



# Washington Update

## A Summary of Key Legislative and Regulatory Developments Affecting Retirement Savings

**FEBRUARY 2023**

### The 118th Congress Convenes

With the 118th Congress having now convened, the first session is underway with a Congress that is not only split in its control, but with the Party in power in each Chamber operating within very narrow majorities. In the Senate, the Democratic Party enjoys a 51–49 majority, while in the House the Republican Party enjoys a 222–212 majority (with one vacancy).<sup>1</sup> These slim majorities themselves will work to limit legislative progress in each Chamber in the coming year.<sup>2</sup>

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Moreover, the split in control could create a dynamic where legislative successes in one Chamber are automatically met with majority opposition in the other Chamber, absent truly bi-partisan policy agreement on a particular legislative matter.

With narrow majorities in each Chamber, and a split in political control between the Senate and the House, it is not anticipated that this 118th Congress will prove overly productive. This power and control dynamic will have more pronounced effects on the legislative agenda the deeper we move into 2023, as the start of the 2024 Presidential election will cause a pivot to politics versus policy, serving to impede consideration of legislative proposals that might otherwise be supported in both Chambers. The result is likely to be a legislative agenda in 2023 that will see few legislative victories, except for those instances where enactment becomes a necessity.



# Legislation

## The Broad Agenda – What to Expect

Despite the split in control and slim margins within each Chamber, there are certain important policy priorities that will ultimately require legislative action. For instance, on January 13, 2023, Treasury Secretary Yellen informed Congress that the federal debt ceiling had been reached and that Treasury would begin initiating the use of extraordinary measures to forestall breaching that limit.<sup>3</sup> Treasury's letter to Congress has served to start the clock on addressing the debt limit, as the use of extraordinary measures are limited in their duration. Yet, it is not anticipated that negotiations will begin in earnest until the estimated end-date for extraordinary measures comes into clearer focus this spring. In the meantime, look for both parties in Congress, and both the Congress and the Administration, to engage in political posturing and positioning over the coming weeks to gain leverage when negotiations ultimately begin. While it is anticipated that the debt ceiling will ultimately be addressed, avoiding a default on our nation's financial obligations, the process towards achieving that outcome is likely to be politically difficult, and ugly, at best.

Beyond the debt ceiling, Congress will also have to focus attention this summer and fall on the appropriations process – to ensure federal programs and operations remain funded when the federal government's new fiscal year begins on October 1, 2023. As occurs in virtually every session of Congress, the appropriations process this first session

will likely bump up against the end of the fiscal year, necessitating short-term measures, and even the possibility of a longer term continuing resolution ("CR"), to keep federal operations running in the event agreement on spending amounts and priorities cannot be achieved in this split Congress.

While there are numerous other issues upon which Congress may focus attention this first session of the 118th Congress (*e.g., the reauthorization of several laws/ programs that are set to expire this year, such for the Federal Aviation Administration and aviation programs*); the split in control likely serves to limit opportunities for legislative progress this year. In fact, it is possible the House and Senate focus their respective attention on issues that are designed to better position each party for the 2024 Presidential election. For the House, that likely means, among other things, extensive oversight of the Biden Administration and its implementation of recently enacted laws, such as the Inflation Reduction Act. For the Senate, oversight will also a priority, but with a focus more on the positive results flowing from implementation of the recently enacted legislation. The Senate will also spend considerable time focused on nominations for the federal judiciary, a function reserved for that Chamber alone.

