



AMERICAN BENEFITS
COUNCIL

Benefits Passport Webinar

**A Global View of the Biden Administration's
Retirement Policy Agenda**

**Wednesday, February 24, 2021
11 a.m. ET**

Today's Speakers

Moderators:



Lynn Dudley
*Senior Vice President,
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American Benefits
Council



Michael Mullins
*Director International
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The Walt Disney
Company
Chair
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Guest Speakers from Eversheds Sutherland:



Francois Barker
*Product Group
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Agenda

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- Auto-enrollment
- ESG investing
- Cybersecurity and data privacy

Topics

Auto-enrollment

- Current law:
 - Auto-enrollment and auto-escalation are permissive features, becoming more common
 - Incentivized through safe harbor design
 - A number of states have auto-IRA requirements for employers – CA, OR, IL, and several others starting in 2021
- Secure 2.0:
 - Automatic enrollment for all new DC plans at 3-10%, with 1-10% auto-escalation
- Biden proposal:
 - Federally mandated auto-enrollment retirement plans; details not clear yet, may settle ERISA questions facing state initiatives

ESG investing

- Retirement plan investing is governed by ERISA fiduciary duties
 - Guidance on role of ESG factors has varied by administration
- Trump administration issued regulations that emphasize the primacy of economic considerations and make ESG-themed fund unavailable as default investment option
 - DOL “cautions fiduciaries against too hastily concluding that ESG-themed funds may be selected based on pecuniary factors”
- ESG-themed funds v. selecting fund investments
 - ESG factors are often taken into account by fund managers in selecting underlying investments
- Retirees Sustainable Investment Policies Act in House would amend ERISA to encourage ESG and mandate plans have an ESG investing policy

Cybersecurity and data privacy

- Unlike HIPAA, no federal law that governs retirement plan data/asset protection.
 - General fiduciary duty to act in best interests of participants; act prudently
 - Primarily addressed through litigation (*Abbott Laboratories*; *Estee Lauder*)
- Data Privacy
 - States have begun to enact their own laws (NY, CA)
 - Increased international focus
 - Is participant data a “plan asset” under ERISA?
- Cybersecurity
 - 2019 request for Government Accountability Office study
 - DOL has suggested guidance may be coming



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