

Savings Reform

Prospects and Proposals



Learning Objectives

- ✔ Review guidance intended to promote the creation of new plans
- ✔ Discuss the political climate and prospects for savings reforms or enhancements
- ✔ Examine lawmakers' proposals for tax-advantaged savings
- ✔ Consider state initiatives in retirement preparedness and investing

Executive Order: Enhance Retirement Saving Opportunities

President Trump directs DOL and IRS to broaden retirement plan availability and enhance savings preservation



Expand use of multiple employer plans (MEPs), guidance terms “association retirement plans”



Simplify plan disclosure process



Modernize RMD determination

Association Retirement Plans



Association Retirement Plans (ARPs/MEPs) may allow sharing plan costs and burdens, and thereby encourage employers to sponsor and participate



Final regulations issued July 31, 2019, and apply only to defined contribution plans



Effective September 30, 2019; does not create “open MEPs”



Request for Information (RFI) on *Open MEPS and Other Issues under 3(5) of ERISA* published along with final rule; comments should be submitted by October 29, 2019

Expanded Interpretation of “Employer”



Bona fide group or
association of employers



Bona fide professional
employer organization

Bona Fide Group of Employers



Primary purpose of group or association may be to

- offer and provide MEP coverage to its employer members and their employees
- have at least one substantial business purpose

Each participating employer must employ at least one person covered under the plan

Group must have an organizational structure, with bylaws or other indications of a formal structure

Bona Fide Group of Employers

- Plan must be controlled by participating members
- Group must have “commonality of interest,” which can be satisfied by
 - being in the same trade, industry, line-of-business, or profession
 - having a principal place of business in the same region



Bona Fide Group of Employers



Only employees, former employees, or their beneficiaries may participate in plan



Group of employers cannot be a bank or trust company, insurance issuer, broker-dealer, or other financial services firm

Bona Fide Professional Employer Organization (PEO)

Facts-and-Circumstances Conditions

- PEO organization performs substantial business functions for its member clients; final regulations create a new safe harbor
- PEO has substantial control over functions and activities of MEP
- Employer-clients of PEO must act as employer for at least one employee participating in MEP
- Participation must be limited to current and former employees of PEO, and its client-employers and their beneficiaries



Special Rules for Owner-Employees

Owner-employees eligible to participate if they...



- Have ownership interest in trade or business

- Have income from providing personal services

- Meet minimum work time or earnings test

Miscellaneous

Severability provision added to final rule; similar to the provision found in the final Association Health Plan (AHP) regulations



DOL Interpretive Bulletin 2015-02, which gives states the authority to establish state-facilitated MEPs, is not superseded



Open MEPs still a possibility; DOL seeking comments on open MEPs in RFI



IRS Issues Multiple Employer Plan (MEP) Regulations

Much attention focused on Congress and DOL to remove obstacles to wider use of the MEP concept, but IRS also plays a role



IRS proposed regulations provide exception to the “one bad apple” (unified plan) rule, offering MEP protection from disqualification if one participating employer is noncompliant



Public comments being accepted through October 2019



This guidance *does not* enable “open” MEPs, or authorize a common Form 5500 or common plan audit

Savings Enhancements Have Bipartisan Support



2018 mid-term elections brought a power shift in the House of Representatives, where tax-related legislation—and thus retirement provisions—typically begin.



New House Ways and Means Committee Chairman Richard Neal has an extensive record of retirement legislation proposals, and has promised to lead in bipartisan fashion.



The proposals represent concepts that have history in Congress, and many elements have had bipartisan support in past sessions.

