NTSA WINTER VIRTUAL

2021 Retirement Policy Forecast

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117th Congress – Democrats Control

- 50-50 Split in Senate Gives Control to Dems with VP Tiebreaker
- Budget Reconciliation Available
  - Only practically available when one party controls both houses of Congress and the White House
  - Provides for expedited procedures and debate and only requires majority vote (not typical 60 votes) to avoid filibuster and pass in the Senate
  - Used in 2009 by Democrats to pass ACA; used in 2017 by Republicans to pass TCJA
  - Subject to 10-year expiration unless waived with 60 votes
  - Limited to provisions that "effect revenue" (e.g, tax as opposed to strictly ERISA provisions) subject to the determination of the parliamentarian
- More Than One Reconciliation Bill Permitted Per Fiscal Year
  - Biden has suggested as many as three this year could happen

COVID Relief Bill

- Includes Butch-Lewis Act providing a bail out for certain multiemployer plans and funding relief for single employer defined benefit plans
- Due to reconciliation rules, also includes COLA freeze on DC and DB annual contribution and benefit limits as well as a COLA freeze on the annual compensation limit
  - Effective in 2030 as a way to pay for the "out years"
  - Collectively bargained plans are exempt
  - ARA vigorously objecting to this budget gimmick
  - Presents lobbying challenges the longer it's out there
  - Hill folks are looking at alternatives due to ARA objections

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Automatic Retirement Plan Act

- Priority for Chairman Neal—Possible Inclusion In 2nd Reconciliation Tranche – Possibly this Summer
- Plan Requirement: Employers With 10 or More Employees and Without an Existing Retirement Plan Would Have to Offer Automatic Enrollment IRA or 401(k)
  - Must auto-enroll at 6% and auto-escalate 1%/year to 10%;
  - Specific QDIA options allowed including stable value (may address ESG here);
  - For larger plans (>100) likely to require lifetime income investment option;
  - Not applicable until employer in existence for three years;
  - No employer contributions required;
  - Does not supersede State programs in existence prior to enactment; and
  - Enforced with an excise tax
- Start-Up Credit Under SECURE Increased to 100% of Costs Up to $5k for Employers With Up to 25 Employees
- Potential Deferral-Only 401(k) Safe Harbor with $6,000 Limit
- Existing Plans Grandfathered from Auto-Enroll and Investment Rules
- Effective in 2023 (2025 for smaller (<100) employers)

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Encouraging Americans to Save Act

- Chairman Wyden's companion to Chairman Neal's ARPA – also potential for second reconciliation tranche
- Changes current law Saver's Credit to effectively create government matching program for moderate income workers
- Increases income eligibility to $65,000 (joint returns) with a $20k phase out
- Credit is 50% up to $1,000 total credit
- Credit is contributed to the 401(k) account or IRA of the taxpayer
- Treasury MyRA is reinstated as a default mechanism

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Biden Tax Plan – Equalizing DC Plan Tax Benefits

- "The Biden Plan will equalize benefits across the income scale, so that low- and middle-income workers will also get a tax break when they put money away for retirement."
- Would replace exclusion/deduction with a flat tax credit (amount undetermined).
- ARA concern is that reduced tax incentives for small business owners will make them less likely to make matching and other employer contributions, or even worse, less likely to offer a plan at all.

Securing a Strong Retirement Act (SSRA)

- Bipartisan comprehensive retirement policy bill
  - House Ways & Means Chairman Neal and Ranking Member Brady sponsors
- Five Titles consisting of 36 separate Sections
  - Coverage
  - Income Preservation
  - Simplification
  - SECURE Act Technical Corrections
  - Administration
- Marker Bill but possible action in 2021 or 2022
  - Possibly included in second tranche of reconciliation depending on cost
  - No pay-fors included
  - Section 101-103 redundant with ARPA

Securing a Strong Retirement Act (SSRA)

- Sec 101 – Automatic enrollment required for new DC plans (also in ARPA)
  - 401(k)s, 403(b)s, SIMPLE plans
  - Default rate at least 3% of pay but no more than 10% of pay
  - Auto escalation at 1% of pay until 10% of pay
  - All existing plans grandfathered
  - Exceptions
    - ERs with 10 or fewer EEs
    - New EEs in business for less than 3 years
    - Church plans
    - Governmental plans
- Sec 102 – Small ER pension plan start-up credit increase
  - Credit increased to 100% of cost for ERs with up to 50 EEs capped at $5K
    - Current law limited to 50% of cost
  - Additional ER contribution credit for DC plans
    - Applicable % on amount contributed - capped at $1,000 per EE
    - Full credit for ERs with 50 or fewer EEs; credit phased out for ERs with 51-100 EEs
    - Applicable % = 100% in first two years, 75% in year 3, 50% in year 4, 25% in year 5

