



Conference Forum—March 2021



Wespath

BENEFITS | INVESTMENTS

Legal Update

Agenda

- Wespath-GCFA Legal Team Collaboration 2020-21
- GCFA Legal Updates
- Wespath Legal Updates
- Washington D.C. State of Play
- Q&A



- **Andy Hendren**
Wespath: Chief Legal and Governance Officer
- **Steve Clark**
Wespath: Associate General Counsel
- **Sarah Krause**
Wespath: Associate General Counsel
- **Bryan Mills**
GCFA: General Counsel
- **Leticia Mayberry Wright**
GCFA: Deputy General Counsel



Wespath
BENEFITS | INVESTMENTS

UMC
SUPPORT



Wespath/GCFA Legal Collaboration in 2020

COVID Legislation

Families First Coronavirus Response Act (FFCRA)

- FFCRA leave

Coronavirus Aid, Relief and Economic Security Act (CARES Act)

- Timely info to UMC stakeholders
- Overall summary
- Paycheck Protection Program (PPP) loans
- Employee Retention Credits
- Payroll Tax Deferral

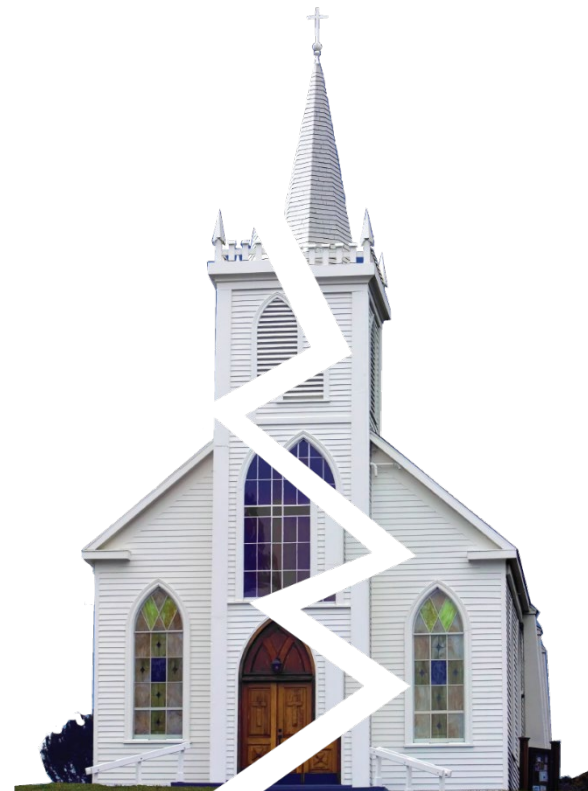
Follow-up Policy Actions

- PPP Flexibility Act
- SBA*/IRS rulemaking
- Executive orders

* **SBA:** Small Business Administration

Disaffiliating Churches

- Education session with conference treasurers (**September**)
- Coordination of questions from treasurers, chancellors, bishops, etc.
 - ¶2553 Disaffiliation
 - How ¶1504.23 (pension withdrawal liability) squares with ¶2549



POTENTIAL CHANGES TO GROUP EXEMPTIONS

What Does it Mean For Us?

Bryan Mills – General Counsel, GCFA

Current Rules (Rev. Proc. 80-27)

- **Central organization must obtain recognition of its own exempt status**
- **Subordinates must be:**
 - “Affiliated” with the central organization
 - Subject to the central organization’s “general supervision or control”
 - Fall under the same subsection of 501(c)
 - Not be private foundations
 - On the same accounting period as the central organization if included in a group return
 - GCFA does not file a group return
- **Subordinates must approve/request inclusion in the group exemption**
- **Subordinates must have their own EIN**

Our Group Exemption

- **GCFA applied for a group exemption to be granted “in the name of The United Methodist Church and its affiliated organizations”**
 - In submitting the application in 1974, GCFA provided a contemporaneous list of general agencies, jurisdictions, annual conferences, and local churches
 - It was stated that these entities are “affiliated with the General Conference of the United Methodist Church and subject to its general supervision or control as legislated through *The Book of Discipline*”
- **When the application was approved, all entities included in the list that was provided became subordinates in the group exemption**
 - The letter was issued to “[GCFA], a/k/a The United Methodist Church and its Affiliated Organizations”

Our Group Exemption

- **Divided into two groups:**

- Category 1 – general agencies, jurisdictions, annual conferences, districts, local churches
 - Simple, online process for requesting and obtaining a letter
 - No need to submit documents
- Category 2 – anything established as a separate legal entity by something in Category 1
 - Food pantries, camps, retreat centers, foundations, campus ministries, etc.
 - More complicated application process that requires specific clauses to be included in the applicant's organizing documents in order to ensure (1) it is a nonprofit and (2) it is sufficiently United Methodist

Proposed Rules (Notice 2020-36)

- **Represents the first meaningful changes to group exemption procedures since 1980**
- **Changes are proposed to all aspects of group exemptions**
- **Several of the proposed changes are problematic:**
 - “Uniform governing instrument” requirement
 - Specific definitions of “general supervision” and “control”
 - Requirement that all subordinates fall under the same subsection of § 509(a)

Uniform Governing Instrument

- **“Representative instruments are not acceptable”**
 - The IRS has allegedly said “uniform equals identical”
- **Section 501(c)(3) group exemptions may be able to create different uniform governing instruments for groups of subordinates with different purposes**
 - This maybe avoids some problems – e.g., an annual conference would not have to adopt the same governing instrument as a local church
 - But it still doesn’t account for other differences within a single category:
 - Incorporated vs. unincorporated
 - Size and sophistication
 - Vagaries in state requirements
 - Category 2 organizations are much less consistently organized

General Supervision and Control

- **There are currently no definitions for either term, but that would change going forward**
- **A subordinate would be subject to the central organization’s “general supervision” if the central organization:**
 - “Annually obtains, reviews, and retains information on the subordinate organization’s finances, activities, and compliance with annual filing requirements, AND
 - Transmits written information to (or otherwise educates) the subordinate organization about the requirements to maintain tax-exempt status under the appropriate paragraph of § 501(c)”
- **A subordinate would be subject to the central organization’s “control” if:**
 - “The central organization appoints a majority of the subordinate organization’s officers, directors, or trustees, OR
 - A majority of the subordinate organization’s officers, directors, or trustees are officers, directors, or trustees of the central organization”

Section 509(a) Limitations

- **Any group exemption that is § 501(c)(3)-based would only be able to add subordinates that fall under the same subsection of § 509(a)**
- **There are four subsections to § 509(a):**
 - (1) – (Most) organizations that are described in § 170(b)(1)(A)
 - (2) – Organizations that annually get at least 33% of their support from gifts, grants, contributions, membership fees, and revenue generated by related activities **AND** no more than 33% of their support from investment income and excess unrelate business income
 - (3) – Supporting organizations
 - (4) – Organizations that test for public safety
- **Note: a § 501(c)(3) organization that falls into one of the § 509(a) categories is, by definition, not a private foundation**

Section 509(a) Limitations

- **Section 509(a)(1) includes churches, schools, hospitals, and governmental units**
 - Category 1 organizations *should* fall under this subsection
- **Our Category 2 application requirements are designed to ensure that an applicant that does not fall under §§ 509(a)(1) or (a)(2) at least qualifies as a § 509(a)(3) supporting organization**
 - Unfortunately, the proposed rules would not permit this level of flexibility

What Does It All Mean?

IF:

All governing instruments must be identical

Definitions of general supervision and control apply

Section 509(a) limitations remain

THEN:



No new subordinates can be added



No new subordinates can be added



New local churches can definitely be added, and possibly all Category 1 organizations; Category 2 likely done

Fortunately, these changes would not retroactively apply to existing subordinates.

When Will This Happen?

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Trust Clause Cases

Leticia Mayberry Wright – Deputy General Counsel, GCFA

South Carolina Diocese v. The Episcopal Church

- **August 2017:**

- The South Carolina Supreme Court issued a decision that overturned the trial court's ruling as to 29 of the 37 churches in favor of The Episcopal Church.

- **When the case returned to the trial court, the judge tremendously slowed down the process.**

- **March 2019:**

- The Episcopal Church filed a motion with the South Carolina Supreme Court requesting the SCSC direct the trial court to enforce its 2017 ruling. The SCSC refused.

South Carolina Diocese v. The Episcopal Church

- **July 2019, the trial judge issued two decisions:**

- (1) An order to implement the first ruling of the SCSC decision to recognize 7 parishes as independent owners of their property. It did not address the other properties.
- (2) An order for mediation.

- **Mediation resulted in an impasse.**

- **June 2020:**

- The trial court judge issued a ruling seemingly contrary to the SCSC stating The Episcopal Church had no interest in the breakaway congregations.

- **July 2020:**

- The Episcopal Church and the Episcopal diocese filed an appeal of the trial court's ruling with the South Carolina Supreme Court. Briefs have been filed.

von Rosenberg v. Lawrence

- **This is the federal case that is a companion case to South Carolina Diocese v. The Episcopal Church.**
- **It concerns five federally registered trademarks and the marks associated with the state registrations.**
- **December 2019:**
 - The district court ruled that The Episcopal Church owned the trademarks and that the breakaway group was prohibited from using the marks.
- **October 2020:**
 - The district court issued its second motion to enforce its judgement stating that the breakaway group could no longer use the marks.

The Episcopal Church v. The Fort Worth Diocese

- **On October 19, 2020, The Episcopal Church filed a petition with the U.S. Supreme Court requesting review of the Texas Supreme Court's most recent ruling in this lengthy dispute.**
- **The U.S. Supreme Court recently rejected this request, which leaves in place the unfortunate Texas Supreme Court's ruling. From the Texas Supreme Court's decision:**
 - "[A] majority of the Diocesan Convention voted to amend its governing documents to change all provisions referring to The Episcopal Church and requiring compliance with its canons and constitution. No provision in any of the organizational documents, including those of the national church, precluded them from doing so. TEC's charters are silent about withdrawal of a diocese. Moreover, whether a diocese can secede from The Episcopal Church does not affect the parties' property rights, because the Diocesan Trust has never required affiliation with The Episcopal Church. Nor do the organizational documents restrict the diocese's authority to amend the Diocesan Constitution and Canons, such as by requiring the national church's approval or permission to make an amendment."

BOD ¶ 2553 Status

- **The Council of Bishops submitted a declaratory decision request to the Judicial Council, posing this question:**
 - “What is the effect of the [Commission on the General Conference’s] determination that the vote to substitute the minority report related to Petition 90066 is null and void?”
 - This was scheduled to come before the Judicial Council in April 2020.
- **In November 2020, the Judicial Council announced it would “conduct its deliberations through a series of video conferences throughout the coming weeks and months.”**
- **As of last week, no new Decisions had been released, so the status of ¶ 2553 remains unclear.**

UMC SUPPORT



FINANCE & ADMINISTRATION

General Council on Finance and Administration

THE UNITED METHODIST CHURCH

Thank You!



1 Music Circle North
Nashville, TN 37203



615-329-2393



bmills@gcfa.org
Imayberrywright@gcfa.org



www.gcfa.org



Legal Update: SECURE, FFCRA, CARES and CAA

What Did SECURE* Act (2019) Change?

- Required Minimum Distributions (RMDs)
- Section 403(b)(9) and Non-QCCOs**
- “Cadillac” Tax repeal
- UBTI** repeal for tax-exempt organizations
- PCORI** fees extended for 10 years

* **SECURE**: Setting Every Community Up for Retirement Enhancement Act

** **QCCO**—Qualified church-controlled organization

UBTI—Unrelated business taxable income

PCORI—Patient-Centered Outcomes Research trust fund (ACA fee)



Required Minimum Distribution Changes

Change to Required Start Date

- **Age 72** (was 70½)
- Effective **January 1, 2020**
- 2020 not a “trigger year” for age
- Need to suspend notices, change withholding



Required Minimum Distribution Changes

Elimination of “Stretch” RMDs

- For participant deaths **on or after January 1, 2020**
- General rule: beneficiaries must receive **entire account balance within 10 years**
 - Example: may **not** be paid over beneficiary’s life expectancy under general rule

Exception: Eligible designated beneficiaries



Required Minimum Distribution Changes

Eligible Designated Beneficiaries

- Surviving spouse
- Child under age 18
- Disabled individual
- Chronically ill individual
- Person not more than 10 years younger than the participant

Note: 10-year rule applies after death of eligible designated beneficiary

2 sets of RMD rules to be administered:

1. Pre-SECURE 2. New Post-SECURE



Section 403(b)(9) and Non-QCCOs

- In 2016, IRS unexpectedly took public position that non-QCCOs are **not eligible** to participate in 403(b)(9) church retirement income accounts
- **Contrary to decades of practice**
- Hardship for participating non-QCCOs
- Church Alliance sought regulatory/legislative relief



CHURCH ALLIANCE
Acting on Behalf of Church Benefits Programs

Section 403(b)(9) and Non-QCCOs

- Legislative solution achieved (after 4 years)
- No changes for us—maintain status quo



Repeal of Cadillac Tax, Other Fees

Repealed

“Cadillac” Tax— 40% tax on value of “high cost” employer-sponsored health coverage

- Was scheduled to take effect in 2022
- Reduces revenues by \$197 billion

Annual fee on health insurance providers

- Reduces revenues by \$151 billion

2.3% medical device tax

- Reduces revenues by \$25.5 billion



UBTI Repeal for Tax-Exempt Organizations

What It Is

TCJA* added UBTI tax on parking/transportation benefits

- Included cost of employee parking

* **TCJA:** Tax Cuts and Jobs Act
(December 2017)

Impact of Repeal

Retroactive

- Avoids major headaches
- If an organization paid the tax for 2018, it can seek refund
- Reduces revenues by \$1.87 billion

PCORI Fees Extended for 10 Years

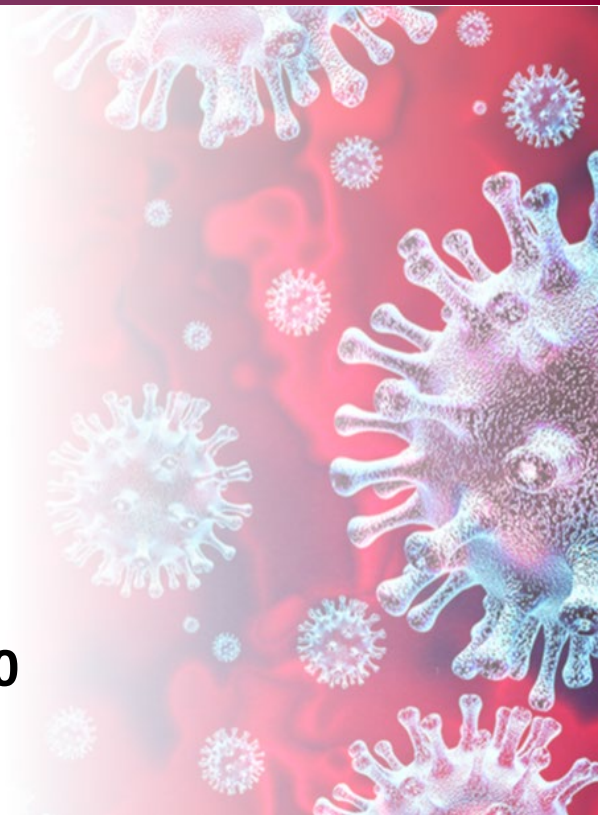
- PCORI fee: established by Affordable Care Act (ACA)
 - Research: evaluates effectiveness of treatments, procedures and strategies for preventing, diagnosing and treating illness/injury
- Insurers and employers with self-insured group health plans pay annual fee to fund the research
- Fee extended for 10 years: 2029 or 2030
 - Amount due per covered life; adjusted annually



Families First Coronavirus Response Act

Happy Birthday! (signed into law **March 18, 2020**)

- Employers with **< 500 employees**
- Must provide **paid sick leave** and **expanded family and medical leave** related to COVID-19
- **Employers receive Social Security tax credits** to support the new leave
 - Amended to also cover **clergy**
- Required **April 1, 2020 through December 31, 2020**



Families First Coronavirus Response Act

Consolidated Appropriations Act, 2021 (“CAA”)

- Extends FFCRA’s tax credits **through March 31, 2021**
 - Incentive for employers to voluntarily continue to provide such paid leave

American Rescue Plan of 2021 (“ARP”)

- Further extends FFCRA’s tax credits **through September 30, 2021**
- **Credits expanded** to cover sick time and leave taken by employee to obtain a vaccine or recover from COVID-19 immunization
- New 10-day limit applies **after March 31, 2021**
- Credit increased from \$10,000 to **\$12,000 per employee per year**

CARES* Act

Became law **March 27, 2020**—\$2 trillion, 850 pages

- Created small business government-backed lending programs
 - Paycheck Protection Program (PPP) forgivable loans
- Funded loans for Federal Reserve credit facilities
- Expanded unemployment assistance: unemployed due to COVID-19
 - Assistance for many individuals who might not otherwise be covered
- Expanded individuals' access to retirement plan funds
- Created payroll tax incentives for employers to retain employees
 - Includes tax-exempts; other relief measures too

***CARES Act**: Coronavirus Aid, Relief, and Economic Stability Act

CARES Act

Our Focus

Retirement plan changes

PPP—as amended by PPPFA in June 2020

Employee Retention Credits—
extended by CAA

Retirement Plan Changes

Items addressed:

- Coronavirus-related distributions (CRDs)
- Loan repayment delay
- 2020 RMDs from DC plans waived



Coronavirus-Related Distributions (CRDs)

- **CARES Act provides for a coronavirus-related distribution**
 - Exempt from 10% tax under §72(t) of the Internal Revenue Code
 - Income spread over 3 years
 - Ability to recontribute to eligible retirement plan or IRA within 3 years
 - Made **January 1, 2020–December 31, 2020**
 - Subject to limit of \$100,000 on aggregate distributions
- **Made to a “qualified individual”**
 - Individuals impacted by COVID-19 (either by testing positive, or being adversely impacted financially due to certain reasons related to COVID)

Coronavirus-Related Distributions (CRDs)

- Plans were permitted, but not required, to add a CRD feature (e.g., permit in-service distributions to participants, or participants under age 59-1/2)
- Wespath added this feature to UMPIP* and Horizon**
- 510 CRDs were made (out of approx. 40,000 participants)

* **UMPIP:** United Methodist Personal Investment Plan

** **Horizon:** Horizon 401(k) Plan

Loan Repayment Delay

CARES Act permits **delay of certain loan repayments** for qualified individuals

- Applies to loans outstanding **on or after March 27, 2020**
- Any repayment with due date **between March 27, 2020 and December 31, 2020** shall be delayed for one year

Wespath adopted this optional provision;
re-amortizing loans for those taking advantage (186 delays/3,215 loans)



2020 Required Minimum Distributions (RMDs)

CARES Act **waives RMDs** from defined contribution (DC) plans for **2020**.

Includes:

- RMDs for participants, surviving spouses, alternate payees and non-spouse beneficiaries who would be receiving recurring RMDs by December 31, 2020
- RMDs for participants who terminate or retire in 2020 and who would be receiving their first RMD by April 1, 2021
- RMDs for participants who had their first RMD due on April 1, 2020 and which was not paid in 2019
- **RMDs resume in 2021— will be due by December 31, 2021**

This change is for all DC accountholders—not just qualified individuals

Paycheck Protection Program (CARES)

- New program makes potentially **forgivable** loans to qualifying small businesses
- Maximum loan: **lesser of \$10M or 2.5 times entity's average monthly payroll costs**
 - Excluding any compensation above \$100,000 for any person
- Payroll costs include payments for most leaves, group health care benefits (including premiums), retirement benefits, clergy compensation
- Loan proceeds may be used for payroll costs, mortgage interest, rent payments, utilities, and interest on debt that existed as of **February 15, 2020**
- Loans can be forgiven to the extent proceeds have been used for certain costs made during the eight-week period after the loan is made
 - Includes payroll costs, mortgage interest, rent, and certain utilities
 - Forgivable amount reduced by certain measures (e.g., drop in average full-time employees)

PPP Flexibility Act (PPPFA)

- Signed into law **June 5, 2020**
 - Gave borrowers new flexibility under PPP
- More time to spend loan proceeds
 - “Covered Period,” during which proceeds must be spent for forgiveness, extended—from 8-week period to **24 weeks** (or **through December 31, 2020** if earlier)
- Reduced payroll cost threshold
 - Requirement to spend at least 75% of proceeds on payroll costs dropped to **60%**
- Loan maturity period for new loans is **5 years** (versus 2)
- Extended deadline for borrowers to restore employment for employee headcount (from June 30 to **December 31, 2020**)

Recent PPP Updates

Extended by CAA

- **Additional funding**— organizations may apply for a “Second Draw”

ARP

- Expands eligibility of certain nonprofits— those with fewer than 500 employees per physical location

PPP application period is scheduled to expire on March 31, 2021

Employee Retention Credits (CARES)

- Employers, including tax-exempts, may receive a refundable credit against applicable employment taxes
- Applies if operations suspended due to government order, or if employer experiences decline in revenue of 50% or more in a quarter from same quarter in 2019
- Credit generally equal to 50% of wages (up to \$10,000) paid to employees **March 13, 2020 – December 31, 2020**
 - Up to \$5,000 credit per employee in 2020

Employee Retention Credits (CARES, cont'd)

- Wages may include pro-rata portion of employer's qualified health plan expenses
- Wages **don't include payments to clergy** for their service
- Reduced by certain credits received by employer, including credit for paid sick leave or paid family leave under the FFCRA
- Employers that receive a PPP loan are not eligible for Employee Retention Credits

Employee Retention Credits

CAA changes

- **Extends ERC** into first two quarters of 2021
- **Increases credit amount**
- **Expands eligibility** to more employers, including those that received a PPP loan

ARP changes

- Further extends **through December 31, 2021**
- Credit is against employer's share of **Medicare taxes**, rather than Social Security taxes
 - Same change made to FFCRA



Health Care Legal and Regulatory Update

Transparency in Coverage Regulations

- Issued by Departments of Labor, Health and Human Services (HHS), and Treasury in **October 2020** under Affordable Care Act
- Requires disclosure of certain plan data to provide transparency to participants and the public
- Effective in phases:
January 1, 2022 – January 1, 2024

No Surprises Act

- Included in CAA, 2021 in **December 2020**
- Protects participants from surprise medical bills from out-of-network providers; creates dispute resolution process for certain disagreements between plans and providers
- Generally effective on **January 1, 2022**

Transparency in Coverage Regulations: New **Public** Disclosures Effective in 2022

Effective January 1, 2022:

Plans/insurers must disclose certain healthcare pricing information (updated monthly) for covered services and items

- Includes:
 - Negotiated rates with in-network providers
 - Negotiated rates and historical net prices for prescription drugs
 - Historical data with billed and allowed amounts for services and items provided by out-of-network providers
- Disclosure must be on a publicly available website, available at no cost to users, and without requiring login credentials

Transparency in Coverage Regulations: New **Participant** Disclosure Effective in 2023, 2024

Effective January 1, 2023:

Plans/insurers must disclose certain information to participants through online self-service tool (and, if requested, on paper) for **500 services/items** listed in the regulations, including:

- Estimated cost-sharing liability
- Negotiated rate for in-network provider
- Allowed amount for out-of-network provider
- Notice of any prerequisites to coverage (e.g., preauthorization, step therapy)
- Participant's accumulated amount toward cumulative features (e.g., deductible, out-of-pocket maximum)

Effective January 1, 2024:

Website must be expanded to include **all covered services/items**

No Surprises Act—Informing Participants

- Plans must provide an **advance explanation of benefits (EOB)**—generally 3 days in advance of scheduled services
 - Expected providers, cost and network status
- Insurance ID cards must note amount of **in-/out-of-network deductibles** and **out-of-pocket maximums**
- Plans must provide **price comparison tool** available online or via phone
- Plans must provide accurate, up-to-date **directory of in-network providers**
 - Online or otherwise provided within 1 business day of an inquiry

No Surprises Act—Out-of-Network Bills

- For **out-of-network** emergency services, air ambulance, and certain ancillary services provided at in-network facilities: **participants are only required to pay in-network cost-sharing**
- For all other out-of-network services provided at in-network facilities: **provider cannot “balance bill” the participant for more than in-network cost-sharing amount** without participant’s advance informed consent
 - Provider must give participant **advance notice of network status** and **estimated charges** to obtain **written, informed consent** generally at least 72 hours prior to treatment
- In-network cost-sharing amount will be determined by a formula to be established by Department of HHS (based on median in-network cost-sharing)
- Amounts paid by a participant in these situations must count toward participant’s in-network deductible and out-of-pocket maximum
- Plans must expand their external review process to include adverse claim determinations for certain out-of-network bills

No Surprises Act—Dispute Resolution

For services covered by the No Surprises Act:

- If plan and out-of-network provider cannot agree on amount paid by the plan within 30 days, a party may submit the dispute to new, binding **independent dispute resolution (IDR) process** within 4 days

IDR process:

- Both parties required to submit a final offer; **arbitrator selects one of the offers**
- IDR arbitrator must consider median in-network rate (and other relevant facts and circumstances), but **may not** consider Medicare/Medicaid rates or provider's usual/customary or billed charges to determine the negotiated price
- Must conclude within **30 days**
- Losing party must pay all fees associated with the IDR process

Other Noteworthy Provisions in CAA

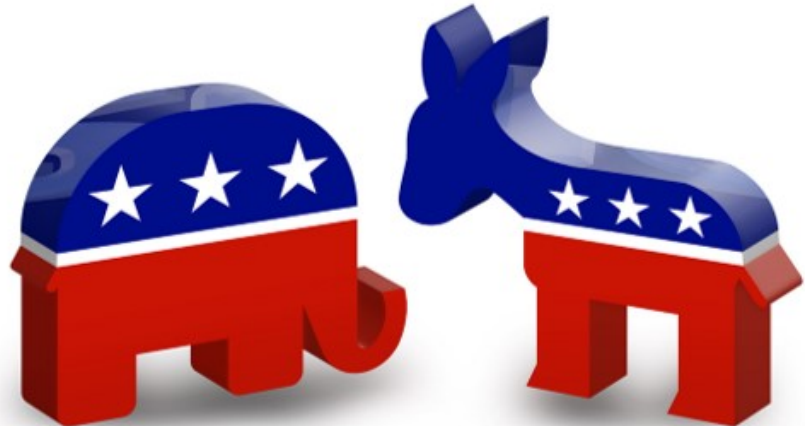
- Optional, temporary flexibility for mid-year cafeteria plan election changes and flexible spending account (FSA) balances
 - For example, FSA plans may allow unused 2020 and 2021 balances to carry over to 2021 and 2022, respectively; HealthFlex has adopted
- Health plans must complete analysis of nonquantitative treatment limitations used for medical benefits compared to mental health and substance use disorder benefits to confirm compliance with Mental Health Parity and Addiction Equity Act
 - Must be made available, if requested by Department of HHS, effective Feb. 10, 2021
- Prohibition on “gag clauses” in agreements between health plans and certain service providers that restrict sharing of cost and quality-of-care information
 - Agreements with providers should be reviewed
 - This could cover certain information that services providers have historically considered proprietary



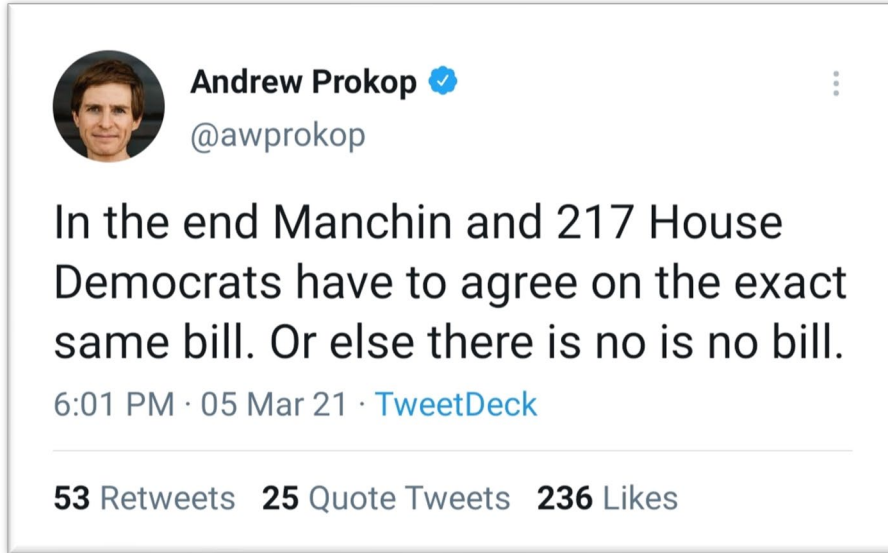
Washington Update

Balance of Power

- President Biden
- Senate: 50 D/50 R—
ties broken by Vice President Harris
 - Agenda set by Democrats
 - Committee ratios, budgets, staffing negotiated
- House: 222 D/211 R
 - Tighter Democratic majority than in previous Congress



