



# Federal Legislative & Regulatory Report

## September 2021

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### Ways and Means completes markup of Build Back Better Act

On September 15, the House Ways and Means Committee completed its markup of the Build Back Better Act, approving various tax provisions, including increases to corporate and individual tax rates, changes to various aspects of retirement security, and new paid leave requirements, among many other provisions. A brief overview of some of the provisions are noted below, with more detailed summaries linked.

(Please note that the Ways and Means activity represents the first step in what is expected to be a long and extremely complicated legislative process. The ultimate scope of the package is yet to be determined, and Democrats are not unified regarding the substance of the legislation or the process by which it may become law.)

#### RETIREMENT

- Retirement Plan Mandate (Auto-IRA) – Requiring employers without employer-sponsored retirement plans to automatically enroll their employees in IRAs or 401(k)-type plans (“automatic contribution plan or arrangement”); the proposal also expands the small employer start-up credit and includes a guaranteed income option requirement, among other changes
- Expansion of the Saver’s Tax Credit – Making the Saver’s Credit refundable so that those without any income tax liability are eligible to receive the benefit in the form of a contribution to their retirement account
- Reforms to “Mega IRAs” – A \$10 million asset cap, accelerated RMD requirements and limits on Roth conversions

## INDIVIDUAL

- Increase the top individual rate to 39.6%
- Increase the top capital gains rate to 25%
- Add a surtax on high-income individuals
- Accelerating expiration of the Tax Cuts and Jobs Act's estate and gift tax parameters
- Changes to the treatment of grantor trusts
- Modifications to estate tax valuation rules

## CORPORATE

- Increase the top corporate tax rate to 26.5%

## OTHER

- Expand the limitation on the deductibility of executive compensation by public companies
- Increase funding for IRS enforcement
- Provide up to 12 weeks of universal paid family and medical leave for all U.S. workers through a new federal program and reimbursement opportunities for qualifying employer-provided benefits

## Lawmakers reintroduce portable retirement account proposal

On September 22, Rep. Jim Himes (D-CT) and Sen. Mark Warner (D-VA) [introduced H.R. 5334](#), the Portable Retirement and Investment Account (PRIA) Act of 2021. The bill would create “universal, portable” retirement and investment accounts. Every American would receive a PRIA when they receive a Social Security number. After the creation of the initial account, account holders will have the option to select investments from a qualified financial institution.

Employers would be able to contribute to their employee's PRIA, similar to how they do with 401(k)-type plans, but employees who separate from their employer would still have the ability to contribute to the same PRIA plan.

PRIAs would be administered by an independent board appointed by the secretaries of the departments of Labor and Treasury, as well as the Pension Benefit Guaranty Corp. and the Consumer Financial Protection Bureau. The board would select financial institutions to manage PRIAs.

The PRIA Act is not expected to generate significant support or to become law.

## Department of Labor seeks input on Form 5500 reporting

On September 14, the U.S. Department of Labor's [Employee Benefits Security Administration](#) (EBSA), the IRS and the Pension Benefit Guaranty Corp. began seeking public comments on [proposed revisions](#) to the Form 5500 Annual Return/Report filed by private-sector employee

benefit plans that are designed primarily to implement provisions in the Setting Every Community Up for Retirement Enhancement Act of 2019 (SECURE Act).

At the same time, EBSA is publishing a notice of [proposed changes](#) to its implementing regulations under Title I of the [Employee Retirement Income Security Act](#). In addition to implementing the SECURE Act, the proposed changes include a limited number of other improvements to the annual return/report forms and instructions.

## **Senate proposal would amend ETF tax rules**

On September 10, Senate Finance Committee Chairman Ron Wyden (D-OR) [released a draft proposal](#) to reform the federal tax treatment of partnerships. Among the changes are reforms to the tax rules affecting exchange-traded funds (ETFs); specifically, it would eliminate the tax treatment of ETFs that engage in “heartbeat” transactions.

Some consider these transactions — in which an ETF eliminates capital gains on assets within the fund by working with an investment bank to inject new assets into the fund and removing those assets shortly thereafter — to be a tax loophole. The proposed elimination of the relevant code section would make ETFs much less tax efficient.

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## References and source material used in this publication

### Page 1

Chairman Neal Announces Markup of Build Back Better Act (press release)

<https://waysandmeans.house.gov/media-center/press-releases/chairman-neal-announces-markup-build-back-better-act>

Subtitle I – Responsibly Funding Our Priorities

<https://waysandmeans.house.gov/sites/democrats.waysandmeans.house.gov/files/documents/SubtitleISxS.pdf>

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Subtitle I – Responsibly Funding Our Priorities

<https://waysandmeans.house.gov/sites/democrats.waysandmeans.house.gov/files/documents/SubtitleISxS.pdf>

Himes, Warner Introduce Portable Retirement Investment Accounts

<https://himes.house.gov/media-center/press-releases/himes-warner-introduce-portable-retirement-investment-accounts>

Text of H.R. 5334, the Portable Retirement and Investment Account Act of 2021 (PRIA Act)

<https://www.congress.gov/117/bills/hr5334/BILLS-117hr5334ih.pdf>

Department of Labor's Employee Benefits Security Administration (EBSA) website

<https://www.dol.gov/agencies/ebsa>

DOL EBSA Proposed Revision of Annual Information Return/Reports (Federal Register notice)

<https://public-inspection.federalregister.gov/2021-19714.pdf>

### Page 3

DOL EBSA Annual Reporting and Disclosure proposed rule

<https://public-inspection.federalregister.gov/2021-19713.pdf>

Department of Labor's ERISA webpage

<https://www.dol.gov/general/topic/retirement/erisa>

Wyden Unveils Proposal To Close Loopholes Allowing Wealthy Investors, Mega-Corporations To Use Partnerships To Avoid Paying Tax (press release)

<https://www.dol.gov/general/topic/retirement/erisa>

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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](https://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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