Setting Every Community Up for Retirement Enhancement (SECURE) Act of 2019



Introduced April 2019
Rep. Richard Neal (D-MA)



Delay RMDs to
age 72



Require beneficiary
payout within
10 years, with
exceptions for
spouses, disabled,
and certain others



Allow Traditional
IRA contributions
at any age,
as with Roth IRAs



Add 10% early
distribution penalty
tax exemption
up to \$5,000
for birth or adoption

SECURE Act of 2019



Treat graduate student stipends and certain nontaxable care giver pay as eligible income for IRA contributions



Ease ability for employers to join in a MEP



Allow QRPs to be established through employer tax filing deadline, including extensions



Raise small plan start-up credit to a maximum of \$5,000 per year (now \$500)

SECURE Act of 2019



Provide employers a new auto-enrollment credit, up to \$500/year, including SIMPLE plans



Enable later election of safe harbor 401(k) design, simplify notice rules



Provide employers a more protective safe harbor for selecting annuity investments



Allow employers to automatically increase employee deferrals to as much as 15% of pay, instead of the current 10% cap

SECURE Act of 2019



Require as least annually a statement of projected lifetime income that could be generated by a participant's account balance



Allow an employer plan lifetime income investment to be rolled over to an IRA or another plan if original plan discontinues its availability



Require employers to give long-term, less than fulltime employees eligibility to defer in the plan (with limited exceptions)

SECURE Act of 2019



Simplify 403(b) plan terminations by allowing investment contracts or accounts to be distributed *in kind* to the participant



Increase penalties for failure to timely file Form 5500, Form 8955-SSA (deferred benefit reporting), and withholding notices



Prohibit certain credit-card-enabled retirement plan loans

SECURE Act of 2019



Provide nondiscrimination relief for defined benefit pension plans that are closed to new employees (generally being offered a DC plan)



Clarify which employees are eligible to participate in retirement plans of church-controlled organizations



Allow 529 plan asset use for apprenticeships and limited loan repayments



Reduce PBGC premiums for certain charities and cooperatives

Retirement Enhancement and Savings Act (RESA) Replaced by SECURE Act

RESA elements not contained in SECURE Act



Required most retirement arrangement nonspouse beneficiary payments to be completed within 5 years, but only for aggregate inherited assets above \$400,000



Simplify 403(b) plan termination by allowing orphan custodial accounts to be treated as IRAs



Allow IRA owners to invest in the shares of S Corporation banking entities



Allow deferrals in certain auto-enrollment 401(k) plans to be automatically escalated to deferral rates above 10%, with no cap

Health Savings Account (HSA) Enhancements From Multiple Bills, President's Budget



Include more services in first-dollar (no deductible) coverage, including chronic care services and medications



Offspring up to age 26 treated like dependents for HSA purposes (similar to Affordable Care Act feature)



Allow contributions by an otherwise HSA-eligible individual, even if *spouse* is covered under an HSA-disqualifying health FSA



Allow services at employer or retail on-site clinics without losing HSA contribution eligibility

HSA Enhancements



Allow prescribed amount of HSA assets for health and fitness expenses



Allow certain unused health FSA (or HRA) amounts to be rolled over to an HSA



Eliminate the 10% additional tax when HSA owner loses eligibility during testing period (i.e., last month of current year, plus following year)



Increase maximum contributions—some propose roughly doubling

HSA Enhancements



Allow those enrolled only
in Medicare Part A
to contribute to an HSA



Treat HDHP coverage
date as HSA effective
date for covered
expenses, if HSA is
established within 60
days after HDHP
coverage begins



Broaden qualified
medical expense
definition to add
non-Rx medications
(e.g., Ibuprofen)

HSA Enhancements



Consider expenses of fixed-fee-based, ongoing primary care arrangements to be HSA-eligible



Allow spouses to choose which account receives *both* catch-up contributions



Consider ACA bronze and catastrophic health plans to be HSA-eligible

Retirement Security and Savings Act



Comprehensive bill (some refer to as “Retirement 2.0”)
Senators Rob Portman (R-OH), Ben Cardin (D-MD)



Delay RMDs to age 75; exempt first \$100,000



Exempt Roth deferrals in 401(k), 403(b) and 457(b) plans from RMD requirements



Allow nonspouse beneficiaries to indirectly roll (60-day) inherited plan assets to inherited IRA



