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GRIST



Bipartisan retirement reforms offered by key House lawmakers

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In this article

[Student loan match payments](#) | [Mandated automatic enrollment and escalation for new plans](#) | [Expanded coverage of part-time workers](#) | [Required minimum distribution \(RMD\) changes](#) | [Qualified longevity annuity contracts](#) | [Expanded self-correction program](#) | [Recovery of retirement plan overpayments](#) | [Reporting and disclosure](#) | [Retirement savings lost and found](#) | [Provisions specific to 403\(b\) plans](#) | [Provisions of interest to small employers](#) | [Miscellaneous provisions](#) | [Related resources](#)

House Ways and Means Committee leaders have introduced a bipartisan package of retirement reforms, building on changes enacted last year in the Setting Every Community Up for Retirement Enhancement (SECURE) Act. The [Securing a Strong Retirement Act of 2020](#) (HR 8696), often referred to as “SECURE 2.0,” will lay the groundwork for legislation next year if the package doesn’t progress in the post-election lame-duck session. The bill draws heavily from sweeping Senate legislation ([S 1431](#)) introduced last year and other bipartisan proposals, which suggests the reforms could see action in the next Congress, regardless of which party has control. Current committee chair Richard Neal, D-MA, who is likely to retain his gavel, may also push for legislation requiring most employers to offer a retirement plan. This GRIST highlights key provisions of interest to employers in the Securing a Strong Retirement Act.

Student loan match payments

The bill would let sponsors of 401(k), 403(b), governmental 457(b) and SIMPLE plans match workers’ student loan payments as if the payments were salary-reduction contributions. Employers offering the benefit would have to make it available to all workers eligible to receive matching contributions on salary deferrals, and the match rate for both payments would have to be the same. The benefit would apply only to repayments of student loan debt incurred for higher education.

Mandated automatic enrollment and escalation for new plans

New 401(k), 403(b) and SIMPLE plans would have to automatically enroll new participants at a deferral rate between 3% and 10%, with lower deferral rates increasing annually by one percentage point to reach 10%. Employees could opt out of automatic enrollment or chose a different contribution percentage. Small employers with fewer than 10 employees, new employers in business less than three years, and sponsors of governmental and church plans would be exempt from the requirement.

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 per year for two consecutive years. Current law (the SECURE Act) generally applies this participation requirement to employees with three consecutive years of service.

Required minimum distribution (RMD) changes

The bill would make a number of changes to Internal Revenue Code Section 401(a)(9) rules for RMDs:

- **Starting age.** A participant's RMD start date would increase from the current age 72 (as set by the SECURE Act) to age 75. The change would take effect for RMDs starting after Dec. 31, 2020, for individuals who turn age 72 after that date.
- **Actuarial increase for defined benefit (DB) plan participants.** The bill would clarify that DB plan participants who retire after the year in which they turn 70½ are still entitled to an actuarial increase for the post-70½ period for which they are not receiving distributions. This is a technical correction to the SECURE Act, which some practitioners read as limiting the increase to participants who retire after age 72.
- **Removal of barriers to life annuities.** Certain barriers under current RMD rules would be removed so defined contribution (DC) plans could offer annuity options with certain increasing or accelerated payment features, such as guaranteed increases of up to 5% (if applied at least annually), full or partial lump sum commutations, and return of premium death payments.
- **RMD exemption for balances of \$100,000 or less.** DC plan participants and IRA owners with total account balances of \$100,000 (indexed) or less on the last day of the year before the year they turn 75 would be exempt from RMD rules.
- **Reduced penalty tax.** The excise tax for failure to take an RMD would decrease from 50% to 25%. For RMDs from IRAs, the excise tax would further drop to 10% if the failure is corrected before the earlier of (i) the date IRS initiates an audit with respect to the failure or (ii) the end of the second tax year beginning after the end of tax year in which the penalty is imposed.

Qualified longevity annuity contracts

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 as follows:

- **Premiums.** Premiums for QLACs would no longer be limited to 25% of the account balance, and the dollar limit on these purchases would increase from \$125,000 to \$200,000 (indexed for inflation).
- **Joint and survivor benefits after divorce.** The bill would clarify the rules for joint and survivor benefits for couples who divorce after purchasing the QLAC but before payments begin, facilitating the sale of QLACs with survivor protection.
- **“Free look” periods.** The regulatory prohibitions on QLACs having commutation benefits, cash surrender rights and similar benefits would not apply to contracts with rescission periods up to 90 days.

Expanded self-correction program

The bill would expand the Self-Correction Program (SCP) under IRS’s Employee Plans Compliance Resolution System (EPCRS):

- **Inadvertent errors.** Plans could use the SCP to correct inadvertent failures at any time 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 the SCP as meeting VFCP requirements.
- **Safe harbor corrections.** The EPCRS would provide more safe harbors for correcting inadvertent errors, including a safe harbor method for calculating earnings that must be restored to a plan.
- **Correction by IRA custodians.** IRA custodians could 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 without paying an excise tax.