## Looking Back – the Lame Duck Session of the 117th Congress

Late last year, following the midterm elections, Members returned to Washington for a lame duck session to

allow them to finish their work in the short time remaining in the 117th Congress. With the federal government operating under a short-term Continuing Resolution ("CR"), Congress used the lame duck session to pass an omnibus appropriations bill to fund all federal operations through the end of the current fiscal year on September 30, 2022. That Omnibus bill, entitled the Consolidated Appropriations Act, 2023 (P.L. 117-328), not only included unfinished appropriations legislation, but numerous other legislative priorities that were added thereto.<sup>4</sup>

## The Omnibus and the Secure 2.0 Act of 2022

Included in the Consolidated Appropriations Act, 2023, was retirement-focused legislation that ultimately became the SECURE 2.0 Act of 2022 ("Secure 2.0"). This legislation was a combination of retirement bills considered and passed separately in both the full House, and through both the Finance and HELP Committees in the Senate, at different times in 2022. As it became clear in the summer of 2022 that Congress would pivot to enactment of a single omnibus spending bill later in the year (or a Continuing Resolution if negotiations over an omnibus bill stalled), and that retirement legislation was unlikely to pass as a stand-alone measure, retirement Leaders in both Chambers began negotiating towards a single retirement bill that would be ready for inclusion, if possible, in whatever funding bill would eventually be considered and passed.

Included in SECURE 2.0 are a number of provisions of interest to and affecting





## Legislation (cont.)

both individuals and employers. Below, we highlight a number of those provisions and their different effective dates, but with the caveat that these represent but a sample of the provisions that were included in SECURE 2.0:

### *For Individuals (sampling):*

- Increase the age at which Required Minimum Distribution (“RMD”) must commence from age 72 to age 73 in 2023 and to age 75 in 2033 (“RMD Age”)<sup>5</sup>
- Increase the catch-up contribution limit for participants in defined contribution plans to the greater of \$10,000 or 150% of the regular age 50 catch-up contribution limit in 2024
  - Applies to participants aged 60 through 63
  - See herein under “Revenue-raising Provisions” when Roth treatment for such contributions would apply
  - Applies to taxable years beginning after 12/31/2024
- Increase the catch-up contribution limit for participants in SIMPLE plans to the greater of \$5,000 or 150% of the regular age 50 catch-up contribution limit in 2025
  - Applies to participants aged 60 through 63
  - Applies to taxable years beginning after 12/31/2024
- Index to inflation the annual \$100k IRA charitable distribution limit
  - Also – allow for a one-time \$50,000 distribution to charities through charitable gift annuities; charitable remainder unitrusts; and charitable remainder trusts
- Applies to distributions made in taxable years beginning after date of enactment
- Reduce the excise tax penalty for inadvertent failures to take an RMD from 50% to 25%; and further to 10% if correct in a 2 year window
  - Applies to taxable years beginning after date of enactment
- Allow for a direct rollover to a Roth IRA of certain assets in a 529 Plan for the benefit of the beneficiary of the 529 Plan
  - Would be exempt from taxation (and therefore the 10% additional tax would also not apply)
  - An overall lifetime limit of \$35k would apply (per beneficiary)
  - The 529 account must be maintained for the 15-year period prior to the date of the distribution
  - Other restrictions would also apply
  - Applies to distributions after 12/31/2023
- Allow limited distributions each year (up to \$2,500) from an employer-sponsored plan for the payment of premiums for “certified” long-term care (“LTC”) insurance for the participant or spouse
  - Would not be subject to the 10% tax on early distributions (for participants not yet aged 59 ½)
  - Applies to distributions made after the date which is 3 years after date of enactment
- Allows for one tax-free and penalty-free withdrawal from a tax-preferred retirement account within a 3-year period of up to \$1,000 per year year for “unforeseeable or immediate financial needs relating to personal or family emergency expenses.”
  - An option to repay the withdrawal is allowed within that 3-year period, and if such repayment occurs, would allow for additional withdrawals
  - Applies to distributions made after 12/31/2023

