BANK OF AMERICA WORKPLACE BENEFITS™

Legislative and regulatory brief

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BANK OF AMERICA

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Policy topics

Legislative activity:

- Tax Cuts and Jobs Act (TCJA) provisions expiring end of 2025
- Health Out-of-Pocket Expense Act (“HOPE Act”)
- Additional congressional activity

Tax Cuts and Jobs Act (TCJA) provisions expiring end of 2025

STATUS: Enacted in 2017, this legislation included tax reforms for individual taxpayers as well as businesses and is set to expire at the end of 2025 if Congress does not extend. A proposal was made in the Senate early in 2024 and the House committees of jurisdiction have been evaluating possible proposals, but none have been advanced to date.

Status in Washington

Tax Relief for American Families and Workers Act (H.R. 7024)

House status

- Passed in the House January 31, 2024, this legislation would extend some of the business tax provisions of the **TCJA** as well as extend the child tax credit. This bill does not address several other expiring provisions and has not yet been voted on in the Senate.

Senate status

- After the House passed the bill it moved to the Senate. The Senate has not yet held a vote on the bill.

House Ways and Means Committee Republicans Form Tax Teams to Review the 2017 Tax Cuts

- Republican members of the House Ways & Means Committee have formed teams to review the 2017 tax cuts and draft proposals and identify possible legislative solutions to help, as Committee Chair Rep. Jason Smith (R-MO) said "…*"Workers, families, farmers, and small businesses [who] are facing the single largest tax hike in history at the end of next year."* [1]
- The tax cuts included in the 2017 law reduced personal income tax rates across the board and expanded the child tax credit as well as making changes to the mortgage interest deduction.
- Because the law was passed under the reconciliation process which requires certain tax changes to expire after 10 years.
- If Congress does not extend or make permanent the TCJA provisions, they will revert to 2016 rates, increasing the taxes owed by many Americans.

Our Point of View

Extension of Tax Cuts and Jobs Act outlook and employee benefits impact

- There is no impact currently to retirement savings from the HR 7024 bill and the tax teams that have been established in the House have not published any proposed legislation to date.
- The formation of tax teams to address the pending expiring provisions is important as drafting tax legislation and garnering enough support to pass it on a bi-partisan basis takes time and many of the TCJA provisions are set to expire at the of 2025
- According to the Bipartisan Policy Center, the Congressional Budget Office ("CBO") estimates that *"…extending individual, estate, and business tax provisions of TCJA—along with IRA's [Inflation Reduction Act] expansion to tax credits that subsidize the purchase of health insurance on Affordable Care Act exchanges—would increase deficits by nearly $5 trillion from fiscal years 2025 through 2034…"*[2]
- While the TCJA did not include retirement specific provisions, extending provisions of that legislation are very costly *and congress may look to reduce or limit existing tax benefits* to cover some of the revenue costs of extending provisions from TCJA.
- Retirement tax benefits like contribution limits and deductibility of certain contributions sometimes come up in such tax legislation proposals.
- It is not likely that this will be taken up during the post-election lame duck session of Congress, but will have to be addressed in 2025 to prevent the provisions from expiring.
- We will continue to monitor for further developments.

1. *https://waysandmeans.house.gov/2024/04/24/ways-means-chairman-smith-and-tax-subcommittee-chairman-kelly-announce-tax-teams-to-avert-2025-tax-cliff/*
2. *https://bipartisanpolicy.org/blog/the-new-cost-for-2025-tax-cut-extensions-5-trillion/*

Health Out-of-Pocket Expense Act (“HOPE Act”)

STATUS: Interesting proposal to expand health care savings. This bill was introduced in the House in August. It has yet to be voted on but has bipartisan support.

