CSinsiderNewsletter
A U.S. Company Serving U.S. Financial Institutions June 2019

Retirement Reform 2019

Retirement savings has been a hot topic in Washington the first half of 2019. New legislation, Setting Every Community Up for Retirement Enhancement (SECURE Act) of 2019, recently passed the House of Representatives by an almost unanimous vote. The SECURE Act aims to help U.S. workers save money for retirement. In April 2019, the Senate proposed a similar bill, the Retirement Enhancement and Savings Act (RESA), which is currently collecting co-sponsors but has not yet been brought to the floor for a vote.

The SECURE Act features a wide range of provisions that include changes to plan coverage, plan automation, funding flexibility, promotion of safe harbor plans, lifetime income, required minimum distributions and beneficiary options, childbirth and adoption, and increased tax filing penalties. Below are some of the key components and potential changes and impact on the retirement industry.

PLAN COVERAGE AND AUTOMATION

Proposed changes would make it easier for smaller employers to join multiple-employer plans, ease non-discrimination rules for frozen defined benefit plans, and extend of deadlines for establishment. The SECURE Act would also include employees who previously would have been excluded due to non-full-time status. Tax credit increases for small plan start-ups and new tax credits for adopting auto enrollment would be available for employers.

FUNDING FLEXIBILITY

One change included in the SECURE Act that would impact IRA owners is the ability to contribute to Traditional IRAs past the age of 70 ½. With many people staying in the workforce longer, this would allow for people to continue funding IRA plans longer.

REQUIRED MINIMUM DISTRIBUTIONS AND BENEFICIARY OPTIONS

The SECURE Act would also extend the required age to take required minimum distributions from 70 ½ to 72. This change would come at a cost to the government due to a reduction in taxes on distributions that would have previously come out from the age of 70 ½. In turn, the Act mandates that most non-spouse beneficiaries would be required to withdraw the entirety of their share within 10 years, which would essentially remove the option of spreading distributions over a life expectancy. This effectively funds the other provisions of the Act that would come at a cost by forcing funds to be removed and taxes to be paid on the funds in a shorter time period.

The Senate version of this bill, RESA, differs on this topic by proposing a 5-year acceleration but with the first $400,000 excluded.

CHILDBIRTH AND ADOPTION

Under the SECURE Act, owners would be able to take a penalty-free withdrawal of up to $5,000 for childbirth or adoption which would then be eligible for repayment. This provision is not included in RESA.

Not only would these changes impact current and future IRA owners, there will be an impact on parties that provide IRAs or product documentation. Amendments may be required if the proposed changes are enacted.

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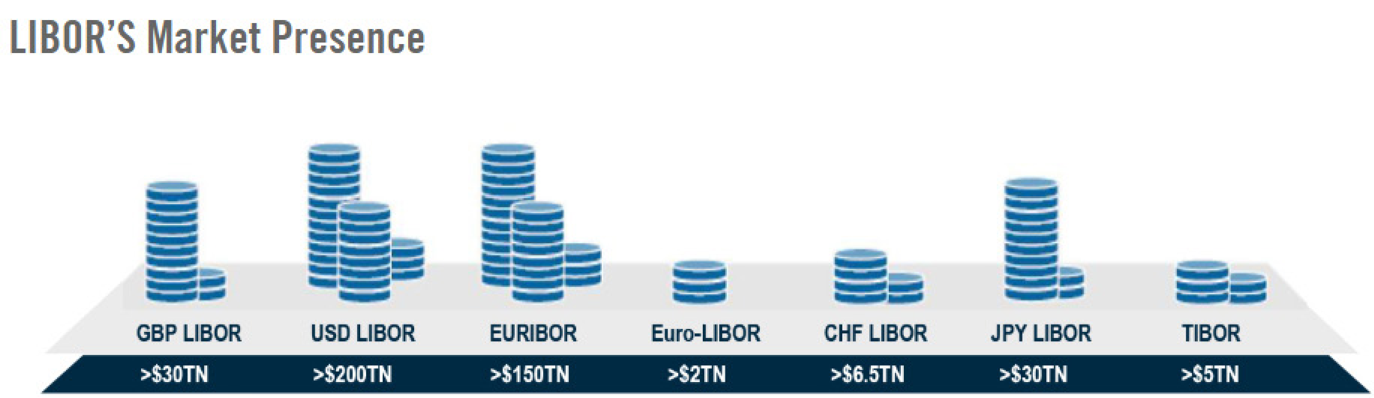
The SECURE Act is currently being read by the Senate for review. Both the SECURE Act and RESA have strong bipartisan support and include revenue provisions to pay for the projected costs, like an increase in penalties for failure to file certain required documents, so funding is not anticipated to be an issue for either side. The Senate has the option to either move forward with RESA alone, the SECURE Act alone, or reconcile the two bills since there is considerable overlap in bill content.

