Senate HELP Committee releases SECURE 2.0 retirement bill

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A bipartisan retirement reform package introduced June 7 by leaders of the Senate Health, Education, Labor and Pensions (HELP) Committee will likely form a key part of any final “SECURE 2.0” legislation Congress might pass this year. The Retirement Improvement and Savings Enhancement to Supplement Healthy Investments for the Nest Egg (RISE & SHINE) Act is the HELP Committee’s version of a new round of retirement reforms building on the Setting Every Community Up for Retirement Enhancement (SECURE) Act of 2019 (Div. O of Pub. L No. 116-94). This GRIST highlights key provisions in the RISE & SHINE Act of interest to employers.

Committees poised to move SECURE 2.0 bills

Led by Chair Patty Murray, D-WA, and ranking Republican member Richard Burr, R-NC, the HELP Committee oversees ERISA issues in the Senate. The committee plans to review, modify and vote on the RISE & SHINE bill on June 14.

The bill joins a list of similar SECURE 2.0 measures, including House-passed legislation (HR 2954) and another Senate bill (S 1770) set to see action this month at the Finance Committee, which has jurisdiction over tax issues. Those bills aim to expand retirement plan coverage, boost savings, increase lifetime income opportunities and ease plan administration. The Senate HELP and Finance committees are already working with each other and House lawmakers on a consensus SECURE 2.0 package, which could get a vote during the lame-duck congressional session later this year.

While the RISE & SHINE Act adopts several provisions found in other bills, it includes some relatively new proposals. Examples include provisions allowing employers to offer emergency savings accounts linked to defined contribution (DC) plans, expanding disclosures when defined benefit (DB) pension plan sponsors offer participants a lump sum option to replace their annuity payments, promoting automatic re-enrollment in DC plans, encouraging development of pooled employer plans (PEPs) and easing reporting for certain groups of small DC plans.

Provisions aligned with recent House-passed legislation

The bill includes several provisions substantially identical to portions of the recent House-passed bipartisan Securing a Strong Retirement Act of 2022 (SSRA) (HR 2954):

- **Cashout limit increased.** The permissible mandatory cashout limit would increase from $5,000 to $7,000, starting in 2024.
- **403(b) PEPs.** Starting with 2023 plan years, 403(b) plans could join PEPs.
- **Blended performance benchmarks for asset allocation funds.** Within two years of the bill's enactment, the Department of Labor (DOL) would have to issue regulations allowing (but not requiring) DC plan administrators to benchmark a designated investment alternative holding a mix of asset classes — such as a target-date or balanced fund — against a blend of securities market indices reasonably representative of the fund's asset holdings. DOL would also need to report to Congress on the effectiveness of the agency's regulatory benchmarking requirements within three years. DOL's current participant investment disclosure rules for DC plans allow blended benchmarks only as a supplement to a broad-based securities market index.
- **Administrative clarification for PEPs.** A PEP would have to designate a named fiduciary — other than a participating employer — to implement written contribution-collection procedures and collect plan contributions. This named fiduciary wouldn't have to be a trustee, as is currently required.
- **Review of pension risk transfer guidance.** The bill would require DOL to review its current guidance on how ERISA's fiduciary standards apply when a DB plan sponsor outsources some or all of its pension risk by purchasing annuities from an insurance company or other provider. DOL would have to consult with the ERISA Advisory Council and determine whether Interpretive Bulletin 95-1 (29 CFR § 2509.95-1) needs amending. DOL would also have to report the findings to Congress, including an assessment of any risk to participants, within a year of the bill's enactment.
- **Joint agency report on disclosure.** Treasury, DOL and the Pension Benefit Guaranty Corp. (PBGC) would have to review how to consolidate, simplify, and standardize ERISA's reporting and disclosure requirements. The agencies would have to consult with participant and employer representatives and report recommendations to Congress within three years of the bill's enactment.
- **Simplified disclosure for nonparticipating employees.** In plan years starting after 2022, DC plans would have to provide only an annual reminder notice of plan eligibility to employees with no account balance who received the summary plan description (SPD) and other required disclosures on first becoming eligible. These employees could continue to request any documents available to participants.

