



# Federal Legislative & Regulatory Report

## November 2018

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### DOL announces auto-portability proposal

The Department of Labor (DOL) announced on November 7 a [request for public comment](#) on a proposed exemption related to the consolidation of small retirement savings accounts in 401(k) plans and IRAs when workers change jobs.

Frequently, employees leaving their place of employment with small account balances in the company's 401(k) plan either take a distribution or move the account into an IRA. An auto-portability program would seek to improve asset allocations and eliminate duplicate fees for small retirement savings accounts. It would also reduce leakage of retirement savings from the tax-deferred retirement system by informing employees how their 401(k) savings will be rolled over to tax-favored IRAs when they leave a job. When the employee finds a new job, the employee's savings in the IRA would then be automatically transferred to the 401(k) plan of the new employer.

Currently, a plan or IRA fiduciary is prohibited from using its discretion to cause the plan or IRA to pay the fiduciary a fee. But the DOL has authority to grant exemptions that are protective of and in the interests of plan participants and IRA owners.

### IRS proposes hardship distribution rules, issues hurricane relief

On November 9, the Department of Treasury (Treasury) and the Internal Revenue Service (IRS) released [proposed regulations](#) modifying the rules for hardship distributions under 401(k) and

403(b) plans. These proposed regulations reflect statutory changes made by the Bipartisan Budget Act of 2018 (BBA), the 2017 Tax Cuts and Jobs Act (TCJA) and the Pension Protection Act of 2006 (PPA). Comments are due 60 days from November 14.

Notably, **the proposal also includes relief for those affected by hurricanes Florence and Michael**. The relief is similar to the relief in Announcement 2017-15, which relaxes the procedural and administrative rules that normally apply to loans, hardship distributions and unforeseeable emergency distributions. This relief is available through March 15, 2019.

Relatedly, on October 26, the DOL [published compliance guidance](#) for employers located in counties identified now or in the future for individual assistance by the Federal Emergency Management Agency because of Hurricane Florence or Hurricane Michael. Recognizing that plan sponsors, participants and beneficiaries may encounter issues complying with the ERISA for the next few months, the DOL announced it will not treat an employee pension benefit plan as failing to follow procedural requirements for plan loans or distributions imposed by the terms of the plan solely because the failure is attributable to the hurricanes.

On November 1, the IRS released updated limits on [retirement plan contribution limits for 2019](#). Among the adjustments, the contribution limit for employees who participate in 401(k), 403(b) and most 457 plans is increased from \$18,500 to \$19,000. The catch-up contribution limit for employees age 50 and over who participate in 401(k), 403(b), and most 457 plans remains unchanged at \$6,000. In fact, most of the limits increased this year, including the 415(c) limit, which is increased to \$56,000.

Treasury released on November 8 its [2018-2019 Priority Guidance Plan](#), setting forth guidance priorities for Treasury and the IRS. The plan is subject to change but continues to prioritize the implementation of the Tax Cuts and Jobs Act. Surprisingly, there is nothing on electronic delivery, even though that issue was part of an Executive Order issued in August that directed action from the IRS, Treasury and the DOL. Below are the new guidance items in the retirement space:

- Guidance under §401(a)(9) on the use of lump-sum payments to replace lifetime income being received by retirees under defined benefit pension plans
- Regulations under §401(a)(9) updating life expectancy and distribution period tables for purposes of the required minimum distribution rules
- Guidance on hardship distributions under §401(k) to reflect modifications made by sections 41113 and 41114 of the Bipartisan Budget Act of 2018
- Guidance on the universal availability requirement under §403(b)
- Guidance on the timing of amendments to §403(b) plans
- Guidance relating to the unified plan rule for §413(c) multiple employer plans

## SEC proposes summary prospectus for variable products

On October 30, the SEC voted to propose rule changes [aimed at improving](#) disclosure for variable annuities and variable life insurance contracts. Intended to “help investors better understand these contracts’ features, fees and risks, and to more easily find the information that they need to make an informed investment decision,” the proposal would permit contracts to use a summary prospectus to provide disclosures to investors with more detailed information about the contract available online. Also, an investor could choose to have that information delivered in paper or electronic format at no charge. Mutual funds have been allowed to use a similar layered approach to disclosure since 2009. The comment period for the new proposal ends February 15, 2019.

Following up on its investor protection proposal released earlier this year, on November 6, the SEC released the [results of its investor testing](#) of the agency’s proposed Form CRS Relationship Summary, which is part of the agency’s advice standards package. The study was prepared by the RAND Corporation at the request of the SEC’s Office of Investor Advocate. The study was based on the hypothetical Form CRS, published by the SEC for illustrative purposes for dual registrants.

Overall feedback from the study was favorable. Respondents indicated they believed the relationship summary would make them more informed, particularly with regard to fees and costs.

## Senator introduces bill that would revive MyRA, replace Saver’s Credit

Senator Ron Wyden (D-OR) introduced on November 15 an updated version of the Encouraging Americans to Save Act (EASA). With few legislative days remaining, this bill appears to be primarily a messaging effort that is unlikely to advance before the end of the legislative term and will need to be reintroduced in 2019 for further consideration.

This updated version of EASA would reestablish the MyRA program established by the Obama Administration to allow workers who do not have access to workplace savings plans to save for retirement. After only two years of operation, Treasury ended MyRA in 2017, citing low demand and high operating costs.

[The proposal](#) also enhances retirement savings incentives by restructuring the nonrefundable saver’s credit into a refundable, government matching contribution of up to \$500 a year for middle-class workers who save through 401(k)-type plans or IRAs. The legislation would also make a full 50 percent credit rate available to taxpayers making up to \$32,500 a year (couples up to \$65,000 a year). The EASA requires the credit be directly contributed into the saver’s retirement plan or IRA.

Significantly, the program would offer matching contributions for the first time to millions of individuals not covered by an employer-sponsored retirement plan, including those who save through an IRA under a state or local government program.

On a related note, Calpensions announced its plan to [launch CalSavers](#) with a pilot rolling out on November 19. The pilot is expected to start with about 20 diverse employers and grow to 50 or more. The first contributions to CalSavers are expected to start to be made in January. CalSavers,

formerly known as California Secure Choice, will be available for voluntary registrations on July 1, 2019. It will become mandatory over the three following years for employer groups of varying sizes. At full implementation by Jan. 1, 2022, employers with five or more employees that do not offer a retirement plan will be required to offer CalSavers.

## NAIC advances annuity suitability model

At the NAIC's 2019 Fall National Meeting, the NAIC's Life Committee met and accepted the report of the Suitability Working Group, including a draft of proposed amendments to the NAIC Annuity Suitability Model. The Life Committee agreed to both "park the draft" and expose it for comment through February 2019.

The Suitability Working Group believes it is important to expose the current draft to continue to have a credible and developed work product for use in discussions with federal regulators (SEC, DOL). The exposed draft:

- Does not apply to life insurance or in-force transactions
- Does not incorporate an express "best interest" standard but does include a suitability "plus" standard
- Includes placeholders for references to the to-be-finalized SEC Regulation Best Interest

## Producer groups challenge State of New York's Best Interest Rule

On November 16, the Independent Insurance Agents and Brokers of New York Inc. (Big I NY), the Professional Insurance Agents of New York (PIANY) and the National Association of Insurance and Financial Advisors-New York State (NAIFA-NYS) [filed lawsuits](#) against the New York Department of Financial Services and its best interest amendments to New York Insurance Reg. 187.

Notably, the amendments go beyond a "suitability" standard to require sales transactions to be in the "best interest" of the customer and expands its scope from applying to just annuities to both life insurance and annuities.

Generally, the plaintiffs allege that the best interest amendments are vague and an overreach of the Department's authority. They are seeking to void the best interest amendments in their entirety. At this time, the legal challenge is not expected to delay the current compliance dates of September 1, 2019, for annuities and February 1, 2020, for life insurance.

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## References and source material used in this publication

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U.S. Department of Labor Announces Proposal Related to Retirement Asset Auto Portability

<https://www.dol.gov/newsroom/releases/ebsa/ebsa20181107>

IRS Proposes Hardship Distribution Rules (Federal Register)

<https://www.gpo.gov/fdsys/pkg/FR-2018-11-14/pdf/2018-24812.pdf>

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U.S. DOL Announces Guidance and Relief For Employee Benefit Plans Impacted by Recent Hurricanes

<https://www.dol.gov/newsroom/releases/ebsa/ebsa20181026>

2019 Limitations Adjusted As Provided in Section 415(d)

<https://www.irs.gov/pub/irs-drop/n-18-83.pdf>

2018-2019 Treasury Priority Guidance Plan

[https://www.irs.gov/pub/irs-utl/2018-2019\\_pgp\\_initial.pdf](https://www.irs.gov/pub/irs-utl/2018-2019_pgp_initial.pdf)

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SEC Proposes Disclosure Improvements for Variable Annuities and Variable Life Insurance Contracts

<https://www.sec.gov/news/press-release/2018-246>

SEC Investor Testing of Form CRS Relationship Summary

<https://www.sec.gov/about/offices/investorad/investor-testing-form-crs-relationship-summary.pdf>

EASA, A Proposal to Help Build Retirement Savings

<https://www.finance.senate.gov/imo/media/doc/one%20pager%20and%20section%20by%20section.pdf>

State of California Announces Pilot for CalSavers Program

<https://www.treasurer.ca.gov/scib/>

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Producer Groups Sue Over New York State Sales Standard Regs

<https://www.thinkadvisor.com/2018/11/20/producer-groups-sue-over-new-york-state-sales-stan/>

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## Keeping watch

You can find the most recent information on issues affecting governmental defined contribution plans, plan sponsors and plan participants in the Employer page of our plan website, NRSforu.com. In addition, we report guidance on legislative and regulatory activity relevant to government sector plans through:

- *Federal Legislative and Regulatory Report* – distributed monthly and posted in the Plan Sponsor section of NRSforu.com; it's available online and for download
- *Plan Sponsor Alerts* – published as needed to announce breaking news
- *Governmental 457(b) Guidebook*

## About this report

**BOB BEASLEY**, CRC, Communications Consultant, edits this report. Beasley brings more than 30 years of financial services communications experience to your plan. He has contributed to past editions of the *457(b) Governmental Guidebook*, edits countless newsletters and plan sponsor communications, and in 2001 authored “What you should know about the Economic Growth and Tax Relief Reconciliation Act of 2001.” He often voices Nationwide’s online presentations and telephone greetings.

Beasley has served on the Education and Communication Committee for the Plan Sponsor Council of America and as a member of the National Association of Government Defined Contribution Administrators.

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