

MEMO# 31774

May 24, 2019

House Passes Bipartisan Retirement Legislation

[31774]

May 24, 2019 TO: ICI Members
Pension Committee

Pension Operations Advisory Committee SUBJECTS: Pension RE: House Passes Bipartisan Retirement Legislation

On May 23, 2019, the US House of Representatives approved the Setting Every Community Up for Retirement Enhancement Act of 2019 (the SECURE Act) (H.R. 1994), by an overwhelming majority of 417 to 3.[\[1\]](#) The SECURE Act includes several retirement savings provisions and expansion of section 529 savings opportunities, as described below. The bill must be passed by the Senate before becoming law. The Senate could vote on the SECURE Act or take up its own version of the bill (*i.e.*, the Retirement Enhancement and Savings Act of 2019 (known as “RESA”) (S. 972)), as introduced in the Senate on April 1, 2019.[\[2\]](#) If the Senate votes on RESA, a conference would need to reconcile differences between the two bills.

The SECURE Act as approved by the full House included certain amendments to the version approved by the Ways and Means Committee on April 2, 2019.[\[3\]](#) Most notably, the provision expanding 529 plan covered expenses (§302) was amended to eliminate the homeschooling expense and elementary/secondary school expense expansion. In addition, a new provision (§501) was added to reduce taxes on certain unearned income of children (including military survivor benefits).

The SECURE Act would do the following:

- Establish Open MEPs (§101). The bill would allow otherwise unrelated employers (of any size) to band together and participate in open multiple employer plan (MEP) arrangements (referred to in the bill as “pooled employer plans” or “PEPs”). Only individual account plans that are qualified under section 401(a) of the Internal Revenue Code (“Code”) or IRA-based could qualify as a PEP. Under the bill, employers could transfer fiduciary responsibility for selecting and monitoring investment options made available through the PEP to another fiduciary. The bill includes important safeguards for PEPs to ensure the legitimacy of the sponsoring entity and that ERISA fiduciary standards are met, including:
 - Participating employers in the PEP would retain fiduciary responsibility for the

selection and monitoring of the pooled plan provider, who would be the “named fiduciary.”

- The pooled plan provider would be required to acknowledge in writing that he is a fiduciary to the plan. The pooled plan provider, or its designee, would also be required to fulfill the role of the plan’s “administrator,” which means it ultimately would be responsible for all ERISA statutory disclosure responsibilities. The named fiduciary could delegate recordkeeping and other administrative functions to another entity.
- The pooled plan provider would be required to register with DOL and provide any information required by DOL, including submitting to audits, examinations or investigations by DOL to enforce compliance with legal requirements for pooled plan providers.
- The plan would be prohibited from subjecting participating employers to unreasonable restrictions or fees, or any penalties, that restrict participating employers’ ability to cease participation in, or transfer assets from, the plan. This requirement would not prohibit an investment fund from imposing fees or charges normally assessed to any shareholder or investor in the normal course of business, such as redemption fees.

The bill also would eliminate the “one bad apple” rule under the Code, allowing PEPs (as well as other MEPs with employers sharing a common interest) to continue to be treated as satisfying the tax qualification requirements despite the violation of those requirements with respect to one or more participating employers. In the case of a violation of the tax qualification requirements by a participating employer, the bill would allow the plan to spin off the portion of the plan’s assets attributable to that participating employer, into a separate plan maintained by that employer.

- Increase Auto-enrollment Safe Harbor Cap on Auto-escalation (§102). For plans using the automatic enrollment safe harbor, the bill would raise from 10 percent to 15 percent the limit on automatic escalation of deferral rates after the first year of enrollment.
- Ease Rules for Safe Harbor 401(k) Plans (§103). The bill would eliminate the safe harbor notice requirement for 401(k) safe harbor plans using nonelective contributions (NECs) and permit delayed adoption of NEC safe harbor provisions.
- Expand Small Employer Tax Credits (§§104 and 105). The bill would extend a more generous tax incentive to small businesses that start a qualified retirement plan and add a new tax credit for small businesses that automatically enroll participants. The new credit would equal \$500 per year for up to three years for startup costs for new section 401(k) plans and SIMPLE IRA plans that include automatic enrollment, as well as for adding automatic enrollment as a feature of an existing plan.
- Expand Compensation for IRA Contribution Purposes (§106). The bill would expand the definition of compensation for purposes of making IRA contributions, to include gross income attributable to payments for graduate or post-doctoral study.
- Repeal Maximum Age for Traditional IRA Contributions (§107). The bill would allow taxpayers to continue making contributions to traditional IRAs after reaching age 70-1/2. As amended, the provision would reduce the amount of any qualified charitable distributions excluded from income if deductible contributions are made to a traditional IRA after age 70-1/2.
- Prohibit Credit Card Plan Loans (§108). The bill would prohibit plans from making loans

through credit cards or “similar arrangements.”

- **Permit Distributions Upon Elimination of Certain Lifetime Income Investment Options (§109).** The bill would allow distribution of a “lifetime income investment” from a qualified defined contribution (DC) plan, 403(b) plan, or governmental 457(b) plan, within 90 days before the investment is no longer authorized to be held in the plan. The bill would require either a direct trustee-to-trustee transfer of the lifetime income investment to another eligible retirement plan (including an IRA) or distribution of qualified plan distribution annuity contract. A “lifetime income investment” must have election rights to a “lifetime income feature,” which must either guarantee a minimum level of income at least annually for the participant’s life (or joint lives of the participant and designated beneficiary), or pay an annuity in substantially equal periodic payments at least annually over the participant’s life (or joint lives of the participant and designated beneficiary).
- **Allow 403(b) Custodial Accounts Under Terminated Plans to be Distributed in Kind (§110).** The bill would resolve a long-standing problem associated with terminating 403(b) plans funded through individually-owned custodial accounts. Under the bill, Treasury must issue guidance that an individual 403(b) custodial account can be distributed “in kind” to the participant in a terminating plan and that the “distributed” account would retain its 403(b) tax-deferred status.
- **Clarify Retirement Income Account Rules (§111).** The bill would clarify which employees are eligible for a section 403(b)(9) retirement income account (a program provided by a church or a convention or association of churches).
- **Allow 401(k) Plan Participation by Long-Term Part-Time Workers (§112).** The bill would require 401(k) plans (except for collectively-bargained plans) to permit participation by workers who complete at least three consecutive years of service with at least 500 hours of service each year. Such workers would not need to be included in testing for nondiscrimination and coverage requirements or application of the top-heavy rules.
- **Exempt from Early Withdrawal Penalty Certain Distributions for Birth or Adoption of a Child (§113).** The bill would add a new exception from the 10 percent early distribution penalty for qualified withdrawals from a DC plan or IRA for the birth or adoption of a child. Under the new exception:
 - Qualified withdrawals are limited to \$5,000 in the aggregate across an individual’s accounts with respect to a birth or adoption.
 - The withdrawal must be made within one year after the birth or adoption date.
 - The distribution may be recontributed to an eligible retirement plan or IRA, subject to certain rules, and is treated as a rollover.
- **Increase Age for Required Minimum Distributions (§114).** The bill would increase the age at which required minimum distributions (RMDs) must begin, from age 70-1/2 to age 72.
- **Provide Funding Relief for Community Newspaper Pension Plans (§115).** The bill would provide an alternative pension funding calculation standard for certain specified community newspaper plans.
- **Treat Payments to Home Healthcare Workers as Compensation for Purposes of Contributing to a Plan or IRA (§116).** The bill would permit home healthcare workers to contribute to a retirement plan or IRA based on compensation (so-called “difficulty of care” payments) that is tax-exempt under Code section 131.

- Permit Delayed Adoption of a Qualified Retirement Plan (§201). The bill would allow a qualified plan adopted after the close of a taxable year—but by the due date (with extensions) for the employer’s tax return for that year—to be treated as in effect as of the close of that taxable year.
- Permit Combined Annual Reports for Similar Plans (§202). The bill would direct the IRS and Department of Labor to work together to modify Form 5500, Annual Return/Report of Employee Benefit Plan, so that all members of a group of DC plans meeting certain requirements (including having the same trustee, named fiduciary, and plan administrator) may file a single consolidated Form 5500.
- Require Lifetime Income Disclosures (§203). The bill would require DC plans to include an annual lifetime income stream estimate on participant benefit statements, setting forth the lifetime income stream equivalent of the participant’s total account balance under the plan. The lifetime income illustration required under the bill mandates a calculation based on an annuity payout. The bill would require DOL to provide a model lifetime income disclosure.
- Provide a Fiduciary Safe Harbor for Selecting Annuity Providers (§204). The bill would provide a fiduciary safe harbor for satisfying the prudence requirement with respect to the selection of an insurer for offering guaranteed income contracts under a plan.
- Modify Nondiscrimination Testing Rules for Soft-Frozen DB Plans (§205). The bill would provide nondiscrimination testing relief to DB plans meeting certain requirements, with respect to a closed class of participants.
- Modify PBGC Premiums for CSEC Plans (§206). The bill would conform PBGC premium levels for cooperative and small employer charity (CSEC) plans to funding relief for such plans made permanent in 2013.
- Provide Benefits to Volunteer Firefighters and Emergency Medical Responders (§301). The bill would extend and increase certain tax benefits provided to qualified volunteer emergency response organizations.
- Expand 529 Plans (§302). The bill would expand section 529 plans to permit qualified distributions for:
 - Certain specified apprenticeship program expenses.
 - Qualified education loan repayments for the designated beneficiary or a sibling of the beneficiary, but limited to \$10,000 total over the lifetime of an individual beneficiary.
- Modify RMD Rules for Beneficiary Payments (§401). The bill would modify the required minimum distribution (RMD) rules for post-death distributions from DC plans and IRAs to beneficiaries. It would require the account to be fully distributed within 10 years following the year of the participant’s or IRA owner’s death, unless the distribution is made to an “eligible designated beneficiary” (e.g., a surviving spouse, a disabled or chronically ill individual, an individual who is not more than ten years younger than the participant or IRA owner, or a child of the participant or IRA owner who has not reached the age of majority).
- Increase Failure to File Penalties (§§402 and 403) and Information Sharing (§404). The bill would increase tax penalties for failure to file individual tax returns and retirement plan returns (e.g., Form 5500).^[4] The bill also would allow the sharing of tax return information with US Customs and Border Protection for purposes of administering

certain excise taxes.

- Modify Rules Relating to the Taxation of Unearned Income of Certain Children (§501). The bill would reduce taxes on certain unearned income of children (including military survivor benefits).

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endnotes

[1] The text of the engrossed bill is available at <https://www.congress.gov/bill/116th-congress/house-bill/1994/text>. A summary of the bill, prepared prior to amendment, is available at https://waysandmeans.house.gov/sites/democrats.waysandmeans.house.gov/files/documents/SECURE%20Act%20section%20by%20section_0.pdf. The Way and Means Committee Report (also prepared prior to final amendments) is available at <https://www.congress.gov/116/crpt/hrpt65/CRPT-116hrpt65.pdf>.

[2] Several provisions of the SECURE Act also are included in the Retirement Enhancement and Savings Act of 2019 (known as “RESA”), introduced in the Senate on April 1 ([S. 972](#)) and in the House on February 6 as [H.R. 1007](#). The Senate Finance Committee unanimously approved an earlier version of RESA ([S. 3471](#), 114th Congress) in 2016. Some provisions of the SECURE Act also appeared in the Family Savings Act ([H.R. 6757](#)), which passed the House of Representatives in 2018.

[3] For a description of the bill as passed by the Ways and Means Committee, see ICI Memorandum No. 31701, dated April 8, 2019, available here: https://www.ici.org/my_ici/memorandum/memo31701.

[4] Amendments to §403 made prior to final House approval changed the dollar amounts for penalties for failure to file retirement plan returns.

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