- **Recovery of retirement plan overpayments.** The bill would give retirement plan fiduciaries the latitude to decide not to recoup certain inadvertent benefit overpayments. If plan fiduciaries choose to recoup overpayments, limitations and protections would apply to safeguard retirees and their beneficiaries, including a prohibition on charging interest, curbs on threatening litigation and using collection agencies, and a ban on recoupment if the first overpayment occurred more than three years before the plan notifies the recipient.
- **Expanded coverage of part-time workers.** The bill would allow some part-time workers to participate in workplace retirement plans a year earlier than they currently are eligible. Sponsors of noncollectively bargained 401(k) and 403(b) plans would have to let part-time workers voluntarily contribute if they have completed at least 500 hours of service in two consecutive years (reduced from three) and have attained age 21. This change wouldn't take effect until one year after final regulations implementing the provision are issued.

Pension-linked emergency savings accounts

The HELP Committee's bill contains a new proposal that would allow an employer to create emergency savings accounts linked to its defined contribution (DC) plans. First offered in stand-alone legislation (S 4310) from Sens. Cory Booker, D-NJ, and Todd Young, R-IN, the proposal's details include the following:

- **Automatic enrollment permitted.** Employers could automatically enroll employees to contribute up to 3% of their salary, subject to notice requirements, but employees could opt out or choose a different contribution rate. Employers could also contribute to the accounts. Participant contributions would be treated the same as Roth contributions, while employer contributions would be after-tax.
- **Account limits.** Accounts would be capped at $2,500 (annually indexed for inflation) or a lesser amount determined by the employer. To the extent any participant contributions would cause the account to exceed the maximum balance, those amounts could be treated as ordinary elective deferrals to the DC plan. (The bill's language appears to suggest that excess employer contributions to an employee's emergency savings account would also be treated as elective deferrals, which seems unusual.)
- **Employee withdrawals.** Participants could request withdrawals at least once per month and would have to receive the withdrawal within a week of making a request. Participants could make withdrawals for any reason but would have to withdraw the entire emergency balance before taking a hardship withdrawal or loan (another unusual provision, considering loans are often used for purposes unrelated to emergencies). Withdrawals would be exempt from the excise tax on early distributions before age 59-1/2.
- **Required investments.** Account funds would have to be held in cash in an interest-bearing deposit account or in an investment or insurance product designed to preserve principal and provide a reasonable rate of return. These investments would be eligible for fiduciary relief.

- **Matching requirements.** Employers would have to match employee emergency savings contributions at the same rate as elective deferrals.

Reporting and disclosure

The bill includes several provisions addressing required participant disclosures:

- **Review of DC plan fee disclosures.** DOL would have to explore how to improve the required DC plan fee disclosures' content and design to enhance participants' understanding of fees and expenses, as well as the cumulative effect on retirement savings over time. DOL would have three years to undertake the study and report the findings to Congress.
- **Consolidation of required notices.** Within two years of the bill's enactment, DOL and Treasury would have to adopt regulations allowing plans to consolidate certain required participant notices. Plans could consolidate into a single notice two or more of the required notices regarding qualified default investment alternatives, automatic enrollment and 401(k) plan safe harbors.
- **Lump-sum buyout disclosures.** The bill includes a recent Senate measure — S 4087, the Information Needed for Financial Options Risk Mitigation (INFORM) Act — that would require DB pension plan sponsors offering terminated vested participants a lump-sum window to provide information to help them understand the financial trade-offs of choosing a lump sum over an annuity.
  - **Participant disclosure.** Employers would have to send a notice to participants and beneficiaries offered a lump-sum option to replace their annuity payments at least 90 days before the election period begins. DOL would have to issue a model notice, additional guidance and any necessary regulations within 180 days of the bill's enactment.
  - **Disclosure to federal agencies.** Sponsors would also have to report information about the lump-sum window to DOL and PBGC — such as how long the window will last and how the lump sums will be calculated — at least 30 days before the window opens. Within 90 days after the window closes, sponsors would have to send a "post-offer report" to DOL detailing how many participants and beneficiaries elected the lump sum and any other information DOL requires in regulations or other guidance.
- **DB annual funding notice**. The annual funding notice now required for single-employer DB plans would be revised starting with the 2024 plan year. The revised notice would show the plan's current and historical funded status using year-end market conditions, rather than the currently required valuation measures, which are more than a year out-of-date by the time the notice is delivered. The notice would also have to include a statement that if the plan's assets exceed the value of benefits guaranteed by PBGC, participants may receive benefits exceeding the guaranteed amount. However, the notice would also have to explain that PBGC's valuation methodology produces higher liabilities than any method required under federal law, reducing the possibility that participants will get benefits exceeding the guaranteed amount.

