

Legislative and regulatory bulletin

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Momentum is building in Washington for significant retirement legislation

The Pension Protection Act of 2006 (PPA) made important changes that have had a profound impact on defined contribution (DC) plans. Its provisions, including one that encourages automatic enrollment of participants and another that creates a fiduciary safe harbor for default investing, have prompted many plan sponsors to redesign their plans. However, since the enactment of the PPA, Congress has made only a few relatively minor changes to the retirement plan laws. For example, the Tax Cuts and Jobs Act of 2017 gave participants more time to roll the amount of any plan loans offset against their plan accounts into IRAs in order to avoid taxable events.¹ In addition, the Bipartisan Budget Act of 2018 made changes to the hardship withdrawal rules.² But it's been more than a decade since Congress enacted laws that could have a far-reaching impact on the U.S. retirement system. That may soon change.

Two retirement bills in focus

Two significant bills are now getting serious attention in Washington: the Family Savings Act (FSA)³ and the Retirement Enhancement and Savings Act (RESA).⁴ The FSA, which is one of three separate bills in a package that the House of Representatives Ways and Means Committee calls Tax Reform 2.0,⁵ passed the committee on September 13 and the full house on September 27. RESA unanimously passed the Senate Finance Committee in September 2016 but was not put to a vote by the full Congress before it adjourned at the end of that year. The bill was reintroduced in March in both the Senate and the House.

While there are notable differences in the bills, the FSA and RESA have a number of key provisions in common that have been under consideration for a long time and have enjoyed the support of policymakers on both sides of the aisle.

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¹Please see our December 19, 2017, special bulletin for a summary of this change.

²Please see our 2Q 2018 bulletin for a summary of these changes.

³H.R. 6757.

⁴S. 2526; H.R. 5282.

⁵Another component of Tax Reform 2.0 would make the individual tax cuts from last year's Tax Cuts and Jobs Act permanent, while the third contains tax provisions designed to promote business innovation.

Key provisions in both bills

Multiple employer plans (MEPs): Perhaps the most significant proposal in both bills is a provision that would permit unrelated employers to band together in a single plan. Under the current rules, employers must have a relationship with one another, such as belonging to the same trade or professional organization, to participate in a MEP. Allowing unrelated employers to join together in a so-called open MEP to benefit from economies of scale rather than maintaining their own separate plans will be less costly and therefore likely to encourage more employers to offer plans to their workers. The bills would also fix a rule, often called the one-bad-apple rule, that specifies that noncompliance by one employer can disqualify the entire MEP.

Separately, the president issued an executive order on August 31 directing the Department of Labor and the Treasury Department to consider proposing rules that would expand access to MEPs and address the one-bad-apple rule. The Department of Labor sent a proposed rule to the White House's Office of Management and Budget for review on September 23. We expect that the proposal will be released for public review and comment soon.

Fiduciary safe harbor for selecting lifetime income providers: Both bills would protect DC plan fiduciaries from liability when selecting insurers to provide guaranteed payout options, if they receive certain disclosures from the insurer. This would remove a potential obstacle that has prevented some plan sponsors from adding guaranteed lifetime income options to their plans.

Portability of lifetime income options: The bills would permit participants to transfer lifetime income investments to another plan or IRA if the plan sponsor eliminates the investment as an option under the plan.

Election of 401(k) safe harbor status: Both bills include a provision that would provide employers with more flexibility to adopt a safe harbor to avoid nondiscrimination testing.

Other provisions: Both the FSA and RESA would allow employers to set up a plan for a given year as late as their tax return due date for that year. They also would permit working individuals over age 70½ to make traditional IRA contributions and prohibit plan loans via credit cards.

Key provisions only in the FSA

RMD exemption for small balances: Under the FSA, individuals whose aggregate retirement account balances are \$50,000 or less would not have to take required minimum distributions.

Penalty-free withdrawals for births and adoptions: The 10% penalty on early retirement plan withdrawals would be waived on withdrawals made within one year of the birth or adoption of a child.

Universal Savings Accounts (USAs): The FSA would create a new tax-free savings account (a USA) to which an individual could contribute up to \$2,500 or 100% of his or her earned income—whichever is less—each year. Contributions to USAs would not be deductible, but tax-free withdrawals could be taken at any time for any reason. Unlike Roth IRAs, there would be no income restrictions preventing higher-income individuals from contributing. Although not technically retirement plans, USAs could potentially compete with retirement plans for Americans' savings dollars.

Key provisions only in RESA

Lifetime income disclosures on DC participant statements: RESA would require DC plan benefit statements to disclose, at least once during any 12-month period, the monthly amount the participant would receive as an annuity, based on his or her current account balance.

Plan start-up credits for small employers: The bill proposes to increase the credit for employers with 100 or fewer employees that launch new plans to a maximum of \$5,000 per year for the first three years. It would also create an additional credit of \$500 per year for three years if the employer adopts automatic enrollment.

NEXT STEPS

Many Washington observers believe there is a distinct possibility that Congress could pass a retirement plan bill as early as the lame-duck session that begins after the November midterm elections. Otherwise, retirement legislation will likely be high on the agenda when Congress reconvenes in January and no doubt will include many of the provisions described above.

We will continue to monitor all retirement plan-related legislative activity in Congress and will keep you informed of any significant developments.

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