'ZOMBIE' LIBOR

With the 2021 cutoff of the London Interbank Offered Rate ("LIBOR") growing closer, financial institutions, bond issuers, and borrowers have been bombarded with numerous articles predicting what will happen once the benchmark rate reference is phased out. The imminent end to LIBOR has sparked fear in a global marketplace with upwards of $370 trillion in financial products tied to the rate. Among the mounting concerns surrounding market stability in a post-LIBOR world, 'Zombie' LIBOR has become a prominent topic of discussion.

Zombie LIBOR is the culmination of inaccurate reports of the cost to lend money between banks post 2021 and "legacy transactions which have pegged interest rates to some fraction of LIBOR." These legacy transactions are absent language that incorporates alternative rates should LIBOR cease to be reported, leaving parties privy to the contract with very few options as they navigate the coming years with contracts that lack fallback provisions.[1] The outcome of these factors makes LIBOR necessary in a period when reporting is not mandatory (the 'Zombie' LIBOR). Unfortunately, with a significantly smaller pool of reporting participants, many speculate this will lead to misinformed institution-to-institution lending rates.



(https://www.pgim.com/pgim-investments/insights/investment-perspectives/the-libor-transition)

In consideration of this outcome, the Alternative References Rates Committee ("ARRC") preemptively suggests (for contracts entered into prior to 2021) that financial institutions implement appropriate triggers and fallback provisions in their documents that will allow for a transition to a new interest rate benchmark when financial institutions are no longer required to report LIBOR. [2] Given the lack of existing fallback provisions in many of the legacy transactions, it is likely that market participants will be forced to amend their contracts. However, with many contracts requiring bilateral consent, this may not be an easy task. To further complicate this possible solution, certain debt instruments that undergo amendments may trigger reissuance for tax purposes. "The IRS considers a tax-exempt obligation to be reissued if there are what it deems to be 'signifcant modifications' to the terms of the obligation." [1]

In summary, the ARRC suggests financial institutions transition away from LIBOR, and at a minimum, an integration of triggers and fallback provisions that will allow market participants to sidestep the Zombie LIBOR scenario going forward. In the event financial institutions have legacy contracts, a thorough examination of the legacy transactions and the tax standards for debt exchanges under section 1001 of the Internal Revenue Code should be considered. Compliance Systems will continue to monitor the ongoing phase-out of LIBOR as more information becomes available and will implement changes as necessary to ensure compliance with pre and post LIBOR phase out.

1 https://www.jdsupra.com/legalnews/how-to-survive-the-zombie-libor-34489/
2 https://www.federalreserve.gov/newsevents/speech/quarles20190603a.htm

Recent Developments Affecting Banking and Marijuana-Related Businesses

This article is a follow-up piece to *Banking and Legalized Marijuana – The Need to Cultivate Clarity* in the 2018 fourth quarter CSinsider newsletter and provides updates related to recent and current developments.

The Buzz: Recent Developments Affecting Banking and Marijuana-Related Businesses
In the prior article, we examined the countervailing forces of state-level legalization of marijuana and the apparent intent of (then) U.S. Attorney General Jeff Sessions to reinvigorate past DOJ prosecutorial priorities related to selling, possessing, and using marijuana, and the corresponding risks those countervailing forces imposed on financial institutions choosing to provide services to marijuana-related businesses (MRBs).

Despite the legalization/decriminalization of marijuana in all but a handfull of states, there is no clearly established method through which financial institutions can engage marijuana-related businesses without being exposed to criminal and civil liability. Until the requisite clarity is provided, institutions are ill-advised to provide financial services to MRBs. However, there has been noticeable reform activity at both the state and federal levels since the last piece was published in December 2018.