Defined contribution plan provisions

The bill includes a number of provisions aimed at enhancing and simplifying the administration of DC plans:

- **Automatic re-enrollment for new ACAs.** The HELP bill encourages automatic re-enrollment of eligible employees in DC plans at least once every three years. The bill appears to require newly adopted automatic contribution arrangements (ACAs) that become effective after 2024 to include an automatic re-enrollment feature to qualify for ERISA's special preemption of state laws restricting automatic enrollment. Automatic re-enrollment would apply to eligible employees who have affirmatively elected not to contribute. Plans with ACA features implemented before 2025 would not be affected.
- **Incidental plan expenses.** The bill aims to help smaller employers defray the costs of improving their plans' design — for example, adding an auto-enrollment feature. The bill would permit employers to use plan assets to pay "incidental expenses solely for the benefit of the participants and their beneficiaries." Under current law, retirement plan assets generally can't be used to pay plan design expenses.
- **Report on pooled employer plans (PEPs).** Within five years of the bill's enactment and every five years afterward, DOL would have to conduct a study of PEPs, examining such topics as the number of PEPs and PEP participants, the range of investment options, fees, disclosures, and the impact of PEPs on increasing retirement savings coverage. DOL would have to report the study's findings and recommend how PEPs can be improved to serve and protect participants.
- **Annual audits of groups of plans.** The bill would clarify auditing requirements for groups of plans permitted to file a single Form 5500 under the SECURE Act. (DOL and Treasury refer to these plans as "defined contribution groups" (DCGs) in proposed revisions to Form 5500 and related regulations released in September 2021.) Those proposed revisions would require trust-level audits of groups of plans, even if a group contains only small plans (with fewer than 100 participants) that would be exempt from ERISA's audit requirement if they filed individual Form 5500s. The HELP bill appears to eliminate the trust-level audit and require only large plans (with 100 or more participants) in the group to undergo an audit.

Defined benefit plan provisions

Several provisions will be of interest to DB plan sponsors:

- **Projected interest-crediting rate.** To demonstrate compliance with applicable IRC rules like the 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 IRS auditors have sometimes required.

- **No indexing of PBGC variable-rate premiums.** The bill would put a halt to inflation increases on PBGC variable-rate premiums for single-employer pension plans, which are a specified percentage of a plan's unfunded vested benefits. Variable-rate premiums would be frozen at the 2022 level of $48 per $1,000 of unvested benefits. The inflationary indexing, in place since 2014, has been widely criticized as theoretically unsound.
- **Section 420 transfers.** Employers' ability to fund retiree health and life insurance benefits with surplus pension assets would continue through 2032.

Related resources

Non-Mercer resources

- RISE & Shine Act (Senate HELP Committee, June 7, 2022)
- Summary of the RISE & SHINE Act (Senate HELP Committee, June 7, 2022)
- Press release (Sens. Patty Murray and Richard Burr, June 7, 2022)

Mercer Law & Policy resources

- Bill seeks new lump-sum buyout disclosures to participants, agencies (May 9, 2022)
- Broad 'SECURE 2.0' retirement bill gets overwhelming House approval (April 18, 2022)
- Host of retirement bills may hitch ride on final SECURE 2.0 package (March 25, 2022)
- 2022 legislative, regulatory and judicial outlook for retirement plans (March 15, 2022)
- House retirement bill advances, seeks scrutiny of pension risk transfers (Nov. 15, 2021)
- Senate bills seek spousal consent for DC plans, expanded saver's credit (July 29, 2021)
- Senators revive major retirement reform legislation (May 28, 2021)

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