Recovery of retirement plan overpayments

The bill would give retirement plan fiduciaries the latitude to decide not to recoup benefit overpayments. If plan fiduciaries choose to recoup overpayments, limitations and protections would apply to safeguard retirees. Notably, fiduciaries wouldn’t be able to recoup overpayments from a participant or a beneficiary

if the first overpayment occurred more than three years before the participant or beneficiary first receives written notice of the error.

Reporting and disclosure

Several provisions aim to simplify reporting and disclosure requirements, though the bill also would require at least one annual paper benefit statement:

- **Annual paper benefit statement.** DC plans would have to deliver at least one paper benefit statement per year (and one every three years for DB plans), unless a participant opts out. In addition to summarizing the participant's benefits, the paper statement would contain information on how participants can opt out of receiving the paper disclosure or order delivery of some or all disclosures on paper for no additional cost.
- **Joint agency report.** Treasury, DOL and the Pension Benefit Guaranty Corp. would have to review how to consolidate, simplify and standardize reporting and disclosure requirements. The agencies would have to report recommendations to Congress within 18 months of the bill's enactment.
- **Performance benchmarks for asset allocation funds.** DOL would have to issue new guidance allowing plan administrators to benchmark a target-date fund against a blend of securities market indices that is reasonably representative of the fund's asset holdings. This approach to benchmarking would be permitted but not required.
- **Exemption for nonparticipating employees.** DC plans would be exempt from notice and disclosure requirements for employees who choose not to participate and have no account balance, as long as they receive all documents about their initial eligibility and annual reminder notices of eligibility to participate. Nonparticipating employees could also request any documents available to participants.

Retirement savings lost and found

The bill would establish an Office of the Retirement Savings Lost and Found that would develop a searchable online database of information about all lost retirement accounts. Plans would have to transfer small lost accounts worth \$1,000 or less to the program, which would invest the amounts in Treasury securities. As under current law, plans seeking to disburse a lost retirement account would have to roll over accounts worth more than \$1,000 into an IRA established in the participant's name, but the threshold for disbursement would increase from \$5,000 to \$6,000.

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 collective investment trusts. Under current law, these accounts can invest only in mutual funds. Collective

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

- **Multiple employer plan (MEP) reforms expanded.** The SECURE Act's provisions allowing pooled employer plans (PEPs) would also cover 403(b) plans.

Provisions of interest to small employers

Some provisions will be of special interest to small employers:

- **Increased start-up tax credits.** The current start-up tax credit would increase from 50% to 100% of administrative costs, with additional credits available to employers making contributions on behalf of employees.
- **Start-up credits extended to MEPs, PEPs.** Small employers that join a MEP or PEP could claim the start-up credit for their first three years in the MEP or PEP, regardless of how long the MEP or PEP has existed.
- **Military spouse eligibility credit.** Small employers could receive a three-year tax credit if they (i) make employees who are military spouses eligible for plan participation within two months of hire, (ii) let eligible military spouses receive any matching or nonelective contribution they would otherwise have been eligible to receive at two years of service, and (iii) make military spouses 100% immediately vested in all employer contributions. The credit would apply only to nonhighly compensated employees.

Miscellaneous provisions

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

- **Expanded saver's credit.** The income limit and amounts eligible for the saver's credit would increase, and the Treasury Department would have to raise awareness of the credit.
- **Small financial incentives for contributing to plans.** Employers could offer small financial incentives (e.g., gift cards) — without violating prohibited transaction rules — to encourage employees to participate in the 401(k) or 403(b) plan.
- **Catch-up contribution limits.** Qualified and 403(b) plans could allow larger catch-up contributions of up to \$10,000 starting at age 60. The maximum catch-up for SIMPLE plans would increase to \$5,000. 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 457(b) plans could allow employees to change their deferral rates at any time before the compensation would otherwise have been available to the employees. Current rules require making the change before the beginning of the month of deferral.

- **Charitable contributions.** Participants age 70-1/2 or older could use their pension, 457(b) and 403(b) plan funds to donate up to \$130,000 directly to a charity, without paying income tax on the withdrawals. Current rules only exempt charitable donations from IRAs. The bill also would increase the annual IRA charitable deduction limit from \$100,000 to \$130,000.

Related resources

Non-Mercer resources

- [Press release and summary](#) (House Ways and Means Committee, Oct. 27, 2020)
- HR 8696, the [Securing a Strong Retirement Act of 2020](#) (House Ways and Means Committee, Oct. 26, 2020)

Mercer Law & Policy resources

- [2020 legislative and regulatory outlook for retirement plans](#) (Feb. 21, 2020)
- [Senate reintroduces expansive retirement bill](#) (May 20, 2019)

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