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Legislative Update from Capitol Hill

Retirement Plans. Retirement legislation is finally starting to move in Congress. On May 4, a bipartisan legislative proposal, Securing a Strong Retirement Act of 2021 (SECURE 2.0), was introduced by House Ways and Means Committee Chairman Richard E. Neal (D-Mass.) and Ranking Member Kevin Brady (R-Tex.). A bipartisan legislative proposal, H.R. 2954 easily passed out of Committee on a unanimous voice vote and awaits further action in the House. Ten days after the House committee vote, its counterpart on the Senate side, S. 1770, the Retirement Security and Savings Act (RESA), was introduced and referred to the Senate Finance Committee.

Both include 27 similar provisions designed to encourage plan adoption by small businesses, promote retirement savings, and add penalty-free fixes to minor plan administrative errors. Broadridge Fi360 Solutions expects the legislation to receive substantial bipartisan support. The final legislative package could be signed into law as early as this fall.

The retirement legislation is likely to expand plan coverage to more workers in three ways: by mandating auto-enrollment in 401(k), 403(b) and SIMPLE plans; allowing long-term, part-time workers to qualify for participation in plans after two rather than three years; and giving employers more tools to encourage savings by their workers.

Other items likely to be included in the final conference bill are increasing the RMD age to 75 over a 10-year span and establishing an employer plan option allowing employees to make student loan payments in lieu of retirement account contributions while still receiving the employer's match. In addition, another provision would create a national 'lost-and-found' clearinghouse to help plan sponsors and participants keep track of their retirement accounts after changing jobs.

Also of interest to plan advisors are provisions that would expand investments to include lower-cost collective investment trust (CIT) funds in 403(b) plans and allow the use of variable annuity ETFs.

One intriguing provision in the Senate bill would allow plan participants to receive professional, individualized investment advice on their retirement portfolio without being taxed for that service as a fringe benefit.

Department of Labor

Cybersecurity Guidance. Following up on a recommendation by Congress' independent audit arm, the General Accountability Office (GAO), the DOL in April released a series of best practices for plan sponsors to consider in mitigating cyber-theft of plan assets and workers' personal information. The DOL's subagency that oversees private sector plans, the Employee Benefits Security Administration (EBSA), noted, among other recommendations, that plan fiduciaries have an obligation to minimize cybersecurity risks.

Currently liability in the event of a cybersecurity breach is unclear. Although plan sponsors always have been considered ERISA fiduciaries with ultimate responsibility for protecting client assets, courts are still sorting out whether a plan's service providers may share or be held responsible in the event of a theft.

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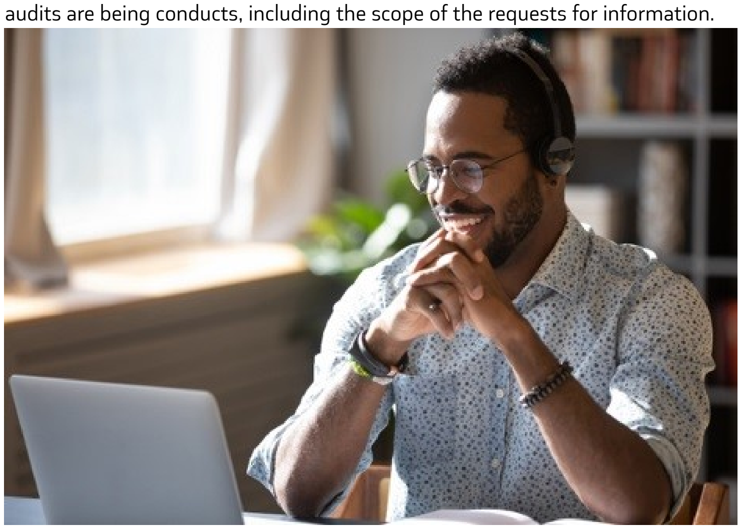
For example, last year a federal court in Illinois held in *Bartnett v. Abbott Labs* that Abbott, the plan sponsor, was not responsible for the theft from a participant's account when the third-party administrator, Alight Solutions, mistakenly disbursed $245,000 to a cyber-hacker who allegedly accessed the account and changed the direct deposit account information. The case against Abbott was dismissed on a finding that the plan sponsor did not act imprudently in hiring Alight. An amended complaint filed against Alight was pending as of early February 2021.

EBSA has made the following materials available for downloading:

- Cybersecurity Program Best Practices
- Tips for Hiring a Service Provider, and
- Online Security Tips for participants and beneficiaries

However, more recently the trade press and law firm blogs have reported that the DOL is moving aggressively to audit plans' cybersecurity and security program policies, less than two months after issuing the above guidance. Several pension attorneys were quoted as saying they were surprised at the pace at which the audits are being conducts, including the scope of the requests for information.



ESG Rule. Following up on its announcement in late March that the Biden DOL would not pursue enforcement actions for violation of an ESG rule approved by the Trump Administration last year, the Biden Administration released a new executive order on May 20 directing the Department of Labor, to review previous ESG-type regulations. The DOL is expected to propose a new ESG rule by September overriding the Trump-era rule that discouraged ESG investing.

The Trump rule would have required plan sponsors to select investments for plan menus based solely on how the investments would affect the financial interests of plan participants – not so-called "non-pecuniary factors" that may include environmental, social or governance (ESG) issues.

Plan sponsors should keep in mind that while the new Administration has effectively discarded the rule, technically speaking it remains in effect until changes are made in a formal rulemaking or in other regulatory guidance. This means private litigants could still base a claim on any alleged violations until that time.

Note: ESG legislation also has been introduced in the House and Senate to overturn the Trump rule and make clear that a plan fiduciary can consider ESG factors when adding new investments to the plan menu. In addition, the bills would permit a plan to use an ESG investment as a Qualified Default Investment Alternative. The Trump ESG rule had prohibited ESG investments as QDIAs. The proposals have strong industry support including SIFMA, a Wall Street trade group, and the CFA Institute. However, ESG legislation is not likely to pass the Senate due to Republican opposition.

Separately, the House of Representatives also narrowly approved legislation that would require public companies to disclose ESG factors related to their businesses. The legislation passed the House on June 16 in a 215-214 vote but is likely to stall in the Senate. However, the SEC is likely to mandate ESG disclosures by regulation sometime later this year.

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Pension Benefit Statements

The SECURE Act 1.0, enacted by Congress in late 2019, among other things requires plan sponsors to add a 'lifetime income illustration,' i.e., what an annuity income stream would look like in retirement, to participants in 401(k)-type plans annually. The illustration would provide participants with a single and qualified joint and 100% survivor lifetime income illustration based on their account balance. The Department of Labor is expected to release a final rule with guidance in the near future.

There is speculation in some industry quarters that, combined with a recent safe harbor for plan sponsors including annuity products on the plan harbor, annuity products will become more widely available in qualified plans after weathering a slowdown in sales activity caused by the coronavirus pandemic.

Form 5500 Revisions

The DOL's long-term action agenda, i.e., prospective rules more than a year out, anticipated extensive revisions to Form 5500 with a focus on more detailed investment information. This project is likely to take up where the Obama Administration left off in 2016 when the DOL proposed similar changes.

Voluntary Fiduciary Correction Program

EBSA earlier this year announced a series of online events will be held regarding use of its Voluntary Fiduciary Correction Program (VFCP). The webinars are sponsored by its New York regional office and are open to plan sponsors and other plan officials to better understand how to make corrections under the VFCP program. Pre-registration is required by emailing Allende.Barbara@dol.gov or calling Ms. Allende for more information at (212)607-8689. 2021 events are scheduled on the following dates: July 22, Aug. 5, Aug. 19, Sept. 2, & Sept. 16.

According to the DOL spring regulatory agenda, EBSA plans to expand the scope of some plan transactions currently eligible for correction and streamline correction procedures for others. Additional safe harbors would become available under pending congressional legislation (See Legislative Update in this update.)

State Activity

State Auto-IRAs. An effort to repeal California's auto-IRA program by a state tax group, the Howard Jarvis Taxpayers Association, failed in mid-June when a federal appeals court upheld a lower court ruling that the CalSavers Retirement Savings Program isn't preempted by ERISA. Eleven other states and the city of Seattle have enacted similar savings programs since 2012. The program is similar to what the Biden Administration is expected to press Congress to adopt on the federal level and make available to all U.S. workers without 401(k)-type plans.

- The state of Maine is likely to become the 12^{th} state with a state-sponsored, auto-IRA (Roth) plan for workers whose employers do not offer a plan. The opt-out program would start with an automatic 5% contribution from employee wages with an annual increase of 1% up to a

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maximum of 8%. It would not permit employer contributions. The program would be phased in starting in 2023 for covered employers with 25 or more covered employees and by 2024 employers with at least 5 workers. The legislation still needs the governor's signature or to become law without signing the bill.

ERISA Litigation Update

ERISA Class-Action Filings Have Slowed in 2021. Twenty-five class-action lawsuits were filed against 401(k) plan sponsors in the first half of 2021, or one per week – far behind the pace of 1.7 complaints filed for the same time period in 2020. Plans targeted this year range in size from $283 million in assets (and about 5,300 participants) to $6 billion (and 44,000+ participants).

The most common complaints allege plan fiduciaries failed to monitor more costly investment options on the plan menu, failed to monitor their co-fiduciary investment committees, or selected target-date funds with little or no historical performance. Other common claims have included plans paying significantly higher administrative fees per participant than the market average. Year-to-date complaints filed claim an average $174 per participant cost for recordkeeping and other administrative services per year when a reasonable average fee would have been $41. (Note that this is a raw average across complaints filed this year; actual claims in the lawsuits range from excessive fees of $71 to $425 per participant and vary widely based in part on plan size.)

Retirement Research

Key Retirement Risks. A Merrill Lynch survey (Spring 2021) identifies four important risks faced by retirees: longevity, healthcare costs, sequence of returns and inflation. It also examines four strategies that may help retirees mitigate those risks, such as delay claiming Social Security benefits and rethinking the 4% withdrawal rule based on age.

Abandoned Retirement Accounts. An academic paper published in June 2021 assesses the problem with abandoned retirement accounts – a headache for many plan sponsors. This paper uses tax data from IRAs to estimate the total assets abandoned in 2017 ($790 million) with the average account holding $5,400. The paper also noted that nearly all of the funds associated with plans stayed there and were not sent to state unclaimed property departments. Pending federal legislation (see Legislative Update above) would create a national online database for lost and found missing accounts.

Overview of Plan Services, Fees and Expenses, 2020. A white paper by the Investment Company Institute (June 2021), a trade group representing the mutual fund industry, highlights key services provided in 401(k) plans and current trends such as participant holdings and expense ratios. This paper might be useful as an overview for plan investment committees and, in particular, newly established plans.

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STATEMENT OF ADDITIONAL DISCLOSURES: PEER GROUP DESCRIPTIONS

- **Allocation--50% to 70% Equity (MA).** Funds in allocation categories seek to provide both income and capital appreciation by investing in multiple asset classes, including stocks, bonds, and cash. These portfolios are dominated by domestic holdings and have equity exposures between 50% and 70%.
- **Foreign Large Blend (FB).** Foreign large-blend portfolios invest in a variety of big international stocks. Most of these portfolios divide their assets among a dozen or more developed markets, including Japan, Britain, France, and Germany. These portfolios primarily invest in stocks that have market caps in the top 70% of each economically integrated market (such as Europe or Asia ex-Japan). The blend style is assigned to portfolios where neither growth nor value characteristics predominate. These portfolios typically will have less than 20% of assets invested in U.S. stocks.
- **Foreign Large Value (FV).** Foreign large-value portfolios invest mainly in big international stocks that are less expensive or growing more slowly than other large-cap stocks. Most of these portfolios divide their assets among a dozen or more developed markets, including Japan, Britain, France, and Germany. These portfolios primarily invest in stocks that have market caps in the top 70% of each economically integrated market (such as Europe or Asia ex-Japan). Value is defined based on low valuations (low price ratios and high dividend yields) and slow growth (low growth rates for earnings, sales, book value, and cash flow). These portfolios typically will have less than 20% of assets invested in U.S. stocks.
- **Intermediate Core-Plus Bond (PI).** Intermediate-term core-plus bond portfolios invest primarily in investment-grade U.S. fixed-income issues including government, corporate, and securitized debt, but generally have greater flexibility than core offerings to hold non-core sectors such as corporate high yield, bank loan, emerging-markets debt, and non-U.S. currency exposures. Their durations (a measure of interest-rate sensitivity) typically range between 75% and 125% of the three-year average of the effective duration of the Morningstar Core Bond Index.
- **Large Blend (LB).** Large-blend portfolios are fairly representative of the overall US stock market in size, growth rates and price. Stocks in the top 70% of the capitalization of the US equity market are defined as large cap. The blend style is assigned to portfolios where neither growth nor value characteristics predominate. These portfolios tend to invest across the spectrum of US industries, and owing to their broad exposure, the portfolios' returns are often similar to those of the S&P 500 Index.
- **Large Growth (LG).** Large-growth portfolios invest primarily in big U.S. companies that are projected to grow faster than other large-cap stocks. Stocks in the top 70% of the capitalization of the U.S. equity market are defined as large cap. Growth is defined based on fast growth (high growth rates for earnings, sales, book value, and cash flow) and high valuations (high price ratios and low dividend yields). Most of these portfolios focus on companies in rapidly expanding industries.
- **Large Value (LV).** Large-value portfolios invest primarily in big U.S. companies that are less expensive or growing more slowly than other large-cap stocks. Stocks in the top 70% of the capitalization of the U.S. equity market are defined as large cap. Value is defined based on low valuations (low price ratios and high dividend yields) and slow growth (low growth rates for earnings, sales, book value, and cash flow).
- **Mid-Cap Blend (MB).** The typical mid-cap blend portfolio invests in U.S. stocks of various sizes and styles, giving it a middle-of the-road profile. Most shy away from high-priced growth stocks but aren't so price-conscious that they land in value territory. Stocks in the middle 20% of the capitalization of the U.S. equity market are defined as mid-cap. The blend style is assigned to portfolios where neither growth nor value characteristics predominate.
- **Mid-Cap Growth (MG).** Some mid-cap growth portfolios invest in stocks of all sizes, thus leading to a mid-cap profile, but others focus on midsize companies. Mid-cap growth portfolios target U.S. firms that are projected to grow faster than other mid-cap stocks, therefore commanding relatively higher prices. Stocks in the middle 20% of the capitalization of the U.S. equity market are defined as mid-cap. Growth is defined based on fast growth (high growth rates for earnings, sales, book value, and cash flow) and high valuations (high price ratios and low dividend yields).
- **Miscellaneous Sector (MR).** Miscellaneous-sector portfolios invest in specific sectors that do not fit into any of Morningstar's existing sector categories and for which not enough funds exist to merit the creation of a separate category.
- **Multisector Bond (MU).** Multisector-bond portfolios seek income by diversifying their assets among several fixedincome sectors, usually U.S. government obligations, U.S. corporate bonds, foreign bonds, and high-yield U.S. debt securities. These portfolios typically hold 35% to 65% of bond assets in securities that are not rated or are rated by a major agency such as Standard & Poor"s or Moody"s at the level of BB (considered speculative for taxable bonds) and below.

STATEMENT OF ADDITIONAL DISCLOSURES: PEER GROUP DESCRIPTIONS

- **Small Blend (SB).** Small-blend portfolios favor U.S. firms at the smaller end of the market-capitalization range. Some aim to own an array of value and growth stocks while others employ a discipline that leads to holdings with valuations and growth rates close to the small-cap averages. Stocks in the bottom 10% of the capitalization of the U.S. equity market are defined as small cap. The blend style is assigned to portfolios where neither growth nor value characteristics predominate.
- **Small Value (SV).** Small-value portfolios invest in small U.S. companies with valuations and growth rates below other small-cap peers. Stocks in the bottom 10% of the capitalization of the U.S. equity market are defined as small cap. Value is defined based on low valuations (low price ratios and high dividend yields) and slow growth (low growth rates for earnings, sales, book value, and cash flow).
- **Target-Date 2030 (TH).** Target-date portfolios provide diversified exposure to stocks, bonds, and cash for those investors who have a specific date in mind (in this case, the years 2026-2030) for retirement. These portfolios aim to provide investors with an optimal level of return and risk, based solely on the target date. Management adjusts the allocation among asset classes to moreconservative mixes as the target date approaches, following a preset glide path. A target-date portfolio is part of a series of funds offering multiple retirement dates to investors.
- **Target-Date 2040 (TJ).** Target-date portfolios provide diversified exposure to stocks, bonds, and cash for those investors who have a specific date in mind (in this case, the years 2036-2040) for retirement. These portfolios aim to provide investors with an optimal level of return and risk, based solely on the target date. Management adjusts the allocation among asset classes to moreconservative mixes as the target date approaches, following a preset glide path. A target-date portfolio is part of a series of funds offering multiple retirement dates to investors.
- **Target-Date 2050 (TN).** Target-date portfolios provide diversified exposure to stocks, bonds, and cash for those investors who have a specific date in mind (in this case, the years 2046-2050) for retirement. These portfolios aim to provide investors with an optimal level of return and risk, based solely on the target date. Management adjusts the allocation among asset classes to moreconservative mixes as the target date approaches, following a preset glide path. A target-date portfolio is part of a series of funds offering multiple retirement dates to investors.
- **Target-Date Retirement (RI).** Target-Date Retirement portfolios provide a mix of stocks, bonds, and cash for those investors already in or entering retirement. These portfolios tend to be managed to more of a conservative asset-allocation strategy. These portfolios aim to provide investors with steady income throughout retirement.
- **Technology (ST).** Technology portfolios buy high-tech businesses in the U.S. or outside of the U.S. Most concentrate on computer, semiconductor, software, networking, and Internet stocks. A few also buy medical-device and biotechnology stocks, and some concentrate on a single technology industry.
- **Utilities (SU).** Utilities portfolios seek capital appreciation by investing primarily in equity securities of U.S. or non-U.S. public utilities including electric, gas, and telephone-service providers.

STATEMENT OF ADDITIONAL DISCLOSURES: RISKS

Investing involves risk. Loss of principal is possible. An investment in a fund is not a bank deposit, and it is not insured or guaranteed by the Federal Deposit Insurance Corporation (FDIC) or any other government agency. Each fund carries its own specific risks which depend on the types of investments in the fund. Investors should review the fund's prospectus carefully to understand the risks before investing.

In general, some of the risks associated with the Morningstar Categories shown in this report are as follows:

- **Allocation.** Different methods of asset allocation are associated with varying degrees of risks. Conservative portfolios contain low risk investments but may not earn any value over time. Moderate portfolios have a higher level of risk than conservative portfolios. Aggressive portfolios mainly consist of equities, so their value tends to fluctuate widely.

- **Bonds.** Bonds are subject to interest rate risk. As the prevailing level of bond interest rates rise, the value of bonds already held in a portfolio decline. Portfolios that hold bonds are subject to declines and increases in value due to general changes in interest rates. Bonds are also subject to prepayment risk, which is the chance that an issuer may exercise its right to prepay its security, if falling interest rates prompt the issuer to do so. Forced to reinvest the unanticipated proceeds at lower interest rates, the fund would experience a decline in income and lose the opportunity for additional price appreciation.

- **Foreign.** Investments in foreign securities may be more volatile than investing solely in U.S. markets due to interest-rate, currency, exchange rate, economic, and political risks. The value of these securities can change more rapidly and extremely than can the value of U.S. securities. Foreign securities are subject to increased issuer risk because foreign issuers may not experience the same degree of regulation as U.S. issuers do and are held to different reporting, accounting, and auditing standards. In addition, foreign securities are subject to increased costs because there are generally higher commission rates on transactions, transfer taxes, higher custodial costs, and the potential for foreign tax charges on dividend and interest payments. Many foreign markets are relatively small, and securities issued in less-developed countries face the risks of nationalization, expropriation or confiscatory taxation, and adverse changes in investment or exchange control regulations, including suspension of the ability to transfer currency from a country. Economic, political, social, or diplomatic developments can also negatively impact performance.

- **Foreign Currencies.** Foreign currencies are subject to the risks associated with such currencies and the changes in their values relative to the U.S. dollar. Such risks include volatility in the price relationship between the U.S. dollar and foreign currencies. The value of foreign currencies relative to the U.S. dollar can be affected by many factors, including national debt levels, trade deficits, international trade and foreign policies, changes in trade and balance of payments, governmental fiscal and monetary policies, currency exchange rates and changes in supply and demand that affect those rates, investment and trading activity of mutual funds, hedge funds and currency funds, exchange rate controls and government intervention in currency markets, inflation rates, interest and deposit rates, market expectations about future inflation rates and interest rates, and global and national economic, financial, political, regulatory, judicial, military and geographical events or developments. Prices of currencies of less developed or emerging market nations tend to be more volatile than those of developed countries, given the greater political, regulatory, economic, financial, military and social instability and uncertainty in less developed or emerging market nations.

- **Large Cap Equities.** Concentrating assets in large-capitalization stocks may subject the portfolio to the risk that those stocks underperform other capitalizations or the market as a whole. Large-cap companies may be unable to respond as quickly as small- and mid-cap companies can to new competitive pressures and may lack the growth potential of those securities. Historically, large-cap companies do not recover as quickly as smaller companies do from market declines.

- **Sector.** Concentrating assets in a particular industry, sector of the economy, or markets may increase volatility because the investment will be more susceptible to the impact of factors such as the market, the economy, regulations, and other dynamics affecting that industry or sector compared with a more broadly diversified asset allocation.

- **Small/Mid Cap Equities.** Portfolios that invest in stocks of small- to mid-cap companies involve additional risks. Smaller companies typically have a higher risk of failure and are not as well established as larger blue-chip companies. Historically, smaller company stocks have experienced a greater degree of market volatility that the overall market average.

- **Target-Date Funds.** Target-date funds typically invest in other mutual funds and are designed for investors who are planning to retire during the target date year. The fund's target date is the approximate date of when investors expect to begin withdrawing their money. A target-date fund's investment objective/strategy typically becomes more conservative over time primarily by reducing its allocation to equity mutual funds and increasing its allocations in fixed-income mutual funds. An investor's principal value in a target-date fund is not guaranteed at any time, including at the fund's target date.

STATEMENT OF ADDITIONAL DISCLOSURES: RISKS

- **Taxable Bond.** Investments in taxable bonds such as government bonds, long-term and short-term bonds, bank loans, corporate bonds, preferred stock, high-yield bonds, etc. are subject to numerous risks including those relating to reinvestment, inflation, market, selection, timing, and duration.
- **Technology.** Concentrating assets in the technology sector may disproportionately subject the fund to the risks of that industry, including loss of value because of intense competitive pressures, short product cycles, dependence on intellectual property rights, and legislative or regulatory changes.