



Conference Forum



Wespath

BENEFITS | INVESTMENTS

Legal and Washington Update

Agenda

- OSHA—Vaccinations/Testing
- GAO Studies
- Budget Reconciliation Bill
- Retirement Reform 2.0
- Clergy Act





OSHA—Vaccinations/Testing

OSHA Emergency Temporary Standard (ETS)

Emergency Temporary Standard (ETS) for mandatory COVID-19 vaccination or testing—published **November 5**

- Final Interim Rule and proposed rulemaking; public comments—due **December 6**
- Impacts most private-sector employers with at least 100 employees (across all locations)
- Requires full vaccination or weekly testing/masking for unvaccinated employees who work indoors with others
 - Employers not required to pay for testing or masking for unvaccinated employees

Deadlines

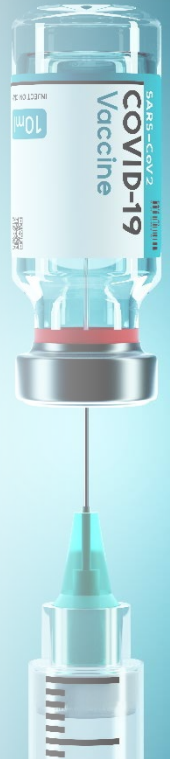
- **January 4, 2022**—vaccination, testing and removal of employees with positive test results
- **December 5, 2021**—other requirements (PTO , masking, etc.)

Temporarily suspended—**November 6**

- By Fifth Circuit Court of Appeals
- Additional legal challenges, including by a variety of state attorneys general
- Suits to be consolidated in federal district court

OSHA ETS—Key Employer Requirements

- (1) Policies on vaccination or testing
- (2) Determination of employee vaccination status
- (3) Support for employee vaccination, including up to 4 hours of paid time off and sick leave for side effects
- (4) Weekly COVID-19 testing for employees who are not fully vaccinated
- (5) Employee notification of a positive test and removal from the workplace
- (6) Face coverings for unvaccinated employees (with limited exceptions)
- (7) Information for employees on policies, vaccine efficacy, legal protections
- (8) Reporting COVID-19 fatalities and hospitalizations to OSHA
- (9) Maintaining available records related to policies, employee vaccination and testing





GAO Studies

GAO Study—Health Care Sharing Ministries

- House Education and Labor Chair request to U.S. Government Accountability Office (GAO)
- Health care sharing ministries
 - Provide benefits similar to health insurance to groups of people who share a belief system
 - Fall outside definition of “insurance” in many states and avoid most federal and state regulation / consumer protections
- Asks GAO to investigate:
 - Characteristics of plan participants (e.g., income, age distribution, proportion of individuals with pre-existing conditions)
 - How participation in these plans has changed since enactment of the ACA
 - To what extent specific workers and/or industries are the focus of marketing practices
 - What benefits are typically covered and excluded
 - Typical application, enrollment and marketing practices
 - Ownership and operating structure of health care sharing ministries
 - How they interact with other third-party commercial entities, including for-profit entities
- Two earlier GAO studies initiated this year
 - 403(b) plans : survey responses
 - Church plans: interviews with GAO





Budget Reconciliation Bill

Reconciliation Bill—ACA Premium Tax Credits

Extends the temporary enhanced ACA* premium tax credits through 2025

- Originally enhanced by American Rescue Plan Act—would otherwise expire at the end of 2022
- Increases premium tax credit—available to households with income between 100% and 400% of the FPL
- Expands eligibility for subsidies—include households with income over 400% of the federal poverty level (FPL)

*Affordable Care Act

Income (% of FPL)	Percentage of Income a Household Must Contribute to be Eligible for Tax Credits	
	Affordable Care Act	American Rescue Plan Act
100 – 138%	2.07%	0%
139 – 150%	3.10% – 4.14%	0%
151 – 200%	4.14% – 6.52%	0.0% – 2.0%
201 – 250%	6.52% – 8.33%	2.0% – 4.0%
251 – 300%	8.33% – 9.83%	4.0% – 6.0%
301 – 400%	8.33% – 9.83%	4.0% – 6.0%
>400%	Not eligible	8.5%

Note: This reflects the Marketplace “benchmark” plan, which is the second lowest cost Silver plan in an individual’s geographic area. Individuals can choose a different plan, but tax credit eligibility and amounts are based on the benchmark plan.

