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GRIST

SENATE REINTRODUCES EXPANSIVE RETIREMENT BILL

By Mercer's Margaret Berger and Brian Kearney
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A bill introduced in the Senate May 13 featuring a slew of familiar retirement provisions is the latest in a growing list of retirement-related bills that have been introduced in both chambers of Congress this year. The Retirement Security and Savings Act of 2019 (S 1431) checks off a number of popular wish list items for defined contribution (DC) and defined benefit (DB) plans but doesn't address open multiple employer DC plans or nondiscrimination testing relief for closed DB plans. The bill is almost identical to the version introduced late last year, and several provisions have popped up in other proposals circulated in recent years. This GRIST provides a high-level overview of the bill's key provisions.

STUDENT LOAN MATCH PROGRAMS

The bill would let sponsors of 401(k), 403(b), governmental 457(b) and SIMPLE plans match their workers' student loan payments as if the payments were salary reduction contributions. If offered, the benefit would have to be available to all workers eligible to make salary reduction contributions matched by employer contributions, and the match rate for both programs would have to be the same. The benefit would apply only to repayments of student loan debt incurred for higher education.

The Retirement Parity for Student Loans Act, introduced in the Senate on the same day, would allow student loan matches under identical terms.

AUTOMATIC ENROLLMENT

The bill aims to increase the use of automatic-enrollment designs in DC plans:

- ***Secure deferral arrangement.*** This new safe harbor design would have higher minimum deferral rates than the existing auto-enrollment safe harbor and a tiered safe harbor matching contribution up to 10% of pay.

- ***Auto-enrollment.*** The bill directs Treasury to issue regulations simplifying the notice timing requirements and auto-escalation rules for eligible automatic contribution arrangements (EACAs) and auto-enrollment church plans.

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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 two consecutive years. Employers wouldn't be required to make nonelective contributions for these workers or match their contributions. Employers could exclude from nondiscrimination testing employees who become eligible by satisfying this requirement and wouldn't have to provide them with top-heavy minimum benefits.

MINIMUM DISTRIBUTION REQUIREMENTS

The bill would make a number of changes to the Code Section 401(a)(9) rules for required minimum distributions (RMDs):

- ***Starting age.*** The age for determining a participant's RMD start date would increase from the current 70-1/2 to age 72 starting in 2023 and then age 75 starting in 2030.
- ***Mortality tables for determining distributions.*** Treasury would have to update the mortality tables used to determine RMDs within a year of the bill's enactment and at least every 10 years thereafter.
- ***No penalty on partial annuitization.*** Participants who elect to receive a portion of their DC account balances as an annuity could choose to determine their RMD on the total account balance, including the value of all purchased annuity contracts. The RMD payable from the remaining account balance for a given year would be the total RMD minus the annuity payments.
- ***Small balances.*** Participants whose aggregate retirement plan balances don't exceed $100,000 (indexed) would be exempt from RMDs. Plan administrators could rely on a participant's certification that the aggregate account balances are under the threshold.
- ***Excise tax.*** The excise tax on a missed RMD would be reduced from 50% to 25% (reduced further to 10% for missed RMDs from IRAs if voluntarily corrected within a specified correction period).
- ***Roth accounts.*** Like standalone Roth IRAs, Roth accounts in employer plans would be exempt from RMDs and the incidental death benefit rules.
- ***Surviving spouses.*** The surviving spouse of a deceased employee could elect to be treated as the employee.

PRESERVATION OF INCOME

The bill would relax the rules for qualified longevity annuity contracts (QLACs) and commercial annuities to encourage retirees to choose those income-preserving options.

Qualified Longevity Annuity Contracts

QLACs let employees use a portion of their retirement savings to purchase an annuity starting as late as age 85 without violating the RMD rules. The bill directs Treasury to amend its regulations on QLACs:

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- ***Premiums.*** The bill would eliminate the requirement that premiums for QLACs be limited to 25% of the account balance and would increase the dollar limit on these premiums from $125,000 to $200,000 (indexed for inflation).

- ***Joint and survivor benefits after divorce.*** The bill would clarify the treatment of joint and survivor benefits for couples that get divorced after purchasing the QLAC but before commencing payment.

- ***Rescission.*** Employees would have 90-days to rescind the purchase of a QLAC.

- ***Indexed and variable contracts with guaranteed benefits.*** The bill would direct Treasury to allow QLACs in the form of variable and indexed annuities with guaranteed benefits.

Remove Barriers for Life Annuities

The bill would remove what some retirees perceive to be barriers to purchasing commercial annuities with their savings. The following small increases in annuity payments would be allowed:

- ***Small increases.*** Annuity payments could increase by up to 5% (as long as the increase applied no less frequently than annually).