Growing Support for Marijuana Reform
The 2018 mid-term elections marked a change in control of the House, and along with it came a new era of bipartisan cooperation on this topic. This cooperation has facilitated the re-incubation of the reform seeds planted by the states, the now rescinded Cole Memos, and past FinCen guidance. The re-incubation comes in the form two pieces of legislation, both with strong bipartisan support. One bill aims to empower states to determine the legality of marijuana, and the other to enable financial institutions to engage MRBs without risk of criminal and civil liability.

Strengthening the Tenth Amendment Through Entrusting States
Readers of the prior piece may recall the STATES Act as proposed legislation in the 115th Congress. Although the STATES Act of 2018 failed to pass the House or the Senate, the bill was reintroduced on the Senate floor – with bipartisan support – on April 4, 2019. The intent of the STATES Act is not to legalize marijuana at the federal level, but instead to permit each state to make its own determination whether legalization, decriminalization, or a complete prohibition of marijuana is appropriate for its residents. With nearly equal numbers of bipartisan cosponsors (six Democrats and five Republicans), the bill is progressing and was referred to the Senate Judiciary Committee. However, the prior version of the bill was referred to the Senate Judiciary Committee twice before finally dying.

The SAFE Banking Act
On March 28, 2019, by a vote of 45 to 15, the House Financial Services Committee approved the **S**ecure **A**nd **F**air **E**nforcement Banking Act (SAFE Banking Acting). The purpose of the Act, which has more support (206 bipartisan co-sponsors in the House and 30 in the Senate at the time of this writing) than any other proposed marijuana-reform legislation to date, “is to increase public safety by ensuring access to financial services to cannabis-related legitimate businesses and service providers and reducing the amount of cash at such businesses.” The Act creates a safe harbor for financial institutions choosing to provide services to MRBs, limits federal regulators’ ability to impose sanctions/penalize institutions that engage MRBs, and creates clear compliance requirements for institutions choosing to engage MRBs.

State Support

Marijuana-reform initiatives have the widespread support of the states. Evidence of this support is found in the form of a May 8, 2019 letter signed by attorneys general of 38 U.S. states and territories in support of the SAFE Banking Act, sent to federal legislative leaders urging them to pass the bill in hopes of bringing "gray market financial activities into the regulated banking sector." Citing risks that currently inhibit financial institutions' ability to provide services to MRB's along with the public-safety concern that comes with the targeting of cash-intensive businesses for criminal activity, the letter references the significant and deleterious effects of having cash generated from the $8.3 billion in marijuana sales in 2017 handled outside of the regulated banking system, effects that will only exacerbate as marijuana-related sales climb.

Attorney General Barr

In 2018, U.S. Attorney General Jeff Sessions rescinded the Cole Memos, which called into question the FinCen guidance that provided a roadmap to compliance for institutions wanting to engage MRBs. However, Sessions left the AG post, thereby opening the door for the current Attorney General, William Barr. During his Senate confirmation hearing, Barr pledged "not to go after marijuana companies that comply with state laws" pursuant to the Cole Memos. More recently, though he indicated a preference of "one uniform federal rule against marijuana," he recognized that the current situation as "intolerable." Barr also stated: "I think the way to go is to permit a more federal approach so states can make their own decisions within the framework of the federal law and so we're not just ignoring the enforcement of federal law."

Mainstream-Corporate Support

In addition to the support of federal and state legislatures, governors, and attorneys general, mainstream private-sector companies are turning out in support of reform enabling financial institutions to legally provide services to MRBs. Two such companies are Constellation Brands (a beer and wine company) and Scott's Miracle Grow.

Stocks for both companies ticked upwards after their support for reform was announced. In fact, further evidence that mainstream-corporate support of marijuana reform can be seen in ad campaigns of several large, very recognizable U.S. brands. For example, in celebration of April 20th (a cannabis-related holiday), Hidden Valley Ranch (owned by Clorox) offered "Blasted Ranch"; Carl's Jr. (CKE Restaurants) released a hamburger with CBD oil-infused cheese; and Boston Market (Sun Capital Partners) offered a BOGO on POT pies.