Reconciliation Bill—ACA Affordability Test

- Reduces the threshold to determine whether an individual has access to “affordable” coverage through an employer-sponsored plan for purposes of the employer mandate—from ACA baseline of 9.5% of household income to **8.5%**¹
 - Also eliminates annual indexing that otherwise applies to ACA baseline²
- Permits individuals with household income at or below 138% of the FPL to receive a premium tax credit for Marketplace coverage—even if they have been offered affordable coverage from their employer (through 2025)
 - However, such individuals will not trigger an employer mandate penalty



¹The threshold applies to the employee’s contribution for self-only coverage (the cost of family coverage is irrelevant).

²Due to the indexing, the threshold would otherwise be 9.61% for 2022.

Reconciliation Bill—Prescription Drug Pricing

- Allows Medicare to negotiate certain drug prices with pharmaceutical manufacturers
 - Starts with 10 covered drugs in 2025; expands over time
 - Focus: drugs with the highest aggregate Medicare spend
 - Prior drafts extended the negotiated prices to employer-sponsored group health plans
- Requires manufacturers to pay a rebate to the federal government starting in 2023 if their prices increase faster than the rate of inflation



Reconciliation Bill—Other Health Care Items

- Redesigns Medicare Part D prescription drug coverage—beginning in 2024
 - Sets annual out-of-pocket limit at \$2,000
 - Changes co-insurance rates
- Expands Medicare to cover hearing services and hearing aids—starting in 2023
 - Prior drafts also included vision and dental care
- Strengthens enforcement of the Mental Health Parity and Addiction Equity Act—authorizes Department of Labor to assess civil monetary penalties for violations by group health plans and insurers
 - Becomes effective 1 year after date of enactment
 - **May not apply to church plans**



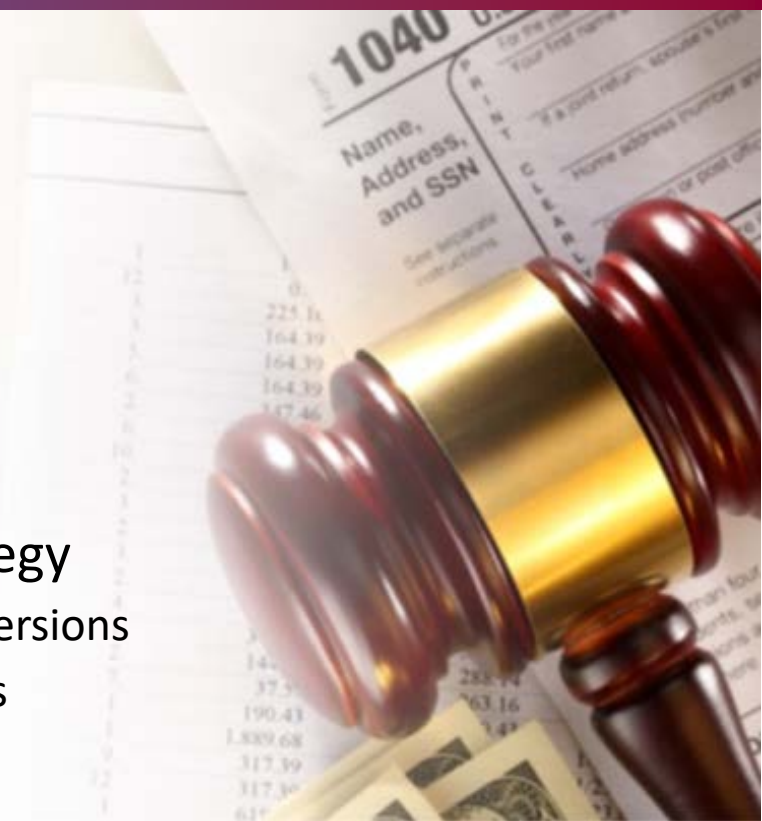
Reconciliation Bill—Other Highlights

- Paid family and medical leave
 - Guarantees 4 weeks of paid leave for “qualifying reasons” during a 52-week period up to a certain dollar amount per week—starting in 2024
 - Employers and states providing paid leave may be eligible for reimbursement from the federal program for a portion of the cost under very detailed eligibility rules
- Universal pre-kindergarten
 - Funds pre-K for 3- and 4-year-old children, prioritizing communities based on poverty rates and existing access to pre-K programs
- Increases the maximum Pell grant for low-income college students by \$500 to \$6,995



