

# Defined Contribution Plan Legislative Update

Congress continues to negotiate retirement legislation with the hope of finalizing Secure Act 2.0 early next year; as it stands, there are two legislative bills proposed by the House and Senate.

- House: [Securing a Strong Retirement Act – H.R. 2954](#)
- Senate: [Retirement Security and Savings Act – S. 1770](#)

While each bill has more than 50 provisions, noteworthy overlap includes: allowing collective investment trusts (CITs) in 403(b) plans; permitting employers to make matching contributions to plans on behalf of employees who are repaying student loans; and increasing the catch-up contribution amount for individuals of a certain age.

The content herein focuses on other changes and trends that are most relevant to our clients.

## ESG Considerations

In October, the Department of Labor (DOL) issued a proposed rule that would allow plan participants to consider environmental, social, and governance (ESG) factors when selecting investments and exercising shareholder rights. The much-anticipated proposal is in response to the Final Rule that was issued last year under the Trump administration; the Biden administration had placed an enforcement moratorium on any Trump administration rulings and directed federal agencies to assess and mitigate financial risk related to climate change.

The proposed rule is titled *Prudence and Loyalty in Selecting Plan Investments and Exercising Shareholder Rights* and while it provides an endorsement for ESG investing, it falls short of mandating the consideration of ESG criteria. In terms of proxy voting, the proposed rule would eliminate the statement in the current regulation that “the fiduciary duty to manage shareholder rights appurtenant to shares of stock does not require the voting of every proxy or the exercise of every shareholder right.” This is consistent with the DOL’s longstanding view that proxies are considered plan assets and should therefore be voted; however, the DOL has also stated that proxies do not need to be voted if the fiduciary determines the costs outweigh the benefits. The proposed rule also eliminates two key requirements for plan fiduciaries: to monitor any third-party proxy voting service to which voting has been delegated and to maintain records on proxy voting. The intent behind these changes is to remove any misperception that heightened fiduciary standards or liability apply to proxy voting.

There will be a 60-day comment period with a final rule expected to be published in early 2022. Once the final rule is published, we will provide additional guidance on implementation.

## Cybersecurity Guidance

The DOL has issued guidance around cybersecurity in the form of three separate documents, each addressed to a specific audience: *Tips for Hiring a Service Provider with Strong Cybersecurity Practices*, *Cybersecurity Program Best*

---

*Practices*, and *Online Security Tips*. While posed as best practices, it does seem that the guidance is an attempt by the DOL to establish minimum expectations for all ERISA plans.

The guidance makes it clear that plan fiduciaries have a duty to mitigate cybersecurity risk; in that vein, the *Tips for Hiring a Service Provider with Strong Cybersecurity Practices* document applies to plan sponsors and fiduciaries, focusing on due diligence and contracting.

The *Cybersecurity Program Best Practices* document is aimed at recordkeepers and other service providers and includes the following:

1. Have a formal, well documented cybersecurity program.
2. Conduct prudent annual risk assessments.
3. Have a reliable annual third-party audit of security controls.
4. Clearly define and assign information security roles and responsibilities.
5. Have strong access control procedures.
6. Ensure that any assets or data stored in a cloud or managed by a third-party service provider are subject to appropriate security reviews and independent security assessments.
7. Conduct annual cybersecurity awareness training.
8. Implement and manage a secure system development life cycle (SDLC) program.
9. Have an effective business resiliency program addressing business continuity, disaster recovery, and incident response.
10. Encrypt sensitive data, stored and in transit.
11. Implement strong technical controls in accordance with best security practices.
12. Appropriately respond to any past cybersecurity incidents.

Lastly, the *Online Security Tips* document is geared towards participants, focusing on password protection, phishing, and security updates.

### **Focus on Target Date Funds**

Congress has asked the Government Accountability Office (GAO) to review and report on Target Date Funds (TDFs). In addition to gathering general market data, Congress posed specific questions to the GAO, including but not limited to:

- How much variation is there in the performance of TDFs of the same vintage?
- How do plan sponsors select and oversee TDFs to ensure these funds have a suitable risk level for participants?
- To what extent do TDFs have alternative assets, such as hedge funds and private equity?

A similar request was issued following the Global Financial Crisis; the report is expected to be finalized next year.

### **2022 Contribution Limits**

The IRS has announced that for 2022, the annual contribution limit for employees who participate in 401(k), 403(b) and most 457 plans will increase to \$20,000. The catch-up limit for employees aged 50 and over remains unchanged at \$6,500.

As additional information surfaces and the content of Secure Act 2.0 becomes clearer, we will update our clients and provide recommendations as appropriate. ■

---

## PREPARED BY MARQUETTE ASSOCIATES

180 North LaSalle St, Ste 3500, Chicago, Illinois 60601    PHONE 312-527-5500  
CHICAGO BALTIMORE MILWAUKEE PHILADELPHIA ST. LOUIS    WEB [marquetteassociates.com](http://marquetteassociates.com)

*Marquette Associates, Inc. ("Marquette") has prepared this document for exclusive use by the client or third party for which it was prepared. The information herein was obtained from various sources, including but not limited to third party investment managers, the client's custodian(s) accounting statements, commercially available databases, and other economic and financial market data sources.*

*The sources of information used in this document are believed to be reliable. Marquette has not independently verified all of the information in this document and its accuracy cannot be guaranteed. Marquette accepts no liability for any direct or consequential losses arising from its use. The information provided herein is as of the date appearing in this material only and is subject to change without prior notice. Thus, all such information is subject to independent verification and we urge clients to compare the information set forth in this statement with the statements you receive directly from the custodian in order to ensure accuracy of all account information. Past performance does not guarantee future results and investing involves risk of loss. No graph, chart, or formula can, in and of itself, be used to determine which securities or investments to buy or sell.*

*Forward looking statements, including without limitation any statement or prediction about a future event contained in this presentation, are based on a variety of estimates and assumptions by Marquette, including, but not limited to, estimates of future operating results, the value of assets, and market conditions. These estimates and assumptions, including the risk assessments and projections referenced, are inherently uncertain and are subject to numerous business, industry, market, regulatory, geopolitical, competitive, and financial risks that are outside of Marquette's control. There can be no assurance that the assumptions made in connection with any forward looking statement will prove accurate, and actual results may differ materially.*

*The inclusion of any forward looking statement herein should not be regarded as an indication that Marquette considers forward looking statements to be a reliable prediction of future events. The views contained herein are those of Marquette and should not be taken as financial advice or a recommendation to buy or sell any security. Any forecasts, figures, opinions, or investment techniques and strategies described are intended for informational purposes only. They are based on certain assumptions and current market conditions, and although accurate at the time of writing, are subject to change without prior notice. Opinions, estimates, projections, and comments on financial market trends constitute our judgment and are subject to change without notice. Marquette expressly disclaims all liability in respect to actions taken based on any or all of the information included or referenced in this document. **The information is being provided based on the understanding that each recipient has sufficient knowledge and experience to evaluate the merits and risks of investing.***

### About Marquette Associates

Marquette was founded in 1986 with the sole objective of providing investment consulting at the highest caliber of service. Our expertise is grounded in our commitment to client service — our team aims to be a trusted partner and as fiduciaries, our clients' interests and objectives are at the center of everything we do. Our approach brings together the real-world experience of our people and our dedication to creativity and critical thinking in order to empower our clients to meet their goals. For more information, please visit [www.MarquetteAssociates.com](http://www.MarquetteAssociates.com).