### *Business/Employer Provisions (sampling):*

- Require new 401(k) and 403(b) plans to automatically enroll participants upon becoming eligible at a minimum initial rate of 3% of pay (up to 10% of pay), increasing in 1% increments until reaching 10% of pay (15% for safe harbor plans and for non-safe harbor plans ending in plan year 2025 and thereafter)
  - Employees may opt out of participation and/or elect a different rate of contribution
  - Plans exempt from the automatic enrollment requirement:
    - Existing 401(k)/403(b) plans
    - SIMPLE 401(k) plans
    - Governmental and church plans
    - Plans sponsored by new businesses (in business less than 3 years)
    - Small businesses (10 or fewer employees)
  - Applies to plan years beginning after 12/31/2024
- Allow employers to make matching contributions under a 401(k), 403(b), and governmental 457(b) plans, and/or a SIMPLE IRA with respect to “qualified student loan payments” (i.e., any indebtedness incurred by the employee solely to pay qualified higher education expense)



## Legislation (cont.)

- For purposes of the nondiscrimination test applicable to elective deferrals – allows a plan to test separately those employees receiving a match based on student loan payments
  - Applies to contributions made for plan years beginning after 12/31/2023
  - Increase the small business tax credit, for employers with up to 50 employees, to 100% of certain administrative costs for the plan's first three years, up to an annual cap
    - Applies to taxable years beginning after 12/31/2022
  - Allow an employer to establish a “starter 401(k) deferral-only arrangement”
    - Can't already maintain another qualified plan
    - Must auto-enroll eligible employees that meet age/service requirements
    - The default contribution rate can be no less than 3% (and no more than 15%) of compensation
    - Annual elective employee contributions are limited to \$6k
    - No employer contributions are permitted
    - A similar provision pertains to creation of a Safe Harbor Deferral-only 403(b) Plan
    - Effective for plan years beginning after 12/31/2023
  - Allow 403(b) plans to participate in multiple employer plans and pooled employer plans
    - Applies to plan years beginning after 12/31/2022
  - Allow deferral of tax on sale of employer stock to an ESOP sponsored by an S-Corporation (was previously limited to C-Corps)
    - In case of an S-Corp – the election is limited to 10% of the amount realized on the sale for determining the amount of gain not recognized and the extent to which the amount realized exceeds the cost of the qualified replacement property
    - Applies to sales after 12/31/2027
  - Allow defined contribution plans to include a “pension-linked emergency savings account” (“PLESA”) as a part of the plan and, in general:
    - Individual must meet plan's eligibility requirements to participate and not be highly compensated
    - Contributions are made to a designated Roth Account
    - May include auto-enrollment at up to 3% of compensation
    - While no employer contributions to PLESA allowed, employer matching contributions to the plan – must treat any PLESA contributions as elective deferrals for purposes of that match – which would go to the non-PLESA account under the plan
    - Must be invested in cash, an interest-bearing deposit account, or an investment product designed to preserve principal and provide reasonable rate of return
    - Contributions cannot cause the account balance to exceed \$2,500 (or less as set by the employer)
    - Withdrawals must be allowed, in whole or part, at least once per calendar month – and 10% additional penalty tax on the first 4 withdrawals made per year not applicable
    - Applies to plan years beginning after 12/31/2023
  - Enhance plan eligibility for part-time employees (those with up to 500 hours of service) by reducing the service requirement to 2 years for eligibility to participate in a 401(k) plan (down from 3 years)
    - Make the rule applicable to ERISA-covered 403(b) plans (in addition to 401(k) plans)
    - Generally effective for plan years beginning after 12/31/2024 (with exceptions)
- Revenue-Raising Provisions:**
- 401(k), 403(b), and governmental 457(b) plans that allow eligible participants to make catch-up contributions – must require such contributions to be designated Roth
    - The Roth requirement has an exception for participants with wages in the prior calendar year in excess of \$145k (based on wages for FICA taxes)
    - IRAs, SEPs, and SIMPLE plans are exempt from this provision – and can continue to allow pre-tax catch-up contributions
    - Applies to taxable years beginning after 12/31/2023
  - Allow SIMPLE and SEPs to be designated as Roth IRAs
    - Employee must elect for contributions made by or on behalf of the employee to be treated as made to a Roth IRA
    - Applies to taxable years beginning after 12/31/2022
  - Allow employers sponsoring a 401(a) plan, a 403(b) plan, or a governmental 457(b) plan to permit employees to elect to treat as designated Roth contributions some/all of their matching or nonelective contributions