Budget Reconciliation—Revenue Raisers

- Contribution limits to IRAs
 - High-income taxpayers (>\$400,000) with account balances > \$10M
- Increase in RMDs for such individuals
 - Annual reporting required for DC plans on aggregate account balances > \$2.5M
 - Effective after Dec. 31, 2028
- Elimination of “back-door” Roth IRA strategy
 - Effective after Dec. 31, 2021, for after-tax conversions
 - Effective after Dec. 31, 2031, for all conversions by high-income taxpayers



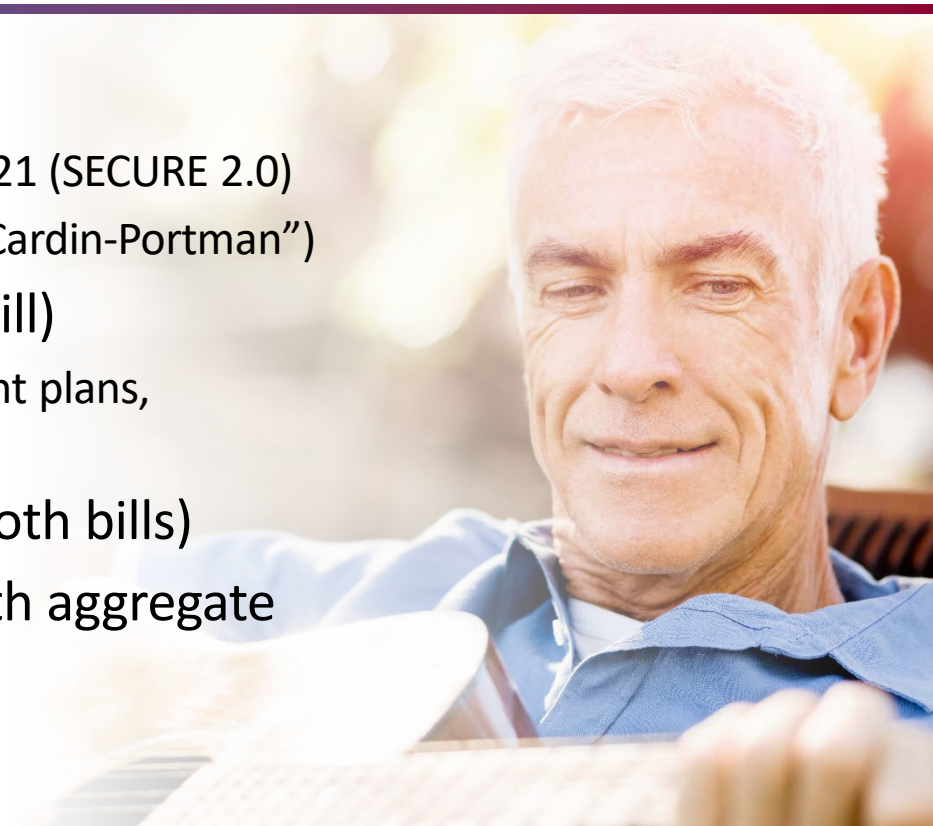
A top-down photograph of a wooden desk. In the center is a spiral-bound notebook with the word "Retirement" written in black cursive ink. Above the notebook lies a black pen with a silver clip. To the right of the notebook is a pair of black-rimmed glasses. The wooden surface has a natural grain and some dark spots.