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Securing a Strong Retirement Act (SSRA)

- Sec 103 – Saver's Credit (in ARPA)
  - New single credit rate of 50% match up to $3,000 saved
  - Maximum credit amount increased to $1,500 per individual (from $1,000)
  - Income threshold eligible for credit increased to $80k for joint filers ($40k single, $60k head of household) phased down until $100k for joint fliers
- Sec 104 – 403(b)s allowed to invest in CITs
- Sec 105 – Age 75 new Required Beginning Date for RMDs
- Sec 108 – Increased Catch-up Contribution Limits
  - Applies to individuals at age 60
  - New catch-up limits = $10K for DC plans; $5K for SIMPLE plans
- Sec 109 – 403(b) MEPs
- Sec 110 – Student Loan Matching Program
- Sec 111 – Small ER Pension Plan Start-up Credit application for ERs that join an existing MEP

Securing a Strong Retirement Act (SSRA)

- Sec 113 – Small immediate financial incentives for contributing to a plan
- Sec 114 – Safe harbor for corrections of EE elective deferral failures
  - Allows ERs to correct inadvertent errors within 9 ½ months after the end of the year in which the error occurs where the correction is favorable to the EE
- Sec 115 – New LTPT worker eligibility requirement definition
  - 500 hours of service for **two consecutive years**
- Sec 201 – Remove RMD requirements for certain Life Annuities
- Sec 202 – New QLAC definition
- Sec 203 – Allow individuals to purchase Insurance ETFs

Securing a Strong Retirement Act (SSRA)

- Sec 301 – Recovery of retirement plan overpayments
  - ERs prohibited from clawing back overpayments after three years if beneficiary did not cause the overpayment
- Sec 302 – Reduction in retirement plan excise taxes
  - RMD failure excise tax reduced from 50% to 25%; further reduced to 10% if taxpayers takes the RMD before an IRS audit or in the second year after the year in which the excise tax is imposed (if earlier)
- Sec 303 – Performance benchmarks for asset allocation funds
  - Directs DOL to issue guidance to allow plan administrators to use an alternative method for benchmarking target-date funds
- Sec 304 – Reporting and Disclosure Improvements Report
- Sec 305 – Eliminate reporting requirements for unenrolled participants

Securing a Strong Retirement Act (SSRA)

- Sec 306 – Retirement Savings Lost and Found
  - Requires PBGC to update its existing online database of lost accounts to include the unclaimed accounts of all former EEs worth $6,000 or less
  - ERs allowed to transfer to PBGC the retirement accounts of former EEs with a balance of less than $1,000, to be invested in U.S. Treasury securities
- Sec 307 – Exemption from RMD rules for individuals with balances of $100,000 or less
- Sec 311 – Qualified Charitable Distribution Rule expanded to qualified retirement plan distributions – limit increased to $130K
- Sec 315 – Paper statement mandate
  - Requires at least one quarterly benefit statement to be delivered on paper unless the participant opts-out
  - Paper disclosure requirement is once every three years for DB plans
- Sec 401 – SECURE Act technical corrections
- Sec 501 – Plan amendments required before end of 2022 (2024 for governmental plans)

ARA Legislative Priorities—Additions to SECURE 2.0

- Student Loan Matching Design – Fix Non-Discrimination Testing Issue
- Streamline Long-Term, Part-Time EE Compliance Rules
- Allow Disaggregation of Excludable Employees from Top Heavy Test
- New Stretch Match Safe Harbor
- Revise Family Attribution Rules
- Allow Discretionary ADMTs to be added after Close of Plan Year
- Plan Expenses
- Make Permanent Special Distribution and Loan Rules upon Presidential Declared Disasters

Other Legislation to Look Out For

- ESG
  - – Possible mandate to offer ESG options to 401(k) participants – ARA would oppose
  - – ESG disclosure requirements – ARA would support depending on details
- 401(k) Cybersecurity
  - – Increased interest in the subject on the Hill
  - – Expecting hearings

2021 Regulatory Outlook

- Clarifying Guidance for ESG
  - – ARA would support bright line standard that ESG is pecuniary clearing use of ESG investments as TDFs
- Fiduciary Rule Revisited
  - – Expect refinements to the now confirmed PTE
  - – Also expect potential revisiting of 5-part test
- PEP Guidance Expected to be a Priority
  - – Need to correct issue with limitations on named fiduciary in fiduciary PTE