Status in Washington

House status

- Introduced in the House in late August 2024, the bill would create a new account that could be used to save and cover out of pocket medical expenses.
- The bill was introduced by Rep. Blake Moore (R-UT) and has bipartisan support with several co-sponsors including Rep. Jimmy Panetta (D-CA), Rep. Brian Fitzpatrick (R-PA), Rep. Brad Schneider (D-IL), Rep. Adrian Smith (R-NE), and Rep. Raul Ruiz (D-CA)
- These accounts are not HSAs and would not require individuals to have a high deductible health plan to be eligible.
- Anyone with health insurance coverage could establish and fund a HOPE account.
- The proposed annual limit would be $4,000 for individuals and $8,000 for families.
- Contributions could be made by individuals and employers (deductible), subject to additional limits.
- Distributions could only be made for medical expenses or due to the account owner’s death or disability.
- HOPE accounts would be tax-exempt, but contributions would not be tax deductible.
- Any employer contributions to HOPE accounts would be exempt from the account owner’s gross income as long as their AGI did not exceed $100,000 (individual) or $200,000 (family).
- Distributions for qualified medical expenses would not be taxed, all other distributions would be taxable income and subject to a 30% excise tax.
- The House has yet to vote on this legislative proposal.

Senate status

- There is no comparable bill in the Senate currently.

Our Point of View

- Health care costs continue to climb and generally increase for individuals as they age.
- Creating additional ways for individuals to save for medical expenses provides another option for people to plan for and manage healthcare expenses while working and when retired.
- This provides a means for anyone with health insurance to have a tax advantaged savings vehicle without having to have a high deductible health plan as required to establish an HSA.

Potential for passage

- It is too early to assess potential for passage.
- A proposal like this would likely score as an expensive program by the Congressional Budget Office and as such, creates a challenge for passage unless it also includes revenue offsets.
- In 2025, Congress will be focused on the expiration of the Tax Cuts and Jobs Act provisions that provide lower individual tax brackets which may not leave much room for other costly tax proposals.
- We will continue to monitor and provide updates if the House votes on the legislation and sends it to the Senate.

Additional congressional activity

STATUS: We continue to see legislative proposals to expand and encourage savings. This is just a sampling.

Status in Washington

SECURE Technical Corrections Legislation Draft Status

- Discussion draft introduced in December 2023 but no movement to date
- Has bipartisan support in House and Senate
- Would address several technical issues with SECURE 2.0 Act of 2022 including but not limited to:
    - Catch-up contributions (legislative reinstatement)
    - Starter 401(k) plan limit index for inflation
    - Clarification of tax credits for small business start up plans
    - RMD age clarification for age 75

Helping Young Americans Save for Retirement Act

- Introduced in House by Representatives Tim Walberg (R-MI) and Brittany Pettersen (D-CO)
- Would reduce the age 21 eligibility requirement to age 18 for 401(k) and ERISA-covered 403(b) plans
- Plans could not, as a condition for participation, require that any employee complete more than one year of service under the 1,000-hour rule after they have attained age 18
- As drafted, would apply to plan years after December 31, 2025
- Similar legislation was introduced In the Senate in 2023

Our Point of View

SECURE 2.0 Technical Corrections

- Technical corrections bill will need to be added to a larger tax bill as it will not be put forth as a bill on its own
- This could happen during the lame duck session of Congress in 2024 or may not find traction until 2025.
- IRS and Treasury have issued regulatory guidance on some of these issues including:
    - IRS Notice 2023-62 enables catch up contributions to continue and delayed compliance with the Roth catch up contribution requirement (for those with wages >$145k) until January 1, 2025
    - Proposed RMD regulations issued in summer 2024 would clarify that for employees born in 1959, the “applicable age” for commencing RMDs from a non-Roth account is age 73. This would clarify a drafting error in SECURE 2.0 that left it unclear whether the applicable for such employees is age 73 or age 75. *(See “Regulatory Updates: Treasury and Internal Revenue Service,” page 10 for further details)*
    - Technical corrections legislation will ensure the statue is accurate.

Helping Young Americans Save for Retirement Act

- This proposal has not moved further than being introduced
- We will continue to monitor to see if there is congressional interest in including this in future retirement legislative proposals.

Regulatory Updates: Department of Labor

Department of Labor (part 1)

STATUS: The DOL continues to work their annual regulatory agenda and ERISA Advisory Council study topics.