Support for Marijuana Friendly Banks

In a capitalistic society, the pursuit of pecuniary interests give rise to industries focused on meeting the needs of the public. Given the current statutory and regulatory climate and the continually increasing revenue generated by MRBs, it follows that companies purporting to help marijuana friendly banks manage risk and comply with regulations are emerging. While boasting services that enable financial institutions to easily comply with regulations when engaging MRBs, whether providing traditional financial services or cashless/electronic payment programs, these services seem to ignore an unavoidable reality: the federal government has yet to change its course. It still considers marijuana a Schedule 1 drug, and financial institutions that knowingly provide services to a marijuana-related business are exposed to both criminal and civil liability.

Holding Off on the Harvest

Although there's been a lot of marijuana-reform activity on the federal level, including activity related to banking MRBs, movement does not necessarily result in progress.

While bills proposing to provide the requisite clarity for financial institutions to comfortably engage MRBs have bipartisan support, those bills must overcome an opposing majority in the Senate, and then must be signed by the President. That is, despite the marijuana-reform activities at the federal and state levels, financial institutions are no closer to getting the much-desired roadmap permitting the engagement of MRBs without fear criminal or civil liability than they were a year ago.

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Compliance Systems will continue to track developments vis-à-vis marijuana reform, particularly those related to those affecting financial institutions.

CFPB - TRID 5-Year Rule Assessment

Time flies when you're having fun… or so the saying goes.

While it seems like just last month that we were sweating the TRID effective date, 2020 actually Cmarks the rule's fifth birthday. And while some may remember the 2015 TRID rollout fondly, plenty of lenders, loan origination system providers, and compliance vendors recall the relative uncertainty imposed by the large and complex rule and the countless hours spent in efforts to comply with its requirements. Then, right when we thought we had things figured out, came the 2017 amendments, which, while not of the same scope or complexity as the initial TRID rule, spurred consumption of more time and energy for all parties involved. Now we are facing yet another round of TRID-related changes; but this time, these changes may very well be the ones we want.

When passed by the U.S. Legislature, Dodd-Frank included a provision requiring that the Consumer Financial Protection Bureau conduct a formal assessment for each significant rule or order it adopted within 5 years of adoption of the applicable rule or order. Additionally, prior to the assessment, the provision stipulated that the Bureau must invite public comment related to the rule or order, including any recommendations regarding modifications, expansions, or rescission of the rule or order. That 5-year period for TRID is upon us.

Compliance Systems recently engaged the CFPB in preparation for this 5-year assessment with the expectation of providing industry feedback vis-à-vis appropriate TRID modifications, and others in the industry are encouraged to do the same. With that in mind, below is the contact information for the Bureau staff spearheading the assessments process. Please forward your comments, recommendations, and questions to the email addresses below and let your voice be heard.

Bureau TRID Assessment POCs
- Alan Ellison, alan.ellison@cfpb.gov
- Shelley Thompson, shelley.thompson@cfpb.gov
- Dustin Beckett, dustin.beckett@cfpb.gov

Revised URLA Update
When the Federal Housing Finance Agency, Fannie Mae, and Freddie Mac (collectively FHFA) announced the implementation of a revised Uniform Residential Loan Application several years ago, they identified July 1, 2019, as the voluntary effective date for its use. However, on June 12, 2019, the FHFA announced the postponement of the voluntary-use effective date, and while indicating that it would engage appropriate stakeholders to identify a new timeline, it has neither determined a new voluntary effective, nor indicated if this postponement will affect the mandatory use date of February 1, 2020. The FHFA stated that it will provide more information in the coming weeks; until that time, Compliance Systems will continue to monitor and report the progress of the revised URLA effective dates.

Compliance Systems Community Lounge

Compliance Systems is in the process of sending out invitations to our clients for the our Community Lounge. The Community Lounge offers a wide range of product information and support, including product quick tips, frequently asked questions, release updates, and video tutorials. Compliance Systems will continue the invitation roll-out phrase throughout the year. If you would like to signup today, click the link below and register by clicking the **Login** button on the top right of your screen. You can also navigate to our corporate website at https://www.compliancesystems.com/ then click the **Resources** menu and then click **Community Lounge**.

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