Enhance saver credit and small employer retirement plan start-up tax credit



Allow qualified charitable distributions from all retirement plans



Retirement Security and Savings Act

- Liberalize substantially equal periodic payment rules
- Expand SIMPLE IRA contributions and allow Roth deferrals
- Reduce IRA RMD failure and excess contribution penalties
- Permit self-correction of inadvertent retirement plan operational failures



Retirement Security and Savings Act

- Allow participants to partially annuitize retirement benefits
- Relax rules on plan overpayments to participants; permit their rollover
- Enhance 403(b) plan provisions, including merger with a “qualified retirement plan”
- Simplify retirement plan notice requirements
- Expand retirement plan contributions, including second-tier, *higher* catch-up contributions for those age 60 or older (first tier at age 50)



Retirement Security and Savings Act

- Allow rollovers from Roth IRAs to retirement plans, with regulations altered to enable
- Expand automatic enrollment features
- Apply certain retirement plan nondiscrimination tests separately to part-time employees
- Make certain student loan repayments eligible for matching contribution

Automatic Retirement Plan Act (ARPA)



Neal's House Version of "Retirement 2.0"

Rep. Richard Neal



First introduced
in 2017,
re-introduced in
116th Congress



Would mandate
401(k)/403(b)-type
Automatic
Contribution (AC)
Plans with
automatic deferrals
initially 6-10%



Applies to firms in
business 3 years
and with more than
10 employees



Firms with eligible
QRP, 403(b),
SEP, SIMPLE
grandfathered, but
broadened eligibility
required after 6-8
years to retain them

ARPA



Begin in 2020
(if have no
grandfathered plan)
for employers with
101+ employees,
2022 if 100 or
fewer employees

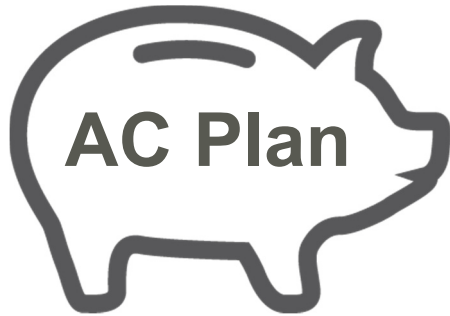


Could exclude those
under 21, seasonal,
nonresident alien,
union, and
employees employed
less than one month



Offer QDIA-
qualifying investment
if no election; lifetime
income option

ARPA



AC plan option of deferral-only
with special contribution,
testing rules



Deferrals limited to \$8,000
(\$9,000 if age 50 or older)



No HCE vs. non-HCE deferral
(ADP) testing to limit HCE
contributions



No top-heavy testing of key vs.
nonkey employees, or top-heavy
minimum contribution
requirement



Simpler reporting on short form
5500-SF, no matter how many
employees

ARPA



Pooled-employer plan
(PEP—liberalized version of
MEP) option



Firms with no common ownership or purpose can join a common plan



No “bad apple” risk to the compliant employer members



Model plan document and guidance on administrator duties issued by IRS



Small employers participating in PEP would not be considered fiduciaries

Automatic IRA Act



Has enjoyed bipartisan support since 2005; some expect it to be combined with Neal's ARPA

Rep. Richard Neal (D-MA)



First introduced in 115th Congress (2017-2018)



Private sector employers with 10+ employees, in existence 2 years, and no plan under which benefits are being provided, must participate



Employees (with limited exclusions) automatically enrolled in payroll-withholding IRA plan, but may opt out or change their saving rate

Automatic IRA Act



Initial saving rate 3%;
regulations could
allow rate between
2 and 6%



Account would be a
Roth IRA unless the
employee elects
otherwise



Investments include
TDF, principal
preservation,
balanced fund,
or GIC

Receiving Electronic Statements to Improve Retiree Earnings (RETIRE) Act



Retirement service providers have hoped for ability to deliver documents and communications electronically as the default method