Status in Washington

Retirement Savings Lost and Found Directory

- SECURE 2.0 created a directive to the Department of Labor (DOL) to create an online searchable database called the *Retirement Savings Lost and Found Registry,* containing plan and participant information for certain separated vested participants, to help individuals locate retirement benefits from prior employers no later than December 29, 2024
- DOL had indicated it planned to populate the Registry, by using information collected by the Internal Revenue Service (IRS) on Form 8955-SSA
- The IRS declined to provide this information to DOL, citing legal concerns, which generally requires tax returns and return information to be kept confidential
- In April, 2024, the DOL proposed a voluntary *Information Collection Request* (ICR) from plan administrators as part of the Form 5500 filing process
- More recently, the DOL issued a pared back ICR proposal to provide for a voluntary collection of data, but not tied to the Form 5500 filing. Rather DOL would create an online website where plan administrators would upload a spreadsheet with the requested data.
- The revised ICR seeks only the names and Social Security numbers of any separated vested participants ages 65 or older still owed a plan benefit. This could change in the future.
- The DOL has submitted their ICR to the Office of Management and Budget (OMB) for review. The OMB will take public comment through October 15, 2024 before deciding if they will approve the ICR.

DOL Issues Report on Interpretive Bulletin 95-1 relating to the fiduciary standards when selecting annuity provider for DB pension risk transfer

- On June 24, 2024, the Department of Labor (DOL) issued its report on the standards that apply under Interpretive Bulletin (IB) 95-1 when selecting an annuity provider for the purpose of distributing benefits under a defined benefit (DB) pension plan, an action that is often referred to as a pension risk transfer (PRT).
- The DOL report did not recommend Congress make any changes to the existing standards, indicated further study would be needed to determine if they should make any changes, and that any future changes would be preceded by public notice and comment.

Our Point of View

Retirement Savings Lost and Found Directory

- A registry where workers can search to locate retirement savings from prior plans in which they participated may be a useful tool
- The registry is voluntary and plan administrators may choose to share data with the DOL but are not required to.
- DOL has created an electronic portal for plan administrators who choose to participate, to upload the requested information via an Excel template.
- Gathering and submitting the database information is expected to take significant internal resources and costs.
- This raises concerns about data privacy and protection. It is unclear whether a participant's personal information can be shared when it is not legally required, which may be the case here.
- Cybersecurity and fraud concerns also need to be considered. The DOL has indicated that "security measures will be in place to protect plan participant and beneficiary data" and that "government access to the data will also be strictly controlled, which will be encrypted both at rest and in transit."
- Plan sponsors and plan administrators should consult their ERISA counsel and their recordkeeper if they are considering sharing plan information voluntarily with the DOL at this point.

DOL Issues Report on Interpretive Bulletin 95-1 selecting annuity provider for DB pension risk transfer

- While the report does not indicate any changes at this time, the DOL did indicate they will continue to review the standards for pension risk transfers
- We will continue to monitor for potential DOL proposals to change or update the current standards under IB 95-1

Regulatory Updates:
Treasury and Internal Revenue Service

Treasury and Internal Revenue Service

STATUS: Treasury and IRS continue to focus on their annual Priority Guidance Plan, additional guidance on SECURE Act and SECURE 2.0 Act provisions, as well as issuance of Notices and proposed regulations

Status in Washington

IRS Publishes Final RMD Regulations and Proposed RMD Regulations to Implement SECURE 2.0

- Treasury Department and Internal Revenue Service (IRS) published final regulations regarding required minimum distributions (RMDs) from qualified plans and IRAs
- Final Regulations generally adopt the proposed regulations that were published in February 2022, which reflected changes that Congress made to the after-death RMD rules as part of the SECURE Act of 2019
- The final regulations were extensive, some highlights:
  - Clarification of the 10-year rule applicability before and after required beginning date:
    - The Final Regulations apply for distributions made, and for distribution calendar years beginning, on or after January 1, 2025
    - For earlier years, taxpayers must apply the final regulations published in 2002
    - 10-year rule clarified applicable in two situations:

    (1) Where an employee dies before their required beginning date (RBD), and an eligible designated beneficiary (EDB) does not “stretch” their inherited benefits, no distributions are required until the end of the year containing the 10th anniversary of the employee’s death, but all benefits must be distributed by then.

    (2) Where the employee dies after their RBD, any designated beneficiary or any beneficiary of an EDB who dies after inheriting an account, must take RMDs annually throughout the 10-year period following the employee’s or EDB’s death, as applicable and all benefits must be fully distributed by the end of the 10-year period. The annual post-death RMDs continue to be based on a life expectancy factor.
  - Clarification applicable age for commencing RMDs in non-Roth accounts:
    - Individuals born in 1959 must commence RMDs in the year they attain age 73
    - This eliminates confusion due to a SECURE 2.0 drafting error that made it unclear if it was age 73 or age 75 for this cohort.
  - 20% mandatory withholding (usually only applicable to rollover eligible distributions) applies to distributions from plans to non-spouse beneficiaries even though they are not eligible for rollover. This is a notable change from 2022 proposed regulations.
  - Clarification on spousal joint life annuities, elimination of lifetime RMDs for in-plan Roth accounts, use of the Uniform Lifetime Table for surviving spouses among others.

Our Point of View

IRS Publishes Final RMD Regulations and Proposed RMD Regulations to Implement SECURE 2.0

- The final and proposed regulations provide a great deal of clarity that was needed to apply the changes from the SECURE Act of 2019 and the SECURE 2.0 Act of 2022.
- There was a great deal of confusion around the 10-year rule since the passage of the SECURE Act of 2019. The IRS interim relief for reasonable interpretation of this provision was helpful, but the final rule clarification solidifies how the rule applies going forward.
- It is important to note that the interim relief on the 10-year rule expires at the end of 2024 when the final regulations become effective.
- We will continue to monitor the progress of the proposed regulations that were part of this release and provide updates when they are finalized.

Treasury and Internal Revenue Service

continued

Status in Washington

IRS FAQs on Educational Assistance Programs Focus on Temporary Student Loan Repayment Feature

- On June 17, 2024, the Internal Revenue Service (IRS) issued a series of frequently asked questions (FAQs) about Internal Revenue Code section 127 educational assistance programs.
- The FAQs include a reminder that the temporary option for employers to use 127 Programs to make principal or interest payments on an employee's student loans on a tax-favored basis will expire at the end of 2025.

IRS Issues Guidance on New Distribution Rights Notice 2024-55

- June 20, 2024, Guidance on the SECURE 2.0 Act of 2022 (SECURE 2.0) provisions creating emergency personal expense distributions and domestic abuse victim distributions.
- Notice 2024-55 is generally consistent with the guidance that the Treasury Department and IRS have issued on qualified birth or adoption distributions and coronavirus-related distributions in 2020.
- The Notice confirms that self-certification is permitted for distributions due to domestic violence and for emergency personal expenses and that there are instances where repayments of these distributions must be accepted if the plan permits the distribution type.
- Additionally, the Notice confirms that where a plan does not permit domestic violence or emergency personal expense distributions, individuals who are otherwise eligible for a distribution under the plan may treat their distribution as a domestic violence or emergency personal expense distribution for tax purposes on their individual tax returns.

Our Point of View

IRS FAQs on Educational Assistance Programs Focus on Temporary Student Loan Repayment Feature

- The FAQs provided helpful clarification on the use of 127 programs and particularly on the temporary ability to pay student loan principal and interest via a 127 program.
- We will continue to monitor congressional activity to see if the temporary use of 127 to make payments on qualified education loans of eligible employees is extended beyond January 1, 2026.

IRS Issues Guidance on New Distribution Rights Notice 2024-55

- The Notice provides helpful information and requests comments on all aspects of exceptions to the additional 10% income tax penalty on early distributions under section 72(t) of the Internal Revenue Code.
- The Notice indicates that the Treasury and IRS anticipate issuing regulations related to these distribution types.
- We will continue to monitor to see if the Treasury and IRS issue proposed regulations in the future.