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**GRIST**

# House retirement bill advances, seeks scrutiny of pension risk transfers

By Margaret Berger and Geoff Manville  
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Bipartisan “SECURE 2.0” retirement legislation ([HR 5891](#)) that would require the Department of Labor (DOL) to review the standards for pension risk transfers involving annuity purchases passed the House Committee on Education and Labor on Nov. 10. Other proposals in the Retirement Improvement and Savings Enhancement (RISE) Act largely mirror broader SECURE 2.0 bills approved by the House Ways and Means Committee (the Securing a Strong Retirement Act of 2021 ([HR 2954](#))) and introduced in the Senate (the Retirement Security and Savings Act of 2021 ([S 1770](#))). Final legislation could take shape next year that packages these and other retirement bills approved by committees in both chambers. This GRIST provides a high-level overview of the RISE Act’s provisions.

## Provisions for pension risk transfers, PEP fiduciaries

Unlike other SECURE 2.0 bills to date, the RISE Act directs DOL to review how ERISA’s fiduciary standards apply when a defined benefit (DB) plan sponsor outsources some or all of its pension risk by purchasing annuities from an insurance company or other annuity provider. These pension risk transfers have drawn fire from some policymakers who say that participants’ benefits are potentially at risk if the annuity provider goes out of business or otherwise cannot meet its contractual obligations.

The Setting Every Community Up for Retirement Enhancement (SECURE) Act created a safe harbor for defined contribution plan fiduciaries selecting annuity providers, but it didn’t apply to DB plans. The RISE Act’s provision would require DOL to determine whether Interpretive Bulletin (IB) 95-1 (29 CFR [§ 2509.95-1](#)) needs amendments and report the findings to Congress, including an assessment of any risk to participants.

The legislation's other new provision would clarify that a named fiduciary — rather than a trustee — would be responsible for implementing written contribution-collection procedures for a pooled employer plan (PEP) and collecting the contributions to the plan.

## Bill includes prior proposals

Other RISE Act provisions are similar or identical to earlier proposals. Provisions directly affecting retirement plan sponsors would:

- Increase the permissible mandatory cashout limit from \$5,000 to \$7,000 (earlier versions would increase the limit to \$6,000)
- Allow 403(b) plans to join multiple-employer plans (MEPs) and PEPs
- Permit employers to provide small financial incentives (e.g., gift cards) — without violating the prohibited transaction rules — to participate in the employer's 401(k) or 403(b) plan
- Exempt individual account plans from providing notices, disclosures and plan documents to employees choosing not to participate who have no account balance, providing they receive all documents in connection with initial eligibility and annual reminder notices
- Prohibit recoupment of overpayments that occurred more than three years before the participant receives notice about error, let retirement plan fiduciaries decide not to recoup overpayments to participants, and provide certain protections to participants when the fiduciary does decide to recoup
- Require sponsors of noncollectively bargained 401(k) plans to let part-time workers voluntarily contribute if they have completed at least 500 hours of service per year for two consecutive years (vs. three years under current law)

The proposal also contains provisions directing government agencies to help ensure participants don't lose track of their pensions and to simplify and standardize reporting requirements. The legislation would:

- Create a Retirement Savings Lost and Found to connect employers with participants entitled to pensions
  - The program would be operated by DOL, not the Pension Benefit Guaranty Corp. (PBGC) as proposed in other bills, and would not accept transfers of small benefits.
- Require DOL to issue new guidance allowing plan administrators to voluntarily benchmark a target-date fund against a blend of securities market indices reasonably representative of the fund's asset holdings, and report to Congress on the effectiveness of the regulatory benchmark standards
- Give Treasury, DOL and PBGC two years to prepare a recommendation to Congress on how to consolidate, simplify and standardize reporting and disclosure requirements

## Outlook

The RISE Act and the Securing a Strong Retirement Act will likely be blended into a larger bipartisan package before a House vote. This most likely will happen in 2022 after Democrats finish their effort to pass a party-line social spending and climate package (which includes new restrictions on Roth conversions). Activity on SECURE 2.0 legislation is also expected to ramp up next year in the Senate, where the Finance Committee plans to take up the Retirement Security and Savings Act and the Health, Education, Labor and Pensions Committee is set to draft its own SECURE 2.0 bill. A final product combining various elements of all these bills may clear Congress next year.

## Related resources

### Non-Mercer resources

- [HR 5891](#), the Retirement Improvement and Savings Enhancement Act (Congress, Nov. 5, 2021)
- [Section-by-section explanation](#) of the RISE Act (House Committee on Education and Labor, Nov. 5, 2021)

### Mercer Law & Policy resources

- [Senators revive major retirement reform legislation](#) (May 28, 2021)
- [Senate bill boosts PEPs, eases fixes for plans with automatic features](#) (May 24, 2021)
- [Major bipartisan retirement reform bill gets House committee approval](#) (May 6, 2021)

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