Rep. Jared Polis (D-CO)



Delivery could be to recipient's electronic address, posting to a site to which the recipient has access, or by other electronic means reasonably calculated to ensure actual receipt by the intended person



The system must allow recipient to select from the e-options offered by the provider, to modify that selection at any time, and to elect to receive in paper form at no additional cost

RETIRE Act



The system must protect the confidentiality of personal information



E-delivered documents must reflect the same readability and content



A paper notice each year must explain the option of paper or e-delivery

Finding Solutions to Missing Retirement Plan Participants

Persistent challenge to employers is tracking down former employees who are entitled to benefits or to receive plan information

DOL auditors claim employers not doing enough to find missing participants, and citing employers for fiduciary breaches



Employers want DOL to give more guidance (e.g., a safe harbor)



DOL claims reluctance to provide a safe harbor or checklist for fear employers will manage to the minimum



Finding Solutions to Missing Retirement Plan Participants

Some level of DOL guidance is expected soon



Influential industry voices provided input to DOL to shape guidance



Washington, D.C., lawmakers have proposed one solution



Retirement Savings Lost & Found Act of 2018



Senators Elizabeth Warren (D-MA), Steve Daines (R-MT)

To connect former employees and beneficiaries with unclaimed benefits due to them



Create online database (with information already available on Form 8955-SSA) to aid those due benefits to find the current plan administrator (or the IRA custodian if a cashout/automatic rollover)



Establish alternative cashout/rollover options, including a fund overseen by the Director of the Retirement Savings Lost & Found (RSLF), or an IRA established by the Secretary of the Treasury

Retirement Savings Lost & Found Act of 2018



Increase the small balance cashout threshold from \$5,000 to \$6,000



Require terminating employees be given information on the RSLF



Broaden the exercise of control definition for DOL 404(c) purposes

Funded-at-Birth Savings Accounts

Universal savings accounts established at birth proposals prompted by

- Lack of workplace retirement plan for many
- Widespread inability to cope with minor financial emergencies
- Income inequality



Funded-at-Birth Savings Accounts



Concept proposed before; recent example is Sen. Corey Booker's so-called "baby bond" proposal

Sen. Corey Booker (D-NJ)



\$1,000 tax-funded account established for each newborn, with annual tax-funded contributions for qualifying low-income families



Access restricted until age 18; to be used for education, home purchase, or retirement



Accounts managed by the U.S. Treasury

Student Loan Assistance Legislation

Lawmakers responding to

- Student loan debt at historic high
- Wide acknowledgement that student loan debt is limiting young workers' ability to
 - save for retirement
 - purchase homes
 - participate fully in the U.S. economy



Student Loan Assistance Proposals



Retirement Parity for Student Loans Act

Sen. Ron Wyden (D-OR)
Sen. Ben Cardin (D-MD)



Would allow employers to match student loan repayments with contributions to its 401(k), 403(b), or SIMPLE IRA plan



Employer Participation in Repayment Act

Sen. Mark Warner (D-VA)
Rep. Scott Peters (D-CA)



Would grant employers a tax benefit to help repay student debt, not just fund future education



Other bills have addressed student loan disclosure, refinancing, debt forgiveness, and other dimensions of student loans



Cannabis Legislation to Protect Financial Organizations

- Voters in most states passed legislation approving the use of cannabis for either medical or recreational use, if not both.
- Current federal law presents obstacles to financial organizations' ability to provide services to cannabis-related businesses
- House of Representatives passed financial services funding that would bar use of appropriated funds to penalize financial firms that provide services to marijuana businesses; no Senate action yet

GAO Report: *Federal Action Needed to Clarify Tax treatment of Unclaimed 401(k) Plan Savings Transferred to States*

GAO suggests IRS address issues regarding uncashed 401(k) distribution checks



When can uncashed checks be transferred to state unclaimed property funds?