Real Balance of Power



Senator Joe Manchin (D-WV)

2021: The Roller Coaster Continues

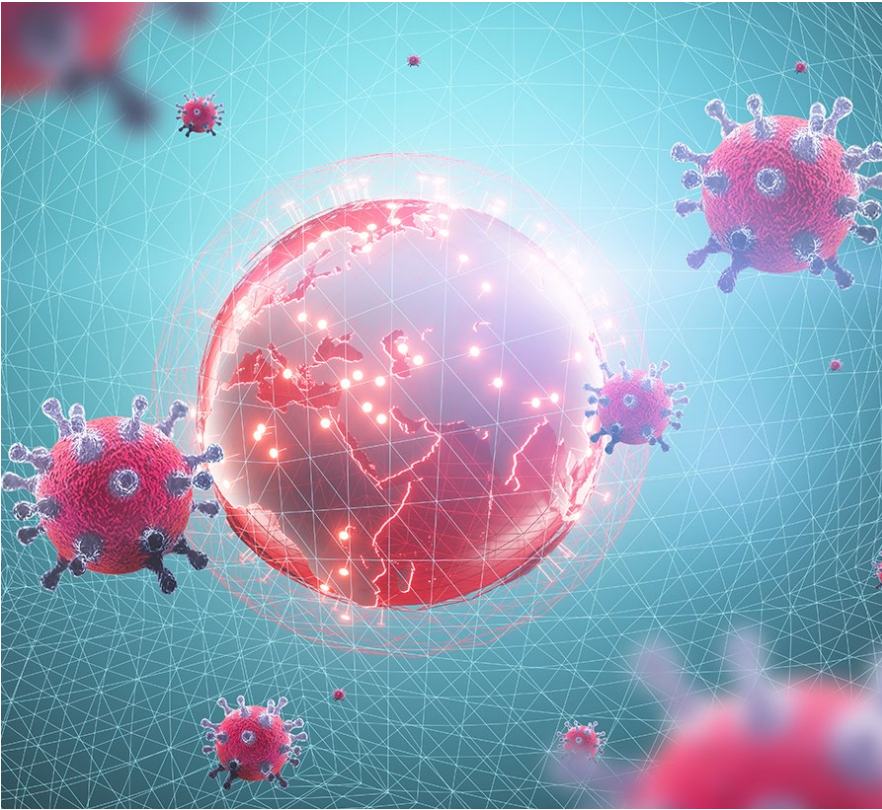
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| January 3 | 117 th Congress sworn in |
| January 5 | Georgia run-off elections cement Democratic Senate majority |
| January 6 | Capitol riots; Electoral College certifies vote |
| January 13 | President Trump impeached by House, 232-197 |
| January 20 | President Biden sworn in |
| February 3 | House approves budget resolution , putting in motion COVID-19 relief Reconciliation bill |
| February 5 | After “vote-a-rama,” Senate approves budget resolution (allows Reconciliation process) |
| February 9 | Senate begins President Trump impeachment trial |
| February 12 | House committees of jurisdiction complete consideration of pieces of COVID-19 relief package |
| February 13 | Senate acquits President Trump, 57-43 |
| Week of Feb. 22 | House approves COVID-19 relief bill: American Rescue Plan (ARP) |
| March 6 | Senate amends and approves \$1.9 trillion ARP (Reconciliation final vote 50-49) |
| March 10 | House approves Senate version of ARP; March 11 President Biden signs ARP into law |

2021: More to Come—The Knowns

| | |
|-----------------------|---|
| March and June | <ul style="list-style-type: none">• Certain pandemic relief under CARES/CAA expires<ul style="list-style-type: none">– Pandemic UI*, eviction moratorium, PPP, ERC– <i>ARP extends many of these ...</i> |
| August 1 | <ul style="list-style-type: none">• Debt limit authorization |
| September 30 | <ul style="list-style-type: none">• Fiscal Year (appropriations bills)• Student loan deferral/delay expires |
| December 31 | <ul style="list-style-type: none">• Tax extenders expire• \$300 above-the-line charitable contribution expires• Medicare provider reimbursements decrease |

* UI: unemployment insurance

The Unknowns



- COVID-19 ongoing impact:
health and economic
- Vaccine rollout/
herd immunity
- Variants

And Let's Not Forget ... the UFOs*



* Un-Foreseen Occurrences

2022 Is ... (Sigh) ... Around the Corner

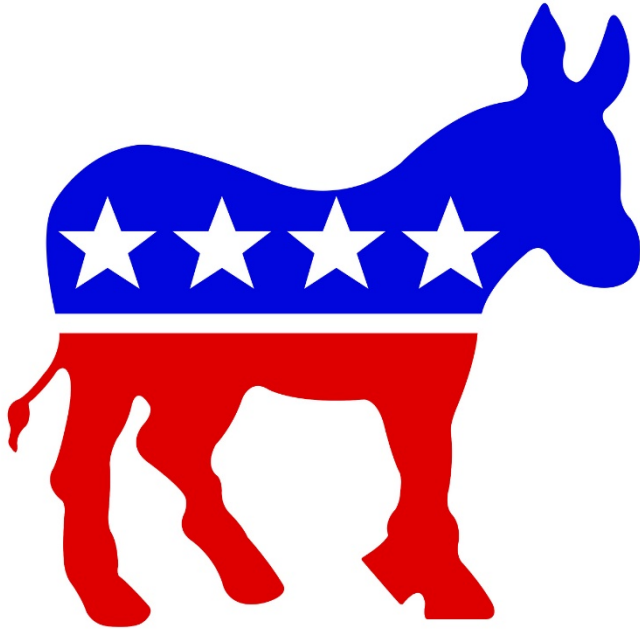
Country remains extremely divided

- **President's party tends to underperform in mid-term elections**
 - E.g., 1994, 2009, 2018
- **Moderate House Democrats at risk in purple districts**
 - Many 2018 winners did not win re-election in 2020
- **Senate Republicans will be defending 22 seats, many of which are in increasingly purple states**
 - Democrats defending 12 safe seats
 - 5 Republicans have announced retirements
- **Former-President Trump and supporters**
 - Increasingly marginalized yet also empowered

“Change” Elections

- 7 from 1960-1998
- 9 since 2000 (including 2020)

Democratic Take-Away



Go BIG
Go FAST
or
We Go HOME

Full Democratic Party Control

- Control of agenda
- Easier path for Biden nominees
- Aggressive executive branch activity
 - Executive orders and agency rulemaking
- **Reconciliation** process available (51 Senate Votes)
 - Whither the filibuster...?
- But: razor-thin majority means:
 - Party unity will determine outer bounds of what is possible
 - E.g., Affordable Care Act (ACA), Tax Cuts and Jobs Act (TCJA)—but *contra*: repeal and replace)
 - Moderate Democrats will be key, Moderate Republicans may also influence
 - Possible rise of “Problem Solvers Caucus”

Democrat Majority: Legislative Lenses

| Relief: \$1.9T (ARP) | For the People | Recovery: \$(?)T (Likely Reconciliation) | Equity | | Climate Change |
|---|---|--|--|---|---|
| <ul style="list-style-type: none"> • Additional stimulus payments • UI, safety net, housing, student loan support • Individual/family tax • COBRA subsidies • ACA enhancements • Vaccination rollout • Health care industry • Business relief • State/local funding • Schools • Minimum wage | <ul style="list-style-type: none"> • Voting rights • Campaign finance • Police reform • Diversity and inclusion | <ul style="list-style-type: none"> • Stimulus • Transportation/ infrastructure • Climate change/ sustainability • Energy future • Environmental justice (socio-economic determinants of health) • ESG • Tax • Earmarks | <ul style="list-style-type: none"> • Building wealth, business in minority communities • Diversity and inclusion • Policy reform • Voting rights • Campaign reform • Minimum wage • Safety net support • Individual and family tax • Vaccination rollout • Health care | <ul style="list-style-type: none"> • Business relief • Environmental justice (socio-economic determinants of health) • Shareholder protections • ESG • Tax • Earmarks | <ul style="list-style-type: none"> • Stimulus • Transportation/ infrastructure • Climate change/ sustainability • Energy future |

Retirement Plans

Proposals— Retirement Reform 2.0

- Neal-Brady Bill (**House**)
 - **H.R. 8696**: Securing a Strong Retirement Act of 2020
- Portman-Cardin Bill (**Senate**)
 - **S. 1431**, Retirement Security and Savings Act
 - **Provisions of Interest:**
 - RMDs to age 75
 - Automatic IRAs
 - Open multiple employer plans
 - Charitable distributions from qualified plans

State of Play

- Generally → bipartisan, bicameral commitment
- Consistent w/Democratic majority lens of equity
- Proactive interest; unclear whether sufficient to prioritize

Health Care

Shareholder Issues

- COVID-19
- *California v. Texas* (SCOTUS case)
- Strengthening ACA
 - ARP bolstered premium tax credit subsidies
 - Adding public option...?
- Drug pricing
- Equity lens: socio-economic determinants of health

State of Play

- Major legislation less likely
 - Reactive or possibly marginal refinements in other bills
- Executive action (agency rulemaking) likely

Broader—Tax/Investments/Economy

Shareholder Issues

- Shareholder engagement proposals, proxy access
- Environment, social and governance (ESG)
 - Climate change/sustainability
 - Diversity and inclusion

Tax

- Taxes, including review of TCJA, focus on investments (capital gains)/wealthy individuals, financial transactions tax
- Revenue raisers (e.g., Recovery/Infrastructure bill) put tax-exempt organizations/tax-deferred plans at risk (we're “on the menu”)

Economic Issues

- Relief/recovery investments in businesses, transportation, infrastructure
- Regulatory actions, including review of environmental rules
- Trade, international relations, China-related issues
- Antitrust-related reviews, including review of technology companies



Wespath

BENEFITS | INVESTMENTS

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