Major bipartisan retirement reform bill gets House committee approval

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In this article

On May 5, the House Ways and Means Committee passed a major bipartisan package of retirement reforms — the Securing a Strong Retirement Act of 2021 — clearing the way for possible House approval this year. The legislation carries over most provisions from an earlier version of the bill, but contains some tweaks and a number of additional sections, including some revenue offsets that would direct more workplace savings into after-tax Roth accounts. It also draws several provisions from broad Senate legislation (S 1431) introduced in the prior Congress and likely to see reintroduction soon, suggesting that a combined retirement bill may advance this year, although the outlook for enactment of a final measure is uncertain. Sections of the new House measure could ultimately be added to the sweeping infrastructure package being developed in Congress. Ways and Means Committee chair Richard Neal, D-MA, may also push to include separate legislation in the package requiring most employers to offer a retirement plan. This GRIST highlights key provisions of the Securing a Strong Retirement Act of 2021 that may be of interest to employers.

Student loan matching payments

The bill would let sponsors of 401(k), 403(b), governmental 457(b) and SIMPLE plans match employees' student loan payments as if the payments were salary-reduction contributions. Employers offering the benefit would have to make it available to all employees eligible to receive matching contributions on salary deferrals, and the match rate and vesting schedules for both payments would have to be the same. Plans could apply the actual deferral percentage (ADP) test separately to employees who receive these matching contributions. 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) and 403(b) plans would have to automatically enroll new participants at a deferral rate between 3% and 10%, with auto-escalation at a rate of one percentage point per year up to a specified cap. For safe harbor plans, the maximum would be 15%. For non-safe harbor plans, the cap would be 10% prior to 2025 and 15% for 2025 and later years. Employees could opt out of automatic enrollment or chose a different contribution percentage, and they could withdraw their contributions during the 90-day period after the first automatic deferral. 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. The bill would also clarify that employees' pre-2021 service would not apply for eligibility or vesting purposes.

Defined contribution plan distribution changes

The bill would make the following changes to the distribution rules for defined contribution (DC) plans:

- **Three-year limit for repaying qualified birth or adoption distributions (QBOADs)**. Current law does not limit the period during which a QBOAD may be repaid to the plan and qualify as a rollover contribution. The bill requires that distributions be repaid within three years from the date the distribution was received.

- **Self-certification of hardship**. Employers could rely on employees' certification that they have experienced a hardship event for purposes of taking a hardship withdrawal from a 401(k) or 403(b) plan or a distribution for an unforeseeable emergency from a governmental 457(b) plan, and that the distribution is not in excess of the financial need.

- **Penalty-free withdrawals in cases of domestic abuse**. Penalty-free early withdrawals up to $10,000 (or 50% of the value of the vested benefit, if less) would be available to victims of domestic abuse. Eligible distributions could be repaid to the plan, subject to certain requirements.

Required minimum distribution changes

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

- **Starting age.** A participant's RMD start date would increase from the current age of 72 (as set by the SECURE Act) to age 73 in 2022, age 74 in 2029 and age 75 in 2032.

- **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 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.

- **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 within a year of the bill's enactment as follows:

- **Premiums.** Premiums for QLACs would no longer be limited to 25% of the account balance.

- **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 eligible inadvertent failures at any time before Treasury identifies the error.

- **Loan failures and the Voluntary Fiduciary Correction Program (VFCP).** The bill would make the SCP available for more plan loan failures and require the Department of Labor (DOL) 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 individual retirement account (IRA) custodians.** IRA custodians could correct inadvertent errors.

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 relying on DOL's 2020 electronic delivery regulation would still have to deliver at least one paper benefit statement per year (and one every three years for DB plans), unless a participant opts out (this change would not apply to plans using DOL's 2002 regulatory safe harbor for e-delivery). 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 request delivery of some or all disclosures on paper for no additional cost.

- **Joint agency report.** Treasury, DOL and the Pension Benefit Guaranty Corp. (PBGC) 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.** Within six months of the bill's enactment, 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. DOL would also need to report to Congress on the effectiveness of the agency's regulatory benchmarking requirements.

- **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 a Retirement Savings Lost and Found, an online searchable database of information about all lost retirement accounts, managed by the PBGC. 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. The Department of Labor would have to issue regulations on what steps plan fiduciaries must take to meet their fiduciary duty to keep track of deferred vested participants and find missing participants.

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.

- **403(b) hardship rules conformed to 401(k) rules**. A revenue raising provision in the bill would conform 403(b) plan hardship rules to the 401(k) hardship rules by allowing hardship distributions from qualified matching contributions, qualified nonelective contributions and account earnings, in addition to employee contributions (which may be withdrawn upon hardship under current law). This change would apply to 403(b) plans invested in annuity contracts as well as plans invested in custodial accounts.

Provisions of interest to small employers

Some provisions will be of special interest to small employers:

- **Increased start-up tax credits.** The current retirement plan start-up tax credit would increase from 50% to 100% of administrative costs for employers with no more than 50 employees. Additional credits would be available to employers with up to 100 employees, if the employers make contributions to DC plans 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 DC 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:

- **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 for individuals who are at least age 62 but less than age 65 by the end of the taxable year. The maximum catch-up contribution 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 deferred compensation would otherwise have been available to the employees. Current rules require making the change before the beginning of the month of deferral.

- **Safe harbor corrections for elective deferral failures**. The bill would give plans 9-1/2 months after the end of the plan year to correct — without penalty — reasonable errors in administering automatic enrollment and automatic escalation features.

- **Retroactive benefit accrual amendments allowed**. Retroactive amendments to increase benefits (except for matching contributions) for a plan year could be made by the due date of the employer's tax return for the tax year including the plan year. This would allow existing plans the same flexibility to retroactively enhance benefits the SECURE Act provided by allowing employers to retroactively sponsor new plans.

- **Separate application of top-heavy rules to DC plans covering excludible employees**. Employers could perform the top-heavy test separately on non-excludable and excludable employees. This provision is intended to remove the financial incentive for many small employers to limit participation in their retirement plan.

Revenue raising provisions

- **Mandated Roth treatment for catch-up contributions**. Catch-up contributions permitted by reason of attaining age 50 would have to be made on a Roth (i.e., after-tax) basis to 401(k), 403(b), and governmental 457(b) plans.

- **Matching contributions permitted on Roth basis**. Employers could permit employees to elect for some of all of their matching contributions to be treated as Roth contributions under 401(k), 403(b) or governmental 457(b) plans.

- **Roth contributions allowed for SIMPLE and SEP plans.** Employers could let employees elect Roth treatment of both employer and employee contributions to Savings Incentive Match Plan for Employees (SIMPLE) plans and Simplified Employee Pension (SEP) plans. All contributions to these plans must be pretax under current law.

Related resources

Non-Mercer resources

- The Securing a Strong Retirement Act of 2021 (HR 2954) (Ways and Means Committee, May 5, 2021)

- Description of 'The Securing a Strong Retirement Act of 2021' (Joint Committee on Taxation, May 3, 2021)

Mercer Law & Policy resources.

- Senate reintroduces expansive retirement bill (May 20, 2019)

- IRS gives closed plans relief for benefits, rights and features testing (Nov. 14, 2019)

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