Retirement

Retirement Reform 2.0

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- Two main bills, with some overlap:
 - Securing a Strong Retirement Act of 2021 (SECURE 2.0)
 - Retirement Security and Savings Act (“Cardin-Portman”)
- Expand automatic enrollment (S2 bill)
 - Exemption for church plans, government plans, employers with < 10 employees
- Increase RMD age to 75 by 2032 (both bills)
- Eliminate RMDs for participants with aggregate DC accounts < \$100,000 (C-P bill)



Retirement Reform 2.0 (continued)

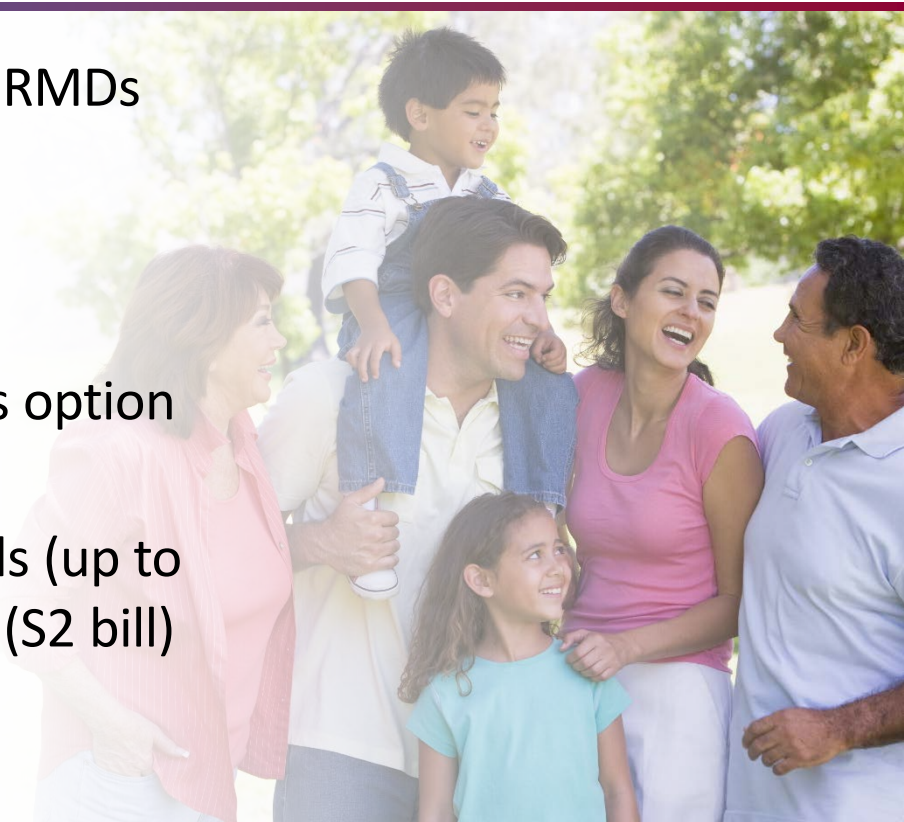
- Increase limit on “catch-up” contributions for individuals in their 60s (both bills)
- Treat student loan payments as participant contributions for match (both bills)
- Remove RMD barriers for life annuities (both bills)
- Exempt Roth accounts from RMD rules (C-P bill)
- Changes to QLAC * rules (S2 bill)
 - Remove 25% limitation; clarify rules re: divorce after QLAC purchase

*QLAC: Qualified Longevity Annuity Contract



Retirement Reform 2.0 (continued)

- Reduces excise tax on failure to take RMDs (from 50% to 25%) (both bills)
- Allow employees to self-certify hardship withdrawal reason (S2 bill)
- Add qualified charitable distributions option to retirement plans (both bills)
- Permit penalty-free early withdrawals (up to \$10,000) in cases of domestic abuse (S2 bill)



Retirement Reform 2.0 (continued)

- Allow employees to designate matching contributions as Roth contributions (S2 bill)
- Extend IRA treatment for spousal beneficiaries to retirement plans (C-P bill)
- Permit rollovers from Roth IRAs to retirement plans with Roth accounts (C-P bill)
- Make Saver's Act credits refundable (C-P bill)
 - Credits may be contributed directly to designated retirement plan (to Roth account) or a Roth IRA





Clergy Act

Clergy Act

- Would permit clergy to revoke past elections to opt-out of Social Security
 - Two-year window (2022-2023 tax years)
 - Apply by filing deadline for 2023 tax year
 - Can revoke effective in 2022 or 2023; must include payment of SS taxes for those years
- Act is the same as one that was effective in 2000-2001
 - Similar two-year window for clergy





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