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BIPARTISAN RETIREMENT REFORMS PASS KEY HOUSE PANEL

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An array of retirement reforms unanimously passed April 2 by the House Ways and Means Committee would offer nondiscrimination testing relief to closed pension plans, promote defined contribution (DC) multiple-employer plans, seek to spur 401(k) savings, and encourage lifetime income options in DC plans, among many other proposals.

MIX OF NEW AND PRIOR PROPOSALS

The Setting Every Community Up For Retirement Enhancement (SECURE) Act of 2019 ([HR 1994](#)) blends provisions from the House version ([HR 1007](#)) of the Retirement Enhancement and Savings Act (RESA) and two bills from prior years — the Family Savings Act of 2018 ([HR 6757](#)) and the Retirement Plan Simplification and Enhancement Act of 2017 ([HR 4524](#)). However, the SECURE Act includes some new proposals as well.

In a [letter](#) to committee leaders, Mercer President and CEO Martine Ferland commended lawmakers for advancing the legislation and called it “a major step forward in helping more Americans to retire with confidence.”

KEY FEATURES AFFECTING EMPLOYER PLANS

Closed plan testing relief. The bill includes permanent nondiscrimination testing relief for closed defined benefit (DB) plans and significantly broadens the temporary relief in IRS [Notice 2018-69](#). Among other changes, the bill would:

- Allow employers to test closed DB plans with a defined contribution (DC) plan on a benefits basis (cross-testing), even though the plans don't satisfy the regular conditions for doing so.
- Allow closed DB plans to be aggregated and cross-tested with the portion of a DC plan that provides matching contributions (as long as elective deferrals are included in the test) or with an employee stock ownership plan.
- Eliminate the requirement that plans must have the same plan year to be aggregated.

- Let sponsors test certain DC plans on a benefits basis if a closed class of participants whose DB plan accruals have been reduced or eliminated receive make-whole contributions (formerly called defined benefit replacement allocations, or DBRAs).
- Provide closed DB plans with relief from certain benefits, rights, and features testing, as well as the minimum participation rule under Internal Revenue Code (IRC) Section 401(a)(26), which generally requires a plan to have at least 50 participants.

If elected by the plan sponsor, the relief could apply to plan years beginning after Dec. 31, 2013.

Open MEPs. Employers of all sizes could join together to create more affordable DC plans through "open" multiple-employer plans (MEPs) using a "pooled plan provider." A pooled plan provider is a person designated as the plan administrator and named fiduciary in the plan document who is responsible for performing all administrative duties. Individuals would have to register with the IRS (and acknowledge in writing their plan administrator and fiduciary status) before serving as pooled plan providers. They also would have to ensure that everyone handling plan assets or serving as fiduciaries are bonded as required under ERISA.

Other changes would eliminate two current rules for MEPs:

- The Department of Labor (DOL)'s requirement that participating employers have an employment-based common nexus or other genuine organizational relationship unrelated to the provision of benefits
- The IRS's "one bad apple" rule that says a violation of plan qualification rules by one participating employer can jeopardize the entire MEP's tax qualification

More time to retroactively adopt retirement plans. The bill would give employers of all sizes more time to retroactively adopt a new stock bonus, pension, profit-sharing or annuity plan — but not a 401(k) plan. The deadline to adopt one of those plans would be the extended due date of the employer's federal income tax return for the year in which the plan becomes effective. Employers meeting that deadline could treat the plan as having been adopted as of the last day of that tax year.

Updating safe harbor DC plan rules. The bill would make major changes to existing safe harbor rules for DC plans:

- **Eliminate advance notice for one type of safe harbor.** An employer that relies on making qualified nonelective contributions (QNECs) of at least 3% would no longer have to give a notice before each plan year informing employees that the plan will use the QNEC safe harbor. However, plans that use the matching-contribution safe harbors would still need to give this advance notice.
- **Allow employer to elect 401(k) QNEC safe harbor after start of plan year.** Employers could amend their 401(k) plans during a plan year to retroactively implement a QNEC safe harbor, but only if the

amendment is adopted at least 30 days before plan year-end. Alternatively, an employer could amend its 401(k) plan by the following plan year-end to convert the design into a QNEC safe harbor, but the employer would have to make a 4% — instead of 3% — QNEC. Similar rules would be available to qualified automatic contribution arrangements (QACAs).

- **Increase 10% cap for QACAs after first plan year.** The current 10% cap on contributions to qualified automatic enrollment/escalation safe harbor plans would increase to 15% after the plan year in which the first elective contribution is made.

Reduced PBGC premiums for CSEC plans. PBGC premiums for cooperative and small-employer charity (CSEC) plans would be rolled back to \$19 per participant for flat-rate premiums and \$9 per \$1,000 of unfunded vested benefits for variable-rate premiums.

Lifetime income encouraged in DC plans. Several reforms in the bill aim to encourage more lifetime income options in DC plans:

- **Lifetime income illustrations.** Every year, DC plans would have to provide individual benefit statements showing the annuity equivalent of a participant's account using DOL-prescribed assumptions. The act also would require the DOL to issue model disclosures. Plan sponsors, fiduciaries and others that use DOL's model disclosures and assumptions would have no liability under ERISA for providing those annuity amounts.
- **Annuity-provider selection safe harbor.** DC plan fiduciaries selecting annuity providers could rely on representations from insurers regarding their ability to fulfill the contract and their status under state insurance laws.
- **Increasing portability of lifetime income investments.** DC plans could provide "qualified distributions" — essentially direct rollovers to an IRA — of "lifetime income investments," starting 90 days before the date those investments would no longer be available under the plan.

Converting 403(b) custodial accounts into IRAs. If an employer terminates a 403(b) plan with amounts held in a custodial account, those accounts could be distributed in kind to each participant or beneficiary of the plan. The distributed accounts would receive 403(b) treatment until the amounts are actually paid to the participant or beneficiary.

Plan loans via credit cards barred. The bill would prohibit plans from making participant loans via credit cards or similar arrangements.

Expanded coverage of part-time workers. Sponsors of noncollectively bargained 401(k) plans would have to let part-time workers voluntarily contribute to the plan if they have completed at least 500 hours of service a year for three consecutive years. Employers wouldn't need to make nonelective contributions for these workers or match their contributions. Employers could exclude these employees from nondiscrimination testing and would not have to provide them with top-heavy minimum benefits.

Penalty-free withdrawals for birth or adoption of a child. Individuals could take up to \$5,000 as a penalty-free early withdrawal from their qualified retirement plan savings to help pay childbirth or adoption expenses — with repayment permitted at a later date.

Consolidated Form 5500 for similar plans. The IRS and DOL would have to implement a consolidated Form 5500 for similar defined contributions plans. Plans eligible for consolidated filing must have the same: trustee, named fiduciary (or named fiduciaries), administrator, and plan year and must provide the same investments or investment options to participants and beneficiaries. The group could include a DC plan not subject to Title I of ERISA — such as a governmental or church plan — if the same person carries out each specified function for all plans in the consolidated filing.

Pension funding relief for community newspaper plans. The bill offers pension funding relief for community newspaper plan sponsors by increasing the interest rate to calculate those funding obligations to 8% and extending the period for amortizing any shortfall from seven to 30 years. The relief would only be available to plans in which no participants received an accrued benefit increase after Dec. 31, 2017.

Clarification of church plan requirements. The bill would clarify which individuals may be covered by plans maintained by church-controlled organizations.

KEY FEATURES AFFECTING INDIVIDUALS

Reforms designed to help individuals save more for retirement would:

- **Increase age for required distributions.** The starting age for required minimum distributions would increase from 70-1/2 to 72, effective for individuals who reach age 70-1/2 after 2019.
- **Eliminate age limit for IRA contributions.** The bill would do away with the current ban on individuals contributing to an IRA after age 70-1/2.
- **Allow graduate students to make IRA contributions.** Taxable graduate or post-doctoral fellowships and stipends could be treated as compensation for purposes of making IRA contributions.
- **Expand Section 529 accounts.** These accounts could be used to pay for trade apprenticeship fees or home-schooling costs. The accounts could also help pay off up to \$10,000 in student loans for any 529 plan's designated beneficiaries (or their siblings). The student loan interest deduction would be adjusted for such repayments.

REVENUE OFFSETS

Taken together, the bill's array of changes would cost \$16.3 billion over 10 years, according to a [projection](#) from the Joint Committee on Taxation. Retirement-related provisions intended to offset that cost include a number of provisions.

Shorter "stretch" IRAs. Most nonspouse beneficiaries in DC plans and IRAs — but not DB plans — would have to complete payouts within 10 years after the IRA owner's death.

Higher penalty for failure to file. The bill would raise the penalty for failing to file a tax return from \$205 to \$400 (or, if less, 100% of the tax due).

Stiffer penalties for failure to file retirement plan returns. The penalties for failing to file certain retirement plan returns would increase sharply:

- The penalty for a late Form 5500 would increase to \$105 per day up to a total of \$50,000, rather than the current \$25 per day up to a maximum of \$15,000.
- Failure to file a registration statement would incur a daily penalty of \$2 per participant up to a total of \$10,000, rather than the current \$1 per participant daily to a maximum of \$1,000.
- The penalty for failing to file a required notification of change would double from \$1 to \$2 per day, and the maximum would rise from \$1,000 to \$5,000.
- Failure to provide a required withholding notice would trigger a penalty of \$100 for each failure, with a limit of \$50,000 for all failures during any calendar year — a steep increase from the current \$10 for each failure, with a \$5,000 limit for the calendar year.

SIMILAR LEGISLATION INTRODUCED IN SENATE

The bill's unanimous approval by the Ways and Means Committee bodes well for eventual House passage, though the timing and legislative vehicle — retirement bills are usually packaged into larger legislation — are unclear. The bipartisan, bicameral effort to enact retirement reforms got a boost on April 1 when leaders of the Senate Finance Committee [reintroduced](#) their version of the Retirement Enhancement and Savings Act, which unanimously passed the committee in 2016. Leaders of the two House and Senate committees say they are working together to shape a final package that could be enacted this year.

RELATED RESOURCES

Non-Mercer Resources

- [HR 1994, the SECURE Act of 2019](#) (House Ways and Means Committee, April 1, 2019)
- [Description of the SECURE ACT](#) (Joint Committee on Taxation, April 1, 2019)
- [Estimated Revenue Effects of the SECURE Act](#) (Joint Committee on Taxation, April 1, 2019)
- [Press Release, Bill Summary and Draft Text of Retirement Enhancement and Savings Act of 2019](#) (Senate Finance Committee, April 1, 2019)
- [HR 1007, Retirement Enhancement and Savings Act of 2019](#) (House, Feb. 6, 2019)
- [Notice 2018-69](#) (IRS, Aug. 24, 2018)

Mercer Law & Policy Resources

- [Trump Budget Seeks Healthcare Reforms, PBGC Premium Hikes, Paid Parental Leave](#) (March 20, 2019)
- [Bill Seeks 'Open' MEPs, New 401\(k\) Safe Harbor with Higher Deferral Rates](#) (March 8, 2019)
- [2019 Legislative and Regulatory Outlook for Employer-Sponsored Retirement Plans](#) (Feb. 5, 2019)

Other Mercer Resources

- [Mercer CEO and President Martine Ferland's Letter to House Ways and Means Committee](#) (Mercer, April 2, 2019)

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