## Legislation (cont.)

- Offering the feature is optional on behalf of the employer
- Applies to contributions made after date of enactment
- Allows 403(b) plan participants to receive hardship distributions from:
  - Salary reduction contributions
  - Qualified nonelective contributions
  - Qualified matching contributions
  - Earnings thereon
  - Applies to plan years beginning after 12/31/2023



# Outlook

## Looking Forward – Retirement Policy in the 118th Congress

With SECURE 2.0 enacted into law in late December 2022, regulatory agencies, plan sponsors, and individuals, will now pivot to implementation of, and adherence to, the new changes. In the short term, it is anticipated that Treasury and the Department of Labor (DOL) will begin to focus attention on publishing guidance to assist in the implementation of those SECURE 2.0 provisions that may require more immediate attention.

It is also likely that Congress seeks to revisit certain SECURE 2.0 provisions that were enacted into law last year. As happens with virtually every major legislative initiative, drafting errors or other glitches within the bill were not identified until after enactment.<sup>6</sup> A “technical corrections” bill will allow for such provisions to be corrected to allow the law to work as intended. With Members expressing an interest in acting to fix errors with SECURE 2.0, it is possible that technical corrections legislation is considered during this first session of the 118th Congress. Moreover, Treasury will also likely use its authority to correct errors in SECURE 2.0 that can be achieved via regulatory versus legislative action.

Beyond technical corrections to SECURE 2.0, the new Congress also presents opportunities for Members to re-introduce, or introduce on first impression, retirement-focused legislation affecting both plan sponsors and individuals. If prior Congresses are any indication, the first session should see numerous such bills introduced in both Chambers. Yet, as of late January 2023, only a single private-sector retirement focused bill had been introduced this Congress that would make substantive changes to retirement policy.<sup>7</sup> While the introduction of legislation will ramp-up in the coming months, expect little movement beyond introduction during this first session, considering SECURE 2.0’s recent enactment.



# Regulatory

## Traditional Regulatory Agenda – Selected Retirement-Focused Rulemaking

### DEPARTMENT OF LABOR

#### **Voluntary Fiduciary Correction Program**

On November 21, 2022, DOL published in the federal register an amended and restated Voluntary Fiduciary Correction Program (VFC Program) that includes proposed program amendments that add thereto a new self-correction feature, a clarification of existing transactions that are eligible for correction under the VFC Program, and simplification of administrative or procedural requirements for participation in, and correction of, certain transactions under the VFC Program.

Comments on the amended and restated VFC Program were due to the DOL by January 20, 2023. A subsequent Federal Register Notice will notify the public of the availability of the amended and restated VFC Program.

[View a copy of the VFC Program changes.](#)

#### **Prohibited Transaction Exemption (PTE) 2002-51 To Permit Certain Transactions Identified in the VFC Program**

In conjunction with the publication of the amended and restated VFC Program (see above), DOL also published a notice of a proposed amendment to PTE 2002-51, the prohibited transaction exemption for certain transactions identified in DOL's VFC Program. In particular, the proposed amendment to PTE 2002-51 would provide for a self-correction feature in the VFC Program to for certain

delinquent participant contributions and loan repayments to pension plans (the SC Component). This would allow “self-correctors” to make whole the plan without having to notify participants or any other interested persons of such correction. Under the amendment, self-correctors would provide an electronic notice to DOL and would receive an email acknowledgment in return.

- Limited to corrections where the amount of lost earnings is \$1 million or less
- Would clarify that excise tax relief is available for such self-correction actions

Written comments on the Proposed Amendment were due to DOL by January 20, 2023.

[View a copy of the Proposed Amendment to PTE 2002-51.](#)

#### **Compliance Assistance Release No. 2022-01 – 401(k) Plan Investments in “Cryptocurrencies”**

On March 10, 2022, DOL published Compliance Assistance Release (2022-02) to “caution[s] plan fiduciaries to exercise extreme care before they consider adding a cryptocurrency option to a 401(k) plan’s investment menu.” The Release announces DOL’s intention to “conduct an investigative program aimed at plans that offer participant investments in cryptocurrencies and related products” and that, as a part of this investigative program, “plan fiduciaries responsible for overseeing such investment options or allowing such investments through brokerage windows should expect to be questioned about how they can square their actions with their duties of prudence and loyalty” in light of the risks that DOL sets forth in the Release.

[View a copy of the Release.](#)

#### **Request for Information on Possible Agency Actions to Protect Life Savings and Pensions from Threats of Climate-Related Financial Risk**

On February 14, 2022, DOL published in the Federal Register a Request for Information (“RFI”) to seek public input on possible actions DOL can take under the Employee Retirement Income Security Act of 1974 (“ERISA”) and the Federal Employees’ Retirement System Act of 1986 (FERSA) to “protect the life savings and pension of U.S. workers and families from the threats of climate-related financial risk.” The RFI was published to further the goals set forth in Executive Order 14030 on Climate-Related Financial Risks, signed by President Biden on May 20, 2021, and in the Report, released by the Biden Administration on October 15, 2021, and entitled “A Roadmap to Build a Climate-Resilient Economy” (“Roadmap”).

Comments in response to the RFI were due to DOL by May 16, 2022.

[View a copy of the RFI.](#)

View a copy of the [Executive Order](#) and the subsequent [“Roadmap”](#).

#### **Procedures Governing the Filing and Processing of Prohibited Transaction Exemptions**

On March 15, 2022, DOL published in the Federal Register a notice of proposed rulemaking to amend and update the existing procedure governing the filing and processing of applications for exemptions from the prohibited transaction provisions of ERISA, the Internal Revenue Code, and the Federal Employees’ Retirement System Act of 1986. According to the release announcing the proposed amendments,





# Regulatory (cont.)

DOL was undertaking the rulemaking to “create more clarity, certainty and transparency around the exemption application process.”<sup>8</sup>

Following an initial comment period, a virtual hearing on the proposed rule was held on September 15, 2022, and shortly thereafter the DOL extended the comment period until October 28, 2022.

[View a copy of the proposed rule.](#)

## **Financial Factors in Selecting Plan Investments**

On December 1, 2022, DOL published in the federal register a Final Rule - “Prudence and Loyalty in Selecting Plan Investments and Exercising Shareholder Rights” to “clarify the application of ERISA’s fiduciary duties of prudence and loyalty to selecting investments and investment courses of action, including selecting qualified default investment alternatives, exercising shareholder rights, such as proxy voting, and the use of written proxy voting policies and guidelines.” Specifically, the final rule permits, but does not obligate, plan fiduciaries to utilize ESG and other non-economic factors in their investment decisions where appropriate, provided that a fiduciary’s duty of prudence in evaluating an investment is focused on factors (both economic and non-economic) that the fiduciary reasonably determines are relevant to a risk and return analysis.

The rule became effective on January 30, 2023. The applicability date for most all provisions is also January 30, 2023, but with the applicability date for several discrete subsections pertaining to proxy voting and exercise of shareholder rights set instead for December 1, 2023.

[View a copy of the Final Rule.](#)

## **Proposed Revision of Annual Information Returns/Reports**

On September 15, 2021, DOL, the Treasury Department and the Pension Benefit Guaranty Corporation jointly published in the Federal Register proposed changes to the Form 5500 Annual Return/Report forms that are filed for pension and welfare plans under ERISA and the Internal Revenue Code. Simultaneous with the publication of the proposed revisions to Form 5500, DOL also separately published a Proposed Rule to amend its regulations relating to annual reporting requirements under Title I of ERISA to conform those reporting regulations to the proposed Form 5500 revisions.

[View a copy of the proposed revisions of the annual information return/reports.](#)

[View a copy of the proposed revisions of the annual reporting and disclosure.](#)

On May 23, 2022, DOL, the Treasury Department, and the Pension Benefit Guaranty Corporation, published final forms/instructions for Form 5500 and Form 5500-Short Form – to primarily implement annual reporting changes for defined benefit plans, as well as provide for a limited number of instruction changes focused on reporting for multiple-employer pension plans (including pooled employer plans). Additional proposed changes to the year 2022 Form 5500, as set forth in the September 15, 2021 release, are anticipated to be published in the coming months.

[View a copy of the final forms/instructions.](#)

On November 21, 2022, DOL forwarded to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget, a final rule to

“implement SECURE Act<sup>9</sup> and Related Revisions to Employee Benefit Plan Annual Reporting on the Form 5500.” OIRA review of that final rule was ongoing at the time of publication.

## **DEPARTMENT OF TREASURY**

On November 4, 2022, the Treasury Department released its 2022-2023 Priority Guidance Plan, setting forth the projects on which the Treasury Department intends to prioritize during the plan year ending June 30, 2023. Included in the Guidance Plan are several priorities pertaining to retirement benefits, some of which are addressed elsewhere in this Update, and include the following (a sampling):

- Regulations under Section 72(t) relating to the 10% additional tax on early distributions
- Regulations relating to the timing of the use or allocation of forfeitures in qualified retirement plans
- Updating IRA regulations under Sections 219, 408, 408A, and 4973 for statutory changes and additional issues
- Final Regulations relating to SECURE Act modifications to 401(a)(9) and other issues under 401(a)(9) (see below)
- Regulations updating electronic delivery rules (see below)
- Guidance on student loan payments and qualified retirement plans and 403(b) plans
- Guidance on missing participants including guidance on uncashed checks
- Regulations regarding employer-provided meals



# Regulatory (cont.)

- Guidance on contributions to and benefits from paid family and medical leave programs

[View a copy of the Priority Guidance Plan.](#)

## **Internal Revenue Service – Multiple Employer Plans**

On March 28, 2022, the Department of the Treasury/Internal Revenue Service (“IRS”) published in the Federal Register proposed regulations to provide relief from the application of the “unified plan rule” for Multiple Employer Plans (“MEPs”) in the event of a failure by one or more employers participating in the plan to satisfy the Internal Revenue Code requirements applicable to such plans. The publication also withdraws an earlier proposed regulation that was published on July 3, 2019.

Comments on the proposed rule were due to the IRS by May 27, 2022.

[View a copy of the proposed rule.](#)

## **Internal Revenue Service – Required Minimum Distributions**

On February 24, 2022, the IRS published in the Federal Register a notice of proposed rulemaking related to required minimum distributions (“RMD”) under 401(a)(9) of the Internal Revenue Code (“Code”) from qualified plans; Section 403(b) annuity contracts, custodial accounts, and retirement income accounts; individual retirement accounts and annuities; and eligible deferred compensation plans under Section 457. The proposed rules address required minimum distribution requirements for qualified plans since the last published update of the rules and further are being updated to reflect the amendments made to the RMD rules via enactment of the SECURE Act.

Comments on the proposed rule were due to the IRS by May 25, 2022.

[View a copy of the proposed rule.](#)

## **Internal Revenue Service – Certain Required Minimum Distributions for 2021 and 2022**

On October 7, 2022, the IRS published Notice 2022-53 to provide temporary relief to certain defined contribution plans and taxpayers that may have either refrained from paying a required minimum distribution (in the case of a plan) or from taking such a distribution (in the case of a taxpayer) in 2021 or 2022 and flowing from a change in the RMD rules enacted as a part of the SECURE Act. In particular, the IRS has indicated that for calendar years 2021 and 2022, taxpayers (and retirement plans) will not be treated as failing to satisfy section 401(a)(9) simply because they did not take a required minimum distribution those years. Further, the IRS indicated that it will not impose an excise tax penalty with respect to a plan’s failure to make RMDs or a taxpayer’s failure to take RMD in either 2021 or 2022, nor will the agency impose the excise tax that would otherwise apply in such a situation.

[View a copy of Notice 2022-53.](#)

## **Internal Revenue Service – Remote Notarization/Witnessing of Spousal Consent**

On May 13, 2022, the IRS issued Notice 2022-27, to extend through the end of 2022 – the relief from the physical presence requirement for participant elections required to be witnessed by a plan representative or notary public, subject to the conditions set forth originally in Notice 2020-42 (issued 6/3/2020). The relief afforded under

Notices 2020-42 and Notice 2022-22 expired at the end of 2022, although the IRS recently issued a new proposed rule issued by the IRS (see below) that provides permanent relief by permitting remote witnessing and spousal consents. While this proposed rule does not technically does not extend the temporary relief described in Notice 2020-42, many plans and providers may continue relying on their remote witnessing procedures without interruption as the proposal states that it may be relied upon prior to the official applicability date of the final rules.

[View a copy of Notice 2020-42.](#)

[View a copy of Notice 2022-27.](#)

## **Internal Revenue Service – Use of an Electronic Medium to Make Participant Elections and Spousal Consents**

On December 30, 2022, the IRS published in the Federal Register a proposed rule relating to the use of an electronic medium for participant elections and spousal consents – providing an alternative to in-person witnessing of spousal consents required to be witnessed by a notary public or plan representative. The proposed rule would clarify that certain special rules for the use of an electronic medium for participant elections also apply to spousal consents.

Comments on the proposed rule are due to the IRS by March 30, 2023, with a public hearing on the proposal set for April 11, 2023.

[View a copy of the proposed rule.](#)



# Miscellaneous

Simply for reference, below we provide inflation adjusted amounts, applicable for calendar year 2023, that pertain to social security benefits, retirement benefits; health savings accounts; and the estate and gift tax exclusion amounts:

## **Social Security Benefits for 2023:**

- Social Security and Supplemental Security Income beneficiaries:
  - 8.7% Cost of Living Adjustment for 2023
- Taxable Wage Base:
  - \$160,200
- Retirement Earnings Test Exempt Amounts:
  - Pre-full retirement age: \$21,240/year or \$1,770 per month
    - \$1 in benefits withheld for every \$2 in earnings above the limit
  - The year an individual reaches full retirement age: \$56,520/year or \$4,710 per month
    - Applies only to earnings for months prior to attaining full retirement age
    - \$1 in benefits withheld for every \$3 in earnings above the limit
  - There is no earnings limit beginning the month an individual reaches full retirement age

[View a copy of the 2023 Social Security fact sheet.](#)

## **Retirement Plan Limits**

For quick reference, selected 2023 plan limits are as follows:

- Elective deferral (contribution limit) for 401(k), 403(b), 457 plans – **\$22,500**
- Catch-up contribution limit for 401(k), 403(b), 457 plans – **\$7,500**
- Annual contribution to traditional and Roth IRAs – **\$6,500**
- Catch-up contribution limit for traditional and ROTH IRAs – **\$1,000 (is not indexed)**
- SIMPLE employee deferrals – **\$15,500**
- SIMPLE catch-up limit – **\$3,500**
- Simplified Employee Pensions (SEPs) minimum compensation threshold – **\$750**
- SEP maximum compensation limit – **\$330,000**
- Annual contribution limit – **\$66,000**
- Annual contribution limit (age 50 and older) including catch-up contributions – **\$73,500**
- Annual Compensation limit for calculating contributions – **\$330,000**
- Limit on annual benefit provided through a defined benefit plan – **\$265,000**
- Employee Stock Ownership Plan (“ESOP”) maximum account balance – **\$1,330,000**

[View a copy of the Cost of Living Adjustments for 2023.](#)

## **Health Savings Accounts (Inflation Adjusted Amounts for 2022-2023)**

For employees to be eligible to participate in a Health Savings Account, they must be enrolled in a High Deductible Health Plan (“HDHP”). For 2022 and 2023, the limits for both HDHPs and HSAs are provided below:

- HSA contribution limit – self only:
  - **2022 – \$3,650**
  - **2023 – \$3,850**
- HSA contribution limit – family:
  - **2022 – \$7,300**
  - **2023 – \$7,750**
- HSA catch-up contribution limit (age 55+)
  - **2022 – \$1,000 (not inflation adjusted)**
  - **2023 – \$1,000 (not inflation adjusted)**
- The minimum HDHP deductible – self only:
  - **2022 – \$1,400**
  - **2023 – \$1,500**
- The minimum HDHP deductible – family:
  - **2022 – \$2,800**
  - **2023 – \$3,000**
- Annual out-of-pocket expenses are capped at – self only:
  - **2022 – \$7,050**
  - **2023 – \$7,500**
- Annual out-of-pocket expenses are capped at – family:
  - **2022 – \$14,100**
  - **2023 – \$15,000**

[View the HSA inflation-adjusted amounts for 2023.](#)



# Miscellaneous (cont.)

## Estate and Gift Tax Exclusion Amounts

For calendar year 2023, the estate and gift tax exemption amounts are:

- **\$12,920,000** per individual
- **\$25,840,000** per couple

The per recipient gift amounts (tax-free and without counting towards the taxpayer's lifetime gift/estate tax exemption amount) are:

- **\$17,000** per recipient
- **\$34,000** per recipient for married couples

[View the inflation-adjusted amounts for 2023.](#)

<sup>1</sup> In the Senate, the 51-seat majority includes three Senators who identify as Independents (Sen. Sanders (I-VT); Sen. King (I-ME); and Sen. Sinema (I-AZ)), but who caucus with the Democratic Party. In the House, a vacancy in Virginia's 4th Congressional District will be filled via special election on February 21, 2023.

<sup>2</sup> This is most pronounced in the Senate, where the Senate filibuster rules, which are expected to remain in place this Congress, will require most if not all legislation to achieve a 60-vote threshold to end debate on a measure and move to a final vote (the final vote itself requires a simple majority, but the procedural votes leading up thereto will, absent agreement, need to achieve a 60 vote threshold to succeed).

<sup>3</sup> [Treasury Department's January 13, 2023 letter to Congress re Reaching Debt Ceiling Limit.](#)

<sup>4</sup> For example, the "Electoral Count Reform and Presidential Transition Improvement Act of 2022"; the "No TikTok on Government Devices Act"; the "Fairness for 9/11 Families Act"; the "Providing Urgent Maternal Protections for Nursing Mothers Act"; and many other Acts or amendments to existing laws, were ultimately included in the Consolidated Appropriations Act. Of course, SECURE Act 2.0, discussed herein, is also included in that mix of bills.

<sup>5</sup> RMD Age is (a) age 70 ½ for individuals born before July 1, 1949, (b) age 72 for individuals born after June 30, 1949, but before 1951, (c) age 73 for individuals born after 1950, but before 1960, or (d) age 75 for all others – note, apparent drafting error in the statutory language in SECURE 2.0 makes it unclear when age 75 starts to apply in lieu of age 73, but it appears age 76 is intended to apply if born after 1959.

<sup>6</sup> For example, a 1/30/23 [Bloomberg Government article](#) identifies a SECURE 2.0 error affecting 401(k) catch-up contributions.

<sup>7</sup> H.R. 585 (Rep. Watson Coleman, D-NJ) was introduced on 1/26/2023 and would "expand the availability of penalty-free distributions to unemployed individuals from retirement plans." As of January 31, 2023, legislative text for H.R. 585 was not yet available.

<sup>8</sup> [US Department of Labor Announces Proposed Amendments to Prohibited Transaction Exemption Filing, Processing Procedures.](#)

<sup>9</sup> The Setting Every Community Up for Retirement Enhancement Act of 2019 (P.L. 116-94), effective as of December 20, 2019 (the "SECURE Act").

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