



HYAS GROUP

9755 SW Barnes Road, Suite 660
Portland, Oregon 97225

MAIN 971.634.1500 FAX 503.914.0022
www.hyasgroup.com

2Q | 2023 THE 457(b) PLAN FIDUCIARY ADVISOR NEWSLETTER

Legislation to Address Critical Issues in SECURE 2.0¹ Thought to be Unlikely until Year-End, Despite Retirement Industry Concerns and Lobbying Efforts

Well-known problems with some SECURE 2.0 provisions are probably going to be addressed only in year-end legislation, some experts believe. "The likely path forward for a pension technical corrections bill is to have something ready for inclusion in an end-of-the-year package that is considered as "must pass" legislation," according to Morgan Stanley's Quarterly Washington Update: A Summary of Key Legislative and Regulatory Developments Affecting Retirement Savings, dated June 2023. The main issue within the industry pertains to Section 603 of SECURE 2.0, which mandates all catch-up contributions made to 401(a), 403(b) and 457(b) plans be made on a Roth-basis beginning in 2024. Almost 250 industry stakeholders signed a letter that was resubmitted to Congress on July 14th requesting a 2-year delay to the effective date of this provision, citing concerns regarding implementation prior to such date absent immediate guidance from Congress, the Treasury and/or the IRS, which may result in a cease to all catch-up contributions. [Read More Here² and Here³](#)

Efforts to Make Commingled Investment Trust (CIT) Products Available in 403(b) Plans are Still Alive

Representative Frank Lucas, R-Oklahoma, plans to introduce legislation that would amend several federal securities laws to permit collective investment trusts to be used in 403(b) plans for the first time. SECURE 2.0 updated tax law to permit CITs into 403(b) plans, but it did not update the necessary federal securities laws to do the same. Without both changes, CITs cannot be used in 403(b) plans. CITs are similar to mutual funds and both are pooled investment vehicles, but CITs tend to have lower fees as they not subject to the same regulatory requirements as those imposed on mutual funds. [Read More Here⁴](#)

IRS Provides Relief on Required Minimum Distribution Rules That Are Impacted by SECURE 2.0 in Advance of Issuing Final Regulations

Notice 2023-54 "provides much-needed 2023 required minimum distributions ("RMD") relief by: extending the effective date of the final RMD regulations, once issued by the IRS, (for all plan types) for another year -- now not effective before the 2024 distribution calendar year; providing rollover relief to plan sponsors and participants/IRA owners who were born in 1951 (as well as their surviving spouses) -- which includes extending the rollover period through September 30, 2023; and eliminating the need for 2023 RMD payments for beneficiaries under the combination of the 10-year rule and the 'at least as rapidly' rule" according to the Groom Law Group article published on July 10, 2023. [Read More Here⁵](#)

Multiple Lawsuits Over Plans Using BlackRock's Target Date Funds (TDF) Have Been Dismissed by Different Courts

"There have been a series of cases filed against fiduciaries of 401(k) plans that offer BlackRock target date funds as investment options to plan participants. Since last August, district courts have dismissed these BlackRock complaints with prejudice, in cases against Boaz Allen Hamilton, Capital One, and Microsoft, saying the plaintiffs had failed to allege any facts about the plan fiduciaries' process for selecting and monitoring the BlackRock TDFs." [Read More Here⁶](#)

CONTACT:

Rasch Cousineau

rcousineau@hyasgroup.com
725.252.0335

Ted Grigsby

tgrigsby@hyasgroup.com
971.412.7701

Audrey White

awhite@hyasgroup.com
971.990.3961

Jayson Davidson, CFA

jdavidson@hyasgroup.com
503.964.0842

Greg Settle

gsettle@hyasgroup.com
503.707.5930

Vincent Galindo

vgalindo@hyasgroup.com
917.227.1629

Ned Taylor

ntaylor@hyasgroup.com
503.964.2333

¹ The SECURE 2.0 Act of 2022. Referred to herein as "SECURE 2.0"

² Source: June 26, 2023, Morgan Stanley Washington Update Newsletter: "A Summary of Key Legislative and Regulatory Developments Affecting Retirement Savings"

³ Source: July 14, 2023, Congress Group Letter: "Retirement Roth Catch-up"

⁴ Source: April 24, 2023, PlanSponsor: "Better Late Than Never: New Bill Would Permit CITs in 403(b)s"

⁵ Source: July 19, 2023, Groom Law Group: "Additional Required Minimum Distribution Relief Following SECURE 2.0 Act Changes"

⁶ Source: July 10, 2023, Faegre Drinker: "Plan Fiduciaries Continue to Defeat BlackRock Target Date Fund Class Actions"

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