- ***Cashouts.*** Annuitants could receive full or partial lump sum cashouts of the remaining annuity payments or the payments scheduled to be made for the next 12 months.

- ***Dividends or similar distributions.*** These distributions would be allowed if based on a reasonable comparison of the actuarial factors assumed when calculating the initial annuity payments and the issuer's experience with respect to those factors.

- ***Refund on annuitant's death.*** A refund of the amount paid for an annuity reduced by payments received would be permissible upon the annuitant's death.

EXPANDED SELF-CORRECTION PROGRAM

The bill would expand the self-correction program (SCP) under IRS's Employee Plans Compliance Resolution System (EPCRS):

- ***Inadvertent errors.*** SCP could be used for inadvertent failures at any time as long as steps are taken to implement a correction before Treasury identifies the error.

- ***Loan failures and the Voluntary Fiduciary Correction Program (VFCP).*** The Department of Labor (DOL) would have to treat inadvertent loan failures corrected under SCP as meeting the requirements of the agency's VFCP.

- ***Safe harbor corrections.*** Treasury would have to update EPCRS to provide more safe harbors for correcting inadvertent errors, including a safe harbor method for calculated earnings that must be restored to a plan.

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- ***Correction by IRA custodians.*** EPCRS would be expanded to allow IRA custodians to correct inadvertent errors as long as the IRA owner is not at fault.

- ***Deadline for RMD corrections.*** Plans and IRA custodians/owners would have 180 days to self-correct inadvertent violations of the RMD rules.

NONDISCRIMINATION TESTING

Although the bill is silent on closed-plan testing relief, some provisions are aimed at easing the nondiscrimination rules:

- ***Minimum participation.*** The bill would require Treasury to issue regulations allowing the minimum participation rule to be applied separately to bona fide separate subsidiaries and divisions.

- ***Safe harbor compensation.*** Plans could use either base pay or rate of pay to determine benefits and contributions under the Section 401(a)(4) and ADP/ACP safe harbor designs.

- ***Catch-up contributions.*** Employers using the separate line of business rules for coverage testing could use those rules to satisfy the nondiscrimination requirements for catch-up contributions.

REPORTING AND DISCLOSURE

Several provisions are aimed at simplifying reporting and disclosure requirements:

- ***Consolidated notices.*** DOL and Treasury would have to let plans consolidate required DC-plan notices so long as the consolidated notice includes all the required content, meets the requirements for timing and frequency of distribution and doesn't obscure important points for participants.

- ***Blended indices.*** Plans could use blended indices to benchmark blended investment funds, subject to certain conditions.

- ***Model rollover notices.*** DOL, Treasury and PBGC would be required to simplify model Section 402(f) rollover notices to facilitate better understanding of different distribution options and corresponding tax consequences. The notices would also have to explain the effect of elections on spousal rights.

- ***Exemption for nonparticipating employees.*** Individual account plans would be exempt from requirements relating to notices, disclosures, and plan documents for employees who choose not to participate and have no account balance, so long as the employees receive all documents in connection with their initial eligibility, annual reminder notices of their eligibility to participate and any documents they'd otherwise be entitled to on request.

PROVISIONS SPECIFIC TO 403(b) PLANS

Several of the bill's provisions relate specifically to 403(b) plans:

- ***Investment in group trusts.*** The bill would allow 403(b) custodial accounts to invest in group trusts. Currently, these accounts can invest only in stock of regulated investment companies. Collective

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investment trusts are held by banks and are considered less costly investment options than mutual funds.

- ***Distribution of custodial accounts.*** 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.

- ***Transferring assets between 401(a) and 403(b) plans.*** Employers could transfer 403(b) account balances to or from a qualified or 403(a) plan and also merge those plans.

- ***Hardship distribution rules.*** 403(b) plans could permit hardship withdrawals of elective deferrals, QNECs and QMACs, as well as earnings on those distributions. Employees may already take a hardship distribution of their elective deferrals, but not earnings on those amounts. The bill would also eliminate the requirement that employees take all available plan loans. These changes would harmonize the 403(b) hardship distributions rules with the rules for 401(k) plans (which were recently amended by the Balanced Budget Act of 2018).

KEY PROVISIONS AFFECTING DEFINED BENEFIT PLANS

The bill contains a few targeted provisions for DB plan sponsors:

- ***Elimination of indexing PBGC variable rate premiums.*** The bill would put a halt to inflation increases on PBGC variable rate premiums, which are a specified percentage of a plan's unfunded vested benefits. The inflationary indexing, in place since 2014, has been widely criticized as theoretically unsound.

- ***Projected interest crediting rate.*** For purposes of demonstrating compliance with applicable code rules, such as benefit limitations under Section 415 and the accrual rules of Section 411, statutory hybrid plans that credit interest at a variable rate could use a reasonable projection of the actual interest crediting rate, not to exceed 6%, rather than the previous year's rate as the IRS has sometimes been requiring on audit.

- ***Non-417(e) interest rates.*** Plan sponsors using non-417(e) interest rates to provide "greater of" lump sums could change the lookback month using the same rules as for the 417(e) rate. Once a rate is changed, it couldn't be changed again for five years without Treasury approval.

- ***Mortality for funding valuations.*** Plan sponsors could use the MP-2017 mortality projection scale to determine minimum required contributions for the 2018 plan year, rather than the MP-2016 scale reflected in the currently mandated rates. This would lower required contributions.

- ***Section 420 transfers.*** Employers' ability to fund retiree health and life insurance benefits with surplus pension assets would be extended an additional four years through 2029. Sponsors (except of collectively bargained plans) making de minimis transfers would get more generous rules for

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determining the available surplus, subject to a seven-year, rather than the usual five-year, cost-maintenance requirement.

PROVISIONS OF INTEREST TO SMALL EMPLOYERS

Some provisions will be of special interest to small employers:

- ***Tax credits.*** New tax credits would be available to small employers that adopt the new secure deferral arrangement or implement three-year re-enrollment periods for employees deferring less than the minimum auto deferral rate. The current tax credit for small employers to start a retirement plan would be increased.

- ***SIMPLE plans.*** Employers sponsoring SIMPLE plans could make nonelective contributions up to 10% of pay for employees who are eligible to participate and earn at least $5,000 a year. The bill would also permit Roth SIMPLE IRAs.

MISCELLANEOUS

Other miscellaneous provisions that might be of interest to employers include:

- ***Post-termination elective deferrals.*** Employees could make elective deferrals on severance and back pay as if the employees were still actively employed.

- ***Cashout of annuity benefits.*** The bill would permit some or all of an annuity benefit already in pay status to be cashed out from a qualified plan without being subject to the excise tax on distributions made before age 59-1/2 (or changed within five years after payments start), so long as the benefit is rolled over to another qualified plan that continues the annuity stream. The same treatment would be available for payments from nonqualified annuity contracts rolled over into similar contracts.

- ***Expanded Saver's Credit.*** The Saver's Credit — currently applied against a taxpayer's tax liability — would be refundable. The refund would be deposited into a Roth IRA or Roth account in an employer plan. The bill would increase the amount of the credit for some taxpayers and directs Treasury to promote the credit to increase public awareness.

- ***Rollovers.*** Nonspouse beneficiaries could roll over a deceased participant's account to an "inherited IRA" established for the purpose of receiving the distribution. Also, Roth accounts in employer plans would accept rollovers from Roth IRAs.

- ***Small financial incentives for contributing to plans.*** Employers could offer small financial incentives to employees to encourage them to participate in the employer's 401(k) or 403(b) plan without violating prohibited transaction rules.

- ***Qualified retirement planning services.*** Employees offered a choice between receiving retirement planning services or cash wouldn't be taxed under the constructive receipt doctrine if they chose

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retirement planning services. (Highly compensated employees would receive this tax treatment only if the choice is available to each employee who's normally provided the services).

- ***Catch-up contribution limits.*** Qualified and 403(b) plans could allow increased catch-up contributions up to $10,000 starting at age 60. SIMPLE plans could allow an increased limit of $5,000 at age 60. All catch-up contribution limits (including the current $1,000 limit for IRAs) would be adjusted for cost-of-living increases.

- ***457(b) deferrals.*** Governmental Section 457(b) plans could allow deferrals of compensation as long as the deferral agreement is in place before the compensation would otherwise have been available to the employee. (Current rules require the agreements to be in place before the beginning of the month of deferral.)

- ***Transfers by nonspouse beneficiaries.*** Nonspouse beneficiaries could transfer distributions among pension, 403(b) and 457(b) plans with tax-favorable rollover treatment.

- ***Charitable contributions.*** Participants age 70-1/2 or older could use their pension, 457(b) and 403(b) plan funds to make donations of up to $100,000 directly to a charity without paying tax on the withdrawals. Current rules only exempt charitable donations from IRAs.

RELATED RESOURCES

- S 1431, Retirement Security and Savings Act of 2019 (Senate, May 13, 2019)

- S 3771, Retirement Parity for Student Loans Act (Senate, May 13, 2019)

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