Legislative and regulatory bulletin

3Q 2021

Secure 2.0 Moved Forward: Reintroduction of Bipartisan Retirement Bills

Bipartisan retirement plan bills introduced in the House and Senate

The prospects for comprehensive retirement plan legislation are looking brighter since the reintroduction of bipartisan bills in both houses of Congress. In our 1Q 2021 Legislative and Regulatory Bulletin, we described the versions of those bills that were introduced in 2019 and 2020, during the 116th Congress. Because bills die if they are not enacted before the end of a congressional session, the bills needed to be put forth again in the 117th Congress (which began in January) to keep a "SECURE 2.0" package alive. As expected, the sponsors of the Securing a Strong Retirement Act,[1] House Ways and Means Committee Chairman Richard Neal (D-MA) and ranking member Kevin Brady (R-TX), and the Senate sponsors of the Retirement Security and Savings Act,[2] Ben Cardin (D-MD) and Rob Portman (R-OH), reintroduced their bills in May, albeit with some modifications.

Much overlap between the Senate and House bills

Each bill has more than 50 separate provisions, about half of them common to both. The overlap includes provisions that would:

- Permit 403(b) plans to invest in collective investment trusts
- Permit matching contributions on behalf of employees who are repaying student loans
- Increase the starting age for required minimum distributions to 75
- Enhance the new plan startup credit for employers with 50 or fewer employees
- Allow long-term part-time employees to join 401(k) plans after two years
- Create a retirement savings lost-and-found

For more information about these provisions, please see our 1Q 2021 Legislative and Regulatory Bulletin.

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[1] H.R. 2954
[2] S. 1770

Key provisions only in the Senate bill

Make the Saver's Credit refundable. Under current law, a tax credit known as the Saver's Credit is available to low and moderate income workers who contribute to IRAs or employer retirement plans, but individuals who owe no federal income tax can't claim the credit. The Cardin-Portman bill would change that by making the Saver's Credit refundable. However, the credit would have to be directly deposited into the individual's Roth IRA or a designated Roth account within the individual's 401(k) or other retirement plan.

Create a new 401(k) automatic enrollment safe harbor: Secure Deferral Arrangements. The bill would add a new, 401(k) nondiscrimination safe harbor called a Secure Deferral Arrangement. Plans would automatically enroll employees at an initial contribution rate of at least 6% of their pay and automatically escalate employees' contributions up to 10%. Employers would be required to make matching contributions for non-highly compensated employees equal to $1 per $1 on the first 2% of pay, $0.50 per $1 on the next 4% of pay and $0.20 per $1 on the next 4% of pay. Thus, participants contributing 10% of their pay would receive a 4.8% match. Employers with 100 or fewer employees that adopted Secure Deferral Arrangements would be eligible for a new tax credit: For the first five years a non-highly compensated employee participated in the plan, the employer would be entitled to a tax credit equal to the matching contributions made for that employee. However, the credit would be limited to 2% of the employee's pay.

Increase the catch-up amount for individuals age 60 and over to $10,000. The Senate bill would raise the 401(k), 403(b) and 457(b) catch-up amount to $10,000 for individuals age 60 and over. Although the House bill introduced last fall would have done the same, the House's current version would increase the amount to $10,000 only for individuals age 62, 63 and 64.

Create a tax credit for automatic reenrollment. The bill would create a $500 tax credit for employers with 100 or fewer employees that add a reenrollment provision to their 401(k), SIMPLE or SARSEP plans. For purposes of this credit, a reenrollment provision is one whereby at least every three years the employer automatically enrolls employees who are not contributing to the plan or are contributing less than the initial automatic enrollment percentage applicable to new employees. The $500 credit would apply for each of the first three years after the employer incorporates this feature into its plan.

Revenue-raising provisions in the House bill

Many of the items in the proposed bills would result in tax savings for individuals and employers, including delaying the start of required minimum distributions to age 75 and the enhanced new plan startup credit. The Joint Committee on Taxation estimates that the tax breaks in the Securing a Strong Retirement Act would reduce the tax revenues collected by the U.S. Treasury by about $27 billion over 10 years. The Neal-Brady bill would offset that lost revenue with several provisions, including the following:

Permit SEP and SIMPLE Roth IRAs. Under current law, contributions to SEP and SIMPLE IRA plans are made on a pre-tax basis. The House bill would allow contributions to be made to Roth IRAs on an after-tax basis.

Require catch-up contributions to be made to Roth accounts. Under current law, 401(k), 403(b) or 457(b) plan participants age 50 and older can make catch-up contributions and choose whether to do so as pre-tax deferrals or on an after-tax basis to designated Roth accounts (if available in their plans). The bill would require catch-up contributions to be made only to a plan's Roth account.

Permit matching contributions to Roth accounts. Under the bill, 401(k), 403(b) and 457(b) plans could give a participant the option of asking their employer to make matching contributions to the plan's designated Roth account. The participant would be taxed on the matching contribution in the year it was made.

The process going forward

The Securing a Strong Retirement Act took a significant step forward when it was unanimously passed by the House Ways and Means Committee on May 5. But it's unclear when the full House will take up the bill or when the Retirement Security and Savings Act will move in the Senate. Once the bills pass in each body, any differences must be reconciled. In addition, it is expected that other members of Congress will push to include some of their ideas in the legislative package. So there is a lot of work to be done before SECURE 2.0 can become a reality. And because Congress has a lot on its plate, we probably won't see an approved bill reach the president's desk until late this year at the earliest—and more than likely sometime in 2022.

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