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How Will the New Administration Shape the Retirement Landscape?

In the first months of the Trump administration's second term, the executive branch has exercised unprecedented latitude in crafting policy. Through the use of executive orders and unilateral pronouncements, the administration has challenged the historical balance of power among the co-equal branches of government. Irrespective of how the legislative and judicial branches of government respond, "business as usual" in Washington, DC seems like a thing of the past, for now. How the policies of the new administration will impact the retirement plan industry remain to be seen.

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Prospects for retirement plan guidance—For decades, retirement plan reform has enjoyed broad bipartisan support. Of course, not all proposed changes have been universally supported. But in the 50 years since the Employee Retirement Income Security Act of 1974 (ERISA) became law, legislators, regulators, employers, and participants have largely embraced its ever-evolving provisions.

Plan sponsors generally embrace any guidance that may clarify their roles and responsibilities, but not always. For instance, the retirement plan industry may welcome guidance on implementing the automatic enrollment feature that the SECURE 2.0 Act of 2022 (SECURE 2.0 Act) requires for some plan sponsors. It may, however, be less uniformly enthusiastic about the Fiduciary Rule, which may impose more burdens on advisors that discuss rolling over plan assets to an IRA. (On February 11, 2025, the DOL filed a motion to put a hold on its appeal of two federal district court rulings that stayed the effective date of the Fiduciary Rule.) So, while certain noncontroversial guidance may be allowed to trickle out, it seems that this administration may impose constraints on departments and agencies releasing directives that do not clearly align with its policies.

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Legislative/Regulatory Update

Because the Republican party controls the White House and both chambers of Congress, they have a clear opportunity to pass significant legislation—in many cases without Democratic support. One immediate priority is extending 2017's Tax Cut and Jobs Act (TCJA), which is slated to expire at the end of 2025. This effort, and other priorities, may mean that retirement plan legislation may have to wait. However, even early in this legislative session, there are several bills that may be reintroduced and may have a good chance of passage.

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Universal Savings Accounts (USAs)

Universal Savings Accounts have been proposed for years but they have not cleared the enactment bar. Whether they finally become a reality remains to be seen, but a USA bill may be reintroduced this session. In light of recent studies by the Federal Reserve and others, about one-third of adults indicated that they could not cover a $400 emergency expense using cash. By passing a USA bill, Congress could at least provide one more vehicle that could help bridge this savings gap. In some ways, previously proposed Universal Savings Accounts are like Roth IRAs.

- Both are funded with after-tax contributions.
- Distributions of principal are tax free.
- Earnings are also tax free.

In other ways, USAs are different from Roth IRAs.

- There are no required minimum distributions (RMDs).
- There is no minimum holding period (Roth IRAs require five years).
- There is no age restriction for tax-free withdrawals (age 59½ for Roth IRAs).

In 2024, the USA bill would have allowed individuals 18 or older to contribute up to $10,000 each year if their modified adjusted gross income did not exceed $200,000. Other versions that are proposed may have different contribution limits or income thresholds. The common thread in all variations is that USA owners could withdraw their assets at any time without tax or penalty. Despite the benefits of a USA, funding such accounts may continue to be a challenge for lower-income individuals, similar to the problem that exists with traditional savings accounts.

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Rollover Contributions From Roth IRAs to Designated Roth Accounts

Also introduced in the last legislative session, this bill promotes pension portability and would allow plan participants to consolidate their retirement assets. Currently, after-tax IRA assets (including Roth IRAs) cannot be rolled over to an employer's qualified plan, such as a 401(k) plan. Given the popularity of both Roth IRAs and Designated Roth Accounts (in qualified plans), passage of a bill that allows this type of rollover could be seen as a boon to participation in workplace retirement plans.

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Other Legislative Possibilities

Some pundits have made some observations about what types of retirement plan provisions the current administration and, therefore, Republicans in both the House of Representatives and the Senate, would tend to favor. Based on other legislative priorities, we may not see a bold follow-up to the SECURE 2.0 Act this session.

Incentives are in – For decades, tax credits have been a powerful force in nudging taxpayer behavior. The SECURE 2.0 Act expanded credits for employers who incur start-up costs to establish workplace retirement plans. What's more, new plans may qualify for an additional credit for making certain employer contributions (not employee deferrals). Although we do not yet have firm data on how effective these credits have been, it seems likely that, because employers can establish and fund a plan with nearly no out-of-pocket costs for several years, these credits may encourage reluctant employers to start a retirement plan.

Mandates are out – Within the past 10 years, many states have created "state-facilitated retirement programs" that require certain employers to enroll their employees in a state's IRA program if the employees are not covered by a qualifying workplace plan. Usually there are exceptions for new businesses or for smaller businesses. These plans have provided workers with a retirement savings option that did not exist for them before. In that regard, there has been a fairly good reception for these programs. But each state program is slightly different. There has been some movement to create a federal program that is similar to the state programs. This would create some uniformity while also covering many more workers who do not now have a plan. However, requiring employers to establish a retirement plan or, alternatively, to enroll their employees in a federal program, would seem to clash with the current administration's stated commitment to lessen legislative and regulatory mandates, which may present problems for implementing this type of program.

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Proposed Regulations on Automatic Enrollment Released

On January 14, 2025, the IRS published the proposed rule on automatic enrollment requirements under Internal Revenue Code (IRC) Sec. 414A. This new section was created by the SECURE 2.0 Act and requires certain plans that are established after December 28, 2022, to have an automatic enrollment feature in place for plan years beginning on or after January 1, 2025. These proposed regulations are scheduled to apply to plan years that begin more than six months after the final regulations are published. Before this time—that is, between January 1, 2025, and six months after the effective date of the final regulations—plans are treated as having complied with IRC Sec. 414A if they use a reasonable, good faith interpretation of this statute.

Some plans are exempt from the automatic enrollment requirements.

- Plans established before December 29, 2022
- New businesses (those in existence for fewer than three years)
- Small businesses (those that normally employ no more than 10 employees)
- Governmental plans and church plans

The proposed regulations are mostly a recitation of the guidance provided in IRS Notice 2024-2, as well as some additional clarifications. For example, the new rule contains multiple examples of when a plan would be subject to the automatic enrollment provision in various merger, acquisition, and spin-off situations. One clarification is relevant for those considering establishing a plan through a multiple employer plan (MEP): new businesses and small businesses apply their exemption from the auto-enrollment rule on an employer-by-employer basis, so they would be exempt from the requirements irrespective of how long the MEP itself had been in existence.

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DOL Updates Voluntary Fiduciary Correction Program

The Department of Labor (DOL) published an update to its Voluntary Fiduciary Correction Program (VFCP) on January 15, 2025. Published just a few days before the new administration took office, the new rules became effective on March 17, 2025, and provide welcome relief for plans that may have engaged in a prohibited transaction, violating ERISA's fiduciary requirements.

The DOL notes that "the amendments are designed to simplify the [VFC] Program and make it easier to use by employers and others who wish to avail themselves of the relief provided." The most significant change to the VFCP is that plan sponsors may now be able to "self-correct" two of the most common plan fiduciary violations: late deposits of participant contributions and participant loan failures.

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Keep in mind that both the DOL and the IRS have plan correction programs. Generally, the DOL enforces ERISA provisions, and the IRS enforces the Internal Revenue Code. There are many parallel rules, and so enforcement efforts may overlap. The two corrections programs also have similar objectives—to restore plans and participants to the conditions they would have been in had the failure not occurred—but they are not identical. For example, the DOL's new Self-Correction Component (SCC) still requires that the plan sponsor file an electronic notice giving the DOL basic information about the correction. The IRS self-correction program has no such requirement. This notice triggers an acknowledgement from the DOL, and possible follow-up, but the DOL does not send a "no-action letter," which it typically would do when approving corrections under its other programs.

Most plan sponsors that fix compliance failures under either the DOL or IRS programs—or both—wisely hire service providers with expertise in this area. Among Pentegra's many other services, plan corrections of any type fall squarely within its core competence. Employers with concerns about their plans' operations may wish to discuss their situation with Pentegra's experts.

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Other Guidance/Trends/Looking Ahead

DOL Releases Guidance on Escheating Missing Participants' Assets

The Department of Labor issued Field Assistance Bulletin (FAB) 2025-01 on January 14, 2025. This FAB applies to plan sponsors who decide to pay over to a state unclaimed property fund small balances that are owed to missing participants or beneficiaries. Current rules allow plans to distribute missing or nonresponsive participants' assets without consent if the amount does not exceed $7,000. If this amount exceeds $1,000, the assets cannot simply be paid out but must generally be paid to an IRA established for the benefit of the participant. But amounts of $1,000 or less may also be sent to an IRA. For these smaller accounts, the DOL recognizes that escheating the assets to a state unclaimed property fund may be more prudent, both because no fees are deducted (as they often are with IRAs) and because there may be a greater likelihood that such assets will be returned to the participant.

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ERISA Sec. 404(a) requires plan fiduciaries—including plan sponsors/employers—to act solely in the interests of participants and beneficiaries as prudent experts. As a temporary enforcement policy, the DOL will not pursue violations under ERISA Sec. 404(a) if plan sponsors meet certain conditions.

- The plan sponsor determines that the transfer to a state unclaimed property fund is a prudent destination for the assets.
- The plan sponsor has implemented a prudent program for finding missing participants but is unable to locate the participant or beneficiary.
- The plan sponsor selects the state unclaimed property fund offered by the state of the last known address of the participant or beneficiary.
- The plan's summary plan description explains that missing participants' assets may be paid to an eligible state fund and gives the name, address, and phone number of a plan contact that will give more information regarding the eligible state fund.
- The state unclaimed property fund qualifies as an eligible state fund. (The qualifications are extensive, but the plan sponsor may rely on a state treasurer's representation that the state operates an unclaimed property fund that meets the requirements.)

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This DOL guidance dovetails nicely with the recent activation of the DOL's Retirement Savings Lost and Found Database. Although employer participation is now voluntary, having a centralized database will certainly improve the chances that plan assets will find their way back to missing participants. For example, a plan sponsor would indicate in the database that assets owed to the participant were paid to the participant's home state unclaimed property fund. With the information available in the database, the participant should have an easier time reclaiming the assets than under other options.

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Looking Ahead

The legislative and regulatory landscape is uncertain in some ways, and it could shift dramatically. Although the current administration is expected to reduce regulations, plan sponsors and service providers still need guidance. Some of this anticipated guidance is mandated under the SECURE 2.0 Act.

However, even if legislative action and regulatory guidance is curtailed, the DOL and IRS can release sub regulatory guidance such as notices, bulletins, and revenue procedures, which will let plan sponsors, service providers, and participants know how the departments and agencies are interpreting existing statutes and regulations. We will likely receive retirement plan guidance in some form or another. In the coming months, Pentegra will continue to review and analyze relevant guidance and keep you updated.