The Asset Management Industry
SERVING INDIVIDUAL INVESTORS
INVESTMENT COMPANY INSTITUTE

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House Ways and Means Committee Approves Tax Reform 2.0 Legislation Including Retirement Savings Provisions

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September 24, 2018 TO: ICI Members
Pension Committee
Pension Operations Advisory Committee SUBJECTS: Pension RE: House Ways and Means Committee Approves Tax Reform 2.0 Legislation Including Retirement Savings Provisions

On September 13, 2018, the US House Ways and Means Committee approved the Family Savings Act of 2018 (H.R. 6757), along with two other bills (H.R. 6760, the Protecting Family and Small Business Tax Cuts Act of 2018, and H.R. 6756, the American Innovation Act)—together known as "Tax Reform 2.0."[1] The Family Savings Act includes several retirement savings provisions and expansion of other tax-advantaged savings opportunities, as described below. The bills must be approved by the full House of Representatives before being considered by the Senate.[2]

The Family Savings 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 plan investment options to the pooled plan provider, who would be the "named 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 "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 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.
- Ease Rules for Safe Harbor 401(k) Plans (§102). 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 Compensation for IRA Contribution Purposes (§103). 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 (§104). The bill would allow taxpayers to continue making contributions to traditional IRAs after reaching age 70-1/2.
- Prohibit Credit Card Plan Loans (§105). The bill would prohibit plans from making loans through credit cards or "similar arrangements."
- Permit Distributions Upon Elimination of Certain Lifetime Income Investment Options (§106). 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 Treated as IRAs (§107). The bill would attempt to resolve a long-standing problem associated with terminating 403(b) plans funded through individually-owned custodial accounts. Under the bill, if the custodian is a qualified IRA trustee, then the custodial account would be deemed to be an IRA as of the date of plan termination. We note that this solution is inconsistent with a different solution long-supported by the Institute.[3]
- Clarify Retirement Income Account Rules (§108). 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).
- Exempt Savers with Small Aggregate Account Balances from RMDs (§109). The bill would provide an exemption from the required minimum distribution (RMD) rules for

individuals with small aggregate balances.
    - The exemption would apply to individuals, during their lifetimes, with no more than $50,000 (indexed) aggregated across all DC plans and IRAs (including individual retirement annuities), but excluding defined benefit (DB) plans. For purposes of determining whether the exemption applies in a given year, it appears that the aggregate value of an individual's account balance is computed as of the last day of that year.
    - If an individual's aggregate account balance exceeds the applicable dollar limit ($50,000 indexed), the individual's RMD amount for that year is capped at the amount by which the aggregate balance exceeds the applicable dollar limit.
    - Employer plans can rely on participant self-certification as to whether the participant's aggregate account balance is within the applicable dollar limit.
    - The bill would add a new requirement for plans and IRA trustees/custodians to report, by January 31 each year, the account balance of the plan or IRA as of the end of the preceding calendar year and other identifying information, for individuals who have reached age 69 as of the end of the preceding calendar year.
- Clarify Treatment of Pick-Up Contributions for Governmental Employees (§110). The bill would clarify that contributions may be treated as "pick-up" contributions even if the employee may make an irrevocable election between the application of two alternative benefit formulas involving the same or different levels of employee contributions.
- Permit Increased Elective Deferrals for Reservists (§111). The bill would apply the elective deferral limit under section 402(g) (including the catch-up limit) separately to deferrals from qualified ready reservist compensation and all other elective deferrals made by the same individual in connection with other employment.
- 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.
- Modify Nondiscrimination Testing Rules for Soft-Frozen DB Plans (§202). The bill would provide nondiscrimination testing relief to DB plans meeting certain requirements, with respect to a closed class of participants.
- Require an Independent Study of PBGC Premiums (§203). The bