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Lawmakers drop retirement provisions from proposed Build Back Better Act

On October 28, as lawmakers continued negotiations on the multitrillion-dollar reconciliation bill known as the Build Back Better Act (BBBA), the [revised version](#) of the bill excludes all the major retirement provisions previously included in the package. The enhanced savers’ credit and retirement plan mandate, among other provisions, do not appear in this version of the bill.

Since being proposed in September, the BBBA has been scaled back significantly — the overall package shrank from the originally proposed \$3.5 trillion in new spending to a figure that’s closer to \$1.5 trillion. So while the retirement provisions were a priority for Ways and Means Chairman Richard Neal (D-MA), ultimately the narrower package was unable to carry them.

Still, there remains strong bipartisan support for the [Securing a Strong Retirement Act](#), also known as SECURE Act 2.0 and/or SECURE 2.0. The Act is expected to receive increased attention next year. Other notable changes to BBBA include a novel alternative corporate minimum tax and individual income surtax on the wealthy. Despite the release of revised text, lawmakers continue to negotiate virtually all the provisions of BBBA, including the spending and pay-for (tax) provisions.

Senate committee holds hearing on EBSA nominee

On October 7, the Senate Committee on Health, Education, Labor and Pensions (HELP) Committee conducted a nomination hearing for Employee Benefits Security Administration Secretary nominee Lisa Gomez.

Democratic Senators generally focused questions on multiemployer pension relief, workforce apprenticeship programs and mental health parity.

Republicans generally discussed the impact of the Build Back Better Act agenda on small businesses, vaccine mandates, and fraud in the unemployment insurance system.

Of particular interest, two senators asked separate questions on fiduciary and pension-risk transfer (particularly as it relates to the role of private equity); however, Ms. Gomez responded only with diplomatic answers without any real substance.

Ms. Gomez is expected to be confirmed but timing remains uncertain.

Department of Labor proposes revised ESG rule

On October 13, the Department of Labor [announced](#) a proposed rule that would remove barriers to plan fiduciaries' ability to consider climate change and other environmental, social and governance (ESG) factors when they select investments and exercise shareholder rights.

The proposed rule, "[Prudence and Loyalty in Selecting Plan Investments and Exercising Shareholder Rights](#)," follows Executive Order 14030, signed by President Biden on May 20, 2021.

The proposal is a reversal of a previous DOL rule and recognizes that ESG factors in investment selection can be "financially material." The impact of an ESG factor would be an appropriate consideration when evaluating particular investment options.

Biden administration calls climate-related financial risk "systemic"

On October 15, the White House [released](#) a report titled "[A Roadmap to Build a Climate-Resilient Economy](#)." The report reemphasizes the Biden administration's whole-of-government approach to climate risk, which the administration notably characterizes as a systemic risk.

On October 21, the Financial Stability Oversight Council (FSOC) released a [report](#) and recommendation on climate-related financial risk. For the first time, FSOC has identified climate change as an emerging and increasing threat to U.S. financial stability.

The report recommends FSOC members take new actions on climate change data, disclosure, and scenario analysis, and discusses the actions already being taken by FSOC members individual members (SEC, FRB, CFTC, etc.).

Related to insurance, FSOC:

- Recommends FIO act expeditiously to analyze the potential for climate change to affect insurance and reinsurance coverage, and
- Supports continued efforts by FIO and insurance regulators to work together to enhance the existing climate-related disclosures for the insurance sector.

House committee approves investor protection proposal

On October 25, the House Financial Services Committee advanced [H.R. 2265](#), the Financial Exploitation Prevention Act. The bill:

- Requires the Securities and Exchange Commission to report to Congress on recommendations for legislation and regulation to better combat financial exploitation of seniors and vulnerable adults
- Permits a registered open-end investment company or transfer agent for that company, including mutual funds, to better protect seniors by delaying the redemption period of any redeemable security if it was reasonably believed that such redemption was requested through the financial exploitation of a security holder who is a senior or an individual unable to protect their own interests

DOL delays PTE effective date

On October 25, the Department of Labor (DOL) issued [Field Assistance Bulletin \(FAB\) 2021-02](#) which provides for a further temporary extension of enforcement relief for firms that provide fiduciary investment advice to ERISA plans and IRAs and receive compensation that would otherwise be a prohibited transaction.

The FAB provides two extensions:

1. The relief in FAB 2018-02, which is due to expire on December 20, 2021, is extended for a brief period until January 31, 2022.
2. DOL will offer relief from the requirement in [Prohibited Transaction Exemption \(“PTE”\) 2020-02](#) to document the specific reasons for a rollover recommendation (and to provide that documentation to the client) until June 30, 2022.

The DOL previously [indicated its intention](#) to propose new amendments the ERISA fiduciary rules by the end of 2021, or more likely, the beginning of 2022.

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References and source material used in this publication

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Build Back Better Act — Section-By-Section

https://rules.house.gov/sites/democrats.rules.house.gov/files/Section_by_Section_BBB.pdf

Neal and Brady Introduce New Bipartisan Legislation to Strengthen Americans' Retirement Security (press release)

<https://waysandmeans.house.gov/media-center/press-releases/neal-and-brady-introduce-new-bipartisan-legislation-strengthen-americans>

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US Department of Labor Proposes Rule to Remove Barriers to Considering Environmental, Social, Governance Factors in Plan Management (press release)

<https://www.dol.gov/newsroom/releases/ebsa/ebsa20211013>

FACT SHEET: Biden Administration Roadmap to Build an Economy Resilient to Climate Change Impacts

<https://www.whitehouse.gov/briefing-room/statements-releases/2021/10/15/fact-sheet-biden-administration-roadmap-to-build-an-economy-resilient-to-climate-change-impacts/>

A Roadmap to Build a Climate-Resilient Economy — Executive Order 14030

<https://www.whitehouse.gov/wp-content/uploads/2021/10/Climate-Finance-Report.pdf>

Financial Stability Oversight Council Report on Climate-Related Financial Risk

<https://home.treasury.gov/system/files/261/FSOC-Climate-Report.pdf>

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Text of H.R. 2265, the Financial Exploitation Prevention Act

<https://www.congress.gov/117/bills/hr2265/BILLS-117hr2265eh.pdf>

Prohibited Transaction Exemption 2020-02, Improving Investment Advice (Federal Register)

<https://www.govinfo.gov/content/pkg/FR-2020-12-18/pdf/2020-27825.pdf>

Proposed Rule: Definition of the Term “Fiduciary”

<https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202104&RIN=1210-AC02>

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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.

About this report

BOB BEASLEY, CRC, Communications Consultant, edits this report. Beasley brings more than 30 years of financial services communications experience to your plan. He has contributed to past editions of the *Governmental 457(b) Guidebook*, edits countless newsletters and plan sponsor communications, and in 2001 authored “What you should know about the Economic Growth and Tax Relief Reconciliation Act of 2001.” He often voices Nationwide’s online presentations.

Beasley has served on the Education and Communication Committee for the Plan Sponsor Council of America and as a member of the National Association of Government Defined Contribution Administrators.

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