



# Federal Legislative & Regulatory Report

## September 2019

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### IRS extends nondiscrimination relief for frozen DB plans

On August 23, the Internal Revenue Service (IRS) [extended through 2020 relief](#) from the imposition of certain nondiscrimination rules on defined benefit pension plans that have been closed to new hires, providing the plans meet certain criteria also detailed in earlier notices.

A permanent fix to the problem is currently pending as part of the SECURE Act, which includes around two dozen other retirement policy improvements. The temporary relief potentially complicates efforts to advance SECURE as the time sensitive nature of the frozen DB plans problem created a sense of urgency for advancing the bill that is now alleviated at least in part. (See [page 2.](#))

Analysis from the American Benefits Council found at least 450,000 participants could lose future pension benefits as of January 1, 2020, without a legislative fix.

### DOJ looks to intervene in CalSavers case

On September 13, the U.S. Department of Justice (DOJ), with Department of Labor’s Office of Solicitor listed as co-counsel, filed a “statement of interest” with U.S. District Court for the Eastern District of California, arguing that

- The CalSavers program’s mandate is preempted by ERISA, and
- Plans set up by the CalSavers program are themselves ERISA-governed plans.

This filing relates to a lawsuit brought by the Howard Jarvis Taxpayers Association (HJTA) against CalSavers, arguing that the automatic IRA arrangement under the CalSavers program is preempted by ERISA. CalSavers requires employers that do not offer a plan to participate in California's automatic IRA program. This is the first time the Trump Administration has taken a position on these state-run auto IRA mandates.

Previously, the Obama Administration promulgated a regulation providing an exemption from ERISA, but that was overturned by Congress. This development provides legitimacy to HJTA's lawsuit and could lead to other cases against Oregon and Illinois.

## **IRS releases final hardship distribution regs**

On September 19, the IRS released finalized hardship distribution regulations, 2019-20511, reflecting statutory changes affecting 401(k) plans, including changes made by the Bipartisan Budget Act of 2018 and the Tax Cuts and Jobs Act.

The final regulations largely follow the proposed rules which were released in November 2018. Generally, the regulations aim to streamline and clarify the hardship distribution rules, particularly in the event of a natural disaster.

## **Senate confirms Secretary of Labor**

On September 26, the Senate confirmed Eugene Scalia as the next Secretary of Labor by a vote of 53 to 44. Previously, the Senate Health, Education, Labor & Pensions (HELP) Committee voted 12-11 in a party-line vote to report favorably to the full Senate the nomination following a confirmation hearing.

During the confirmation hearing and questioning from Ranking Member Patty Murray (D-WA), Scalia would not agree to recuse himself from the forthcoming DOL fiduciary rulemaking. Instead, Scalia said that he would consult with ethics officials following his confirmation. Since his nomination, there has been speculation about whether Scalia would choose to, or need to, recuse himself from the department's fiduciary rulemaking given his role as the lead litigator in the lawsuit to invalidate the Obama-era rule.

Scalia replaces now former Secretary Alex Acosta who resigned earlier this year.

## **SECURE Act unanimous consent vote fails**

On September 25, Senate Majority Leader Mitch McConnell (R-KY) moved to advance the **SECURE Act** through a procedural move called a unanimous consent agreement. As the name implies, moving legislation through the unanimous consent process requires all 100 U.S. Senators support the process and substance of the legislation.

- Ultimately Sen. Ted Cruz (R-TX) blocked advancement of the SECURE Act because it did not include a provision to allow 529 funds to be used for homeschooling purposes.
- Sen. Patty Murray (D-WA) also objected on behalf of Democrats based on concerns with proposed changes to a SECURE Act provision intended to benefit community newspapers.

Despite the vote failing, the fact that Senate Leader McConnell is personally engaged in the process and seeking to move the legislation is a strong indication that the prospects of SECURE becoming law this year continue to increase.

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## References and source material used in this publication

### Page 1

Text of IRS Notice 2019-49: Extension of Temporary Nondiscrimination Relief for Closed Defined Benefit Plans through 2020

<https://www.americanbenefitscouncil.org/pub/?id=7CAC1444-1866-DAAC-99FB-BFCE0E18332E>

### Page 2

Summary and Text of H.R. 1994, Setting Every Community Up for Retirement Enhancement Act of 2019

<https://www.congress.gov/116/bills/hr1994/BILLS-116hr1994eh.pdf>

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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 on the Employer page of our plan website, [NRSforu.com/plansponsor](http://NRSforu.com/plansponsor).

## 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 *Governmental 457(b) 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.

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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NRM-17396AO (10/19)