Distribution taxability and tax withholding with respect to such checks



Participant ability to roll over at a time beyond 60 days if later reclaimed

**IRS Notice
2018-90: IRA
assets
escheated to
state
unclaimed
property
funds**



Escheatment

- IRA distribution included in taxpayer's gross income
- Income tax withholding applies
- Reported on Form 1099-R in taxpayer's name and TIN
- Effective the earlier of January 1, 2020, or date it is practical to comply

New Comprehensive IRA Regulations May Be Coming



Some of the governing IRA regulations date back decades



New, comprehensive IRA regulations have been promised for several years, and included in numerous IRS/Treasury priority guidance plans



IRA changes over many years make new regulations overdue



IRS describes timeline as “imminent” and “soon,” but this has been heard for several years

Who Will Regulate Investment Advising Behavior?

DOL



SEC



DOL Fiduciary Guidance Package Vacated



Fifth Circuit Court of Appeals intervened to vacate entire 2016 DOL fiduciary guidance package



The fiduciary rule and associated PTEs vacated as of May 8, 2018, retroactive to June 9, 2017

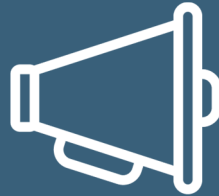


DOL Field Assistance Bulletin (FAB) 2018-02 promised limited enforcement and defines obligations until additional DOL guidance is issued

Impartial Conduct Standard Under the DOL Fiduciary Rule



Receive only
reasonable
compensation



Make no
misleading
statements



Act in the client's
best interest

SEC Reasoning for Issuing Fiduciary Guidance

Improve Investor Protection

Require broker-dealers to not put their own interests ahead of the interests of the retail customer

Enhance Transparency

Address retail investor confusion about

- relationship with investment professionals
- differences between professionals
- harm that may result from that confusion

Preserve Investor Choice

Disclose

- conflicts of interest
- fees
- material info

Allow retail investors to make informed decisions

Create Consistent Standards

Provide clear, understandable, and consistent standards for brokerage recommendations and align these standards with other advice relationships

SEC Guidance Package Is Now Finalized



Regulation best interest
for broker-dealers



SEC interpretation of
fiduciary standard for
investment advisers



Customer relationship
summary; restrictions
on using “advisor” or
“adviser”

SEC Best Interest Standard ≠ DOL Best Interest Contract

Broker-dealer must act in best interest of the retail customer when recommendation is made, not put their own financial or other interest ahead of the customer



Not a fiduciary standard



Applies only to broker-dealers—does not apply to banks, credit unions, insurance companies, etc.



Covers only securities—does not include insurance or banking products



Does not require a legally-enforceable contract; disputes enforceable under current framework

DOL Expected to Replace 2016 Investment Fiduciary Guidance

- 2016 DOL investment fiduciary guidance vacated by U.S. Fifth Circuit Court of Appeals
- Under current administration, DOL has promised an alternative guidance package



Cautiously anticipated
by the end of 2019



Expected in proposed
form, with comment
period before finalized



Believed DOL will
attempt to harmonize
with final SEC guidance



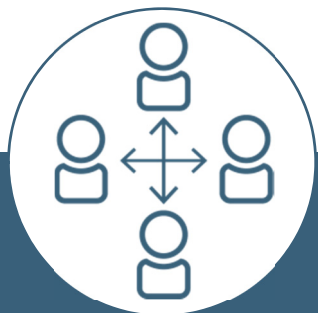
Could extend SEC's
limited broker-dealer/
advisor, securities-only
rules to other
investments, other
financial professionals

State Initiatives in Investment Fiduciary Oversight



- With DOL investment fiduciary regulations invalidated, and SEC guidance applying only to broker-dealers and to securities, states are seeking to establish standards
- Nevada has led, has statute and regulations, and is applying its investment fiduciary standard to B-D's, insurance brokers and investment advisors
- Maryland, Massachusetts, New Jersey, and New York have explored oversight options; others may follow suit

State/City Retirement Initiatives for Private Sector Workers



Automatic IRA
program



Marketplace
approach



Sponsored
prototype plan



Multiple employer
plans (MEPs)

State Retirement Initiatives

Up to 40% of U.S. employees have no retirement plan at work



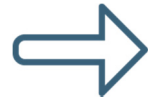
DOL 2016 regulations offered states guidance assuring that these programs would not be in conflict with ERISA rules



Guidance covered automatic IRA programs, state multiple-employer plans (MEPs), state prototype sponsorship, and marketplace creation



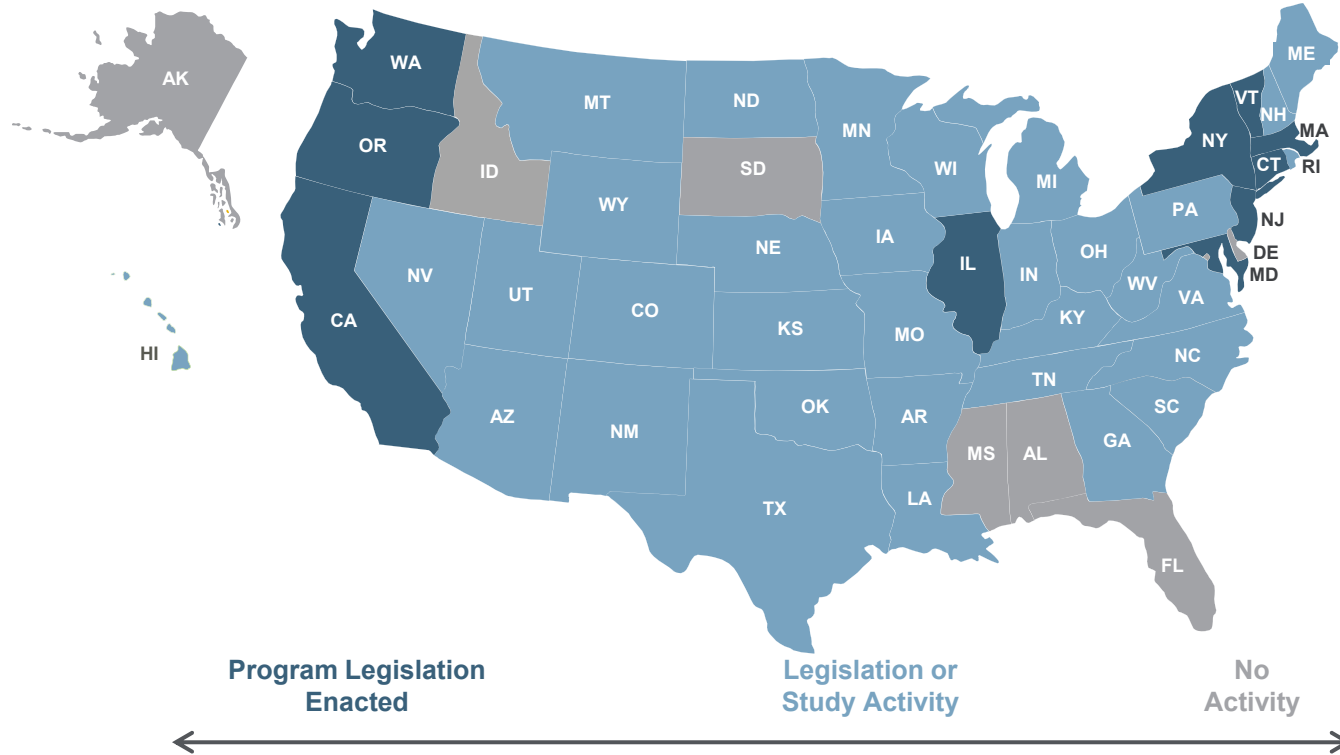
Congress, under the Congressional Review Act, in 2017 withdrew the regulations granting ERISA exemption for auto-enrollment IRA programs of states and large cities



Despite this action by Congress, states continue to move forward, most with IRA-based programs

State Activity

Implementation, pending legislation, studies



Source: Ascensus. Summary as of 7/8/2019

States and Cities With Programs in Motion



OregonSaves is in full operation, open to employers of all sizes



Illinois Secure Choice is in first phase of enrollment



CalSavers in voluntary enrollment phase of introduction



Maryland expects to issue RFP for administration in 2019



Seattle and NYC are considering citywide private sector programs

Opponents Sued Oregon and California Programs on ERISA Preemption, Employer Compliance Burden Grounds



At issue is whether such programs “relate to” an ERISA plan under the ERISA preemption clause



...Whether the program is an “employee benefit plan” subject to ERISA

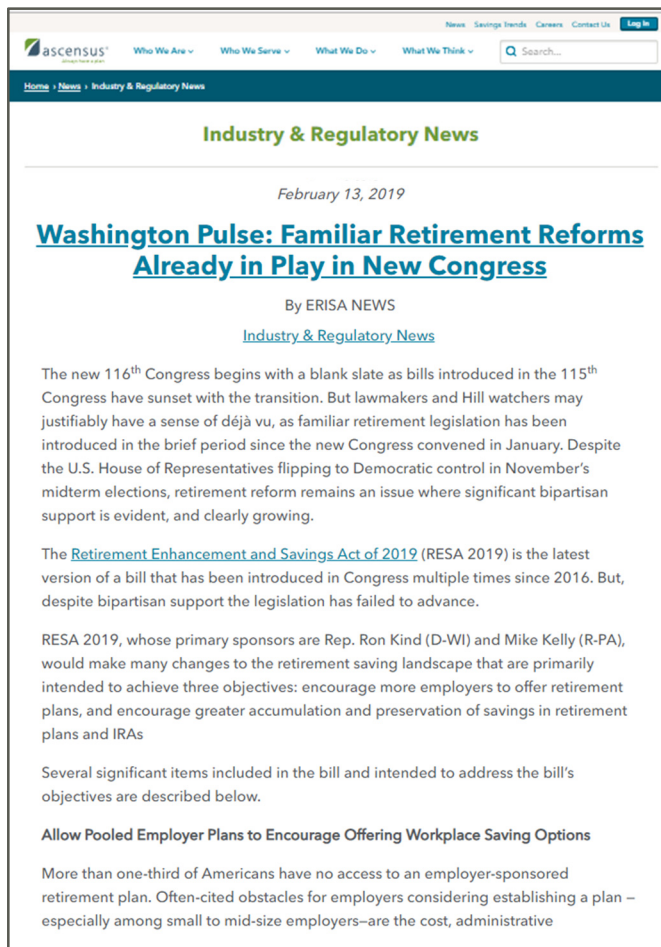


...Whether the program is “completely voluntary” and therefore under the payroll deduction IRA 1975 safe harbor



OregonSaves challenged on grounds of burden placed on exempt employers (employers with a retirement plan) to claim exemption

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The screenshot shows the ascensus.com website. The header includes the ascensus logo, navigation links for 'Who We Are', 'Who We Serve', 'What We Do', and 'What We Think', a search bar, and a 'Log In' button. Below the header, the breadcrumb trail reads 'Home > News > Industry & Regulatory News'. The main content area features the title 'Industry & Regulatory News' in green, followed by the date 'February 13, 2019'. The article title is 'Washington Pulse: Familiar Retirement Reforms Already in Play in New Congress' in blue, with 'Already in Play in New Congress' underlined. The author is listed as 'By ERISA NEWS' and the category as 'Industry & Regulatory News'. The article text discusses the new 116th Congress and the Retirement Enhancement and Savings Act of 2019 (RESA 2019).



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Questions?

Thank you for attending

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We Appreciate Your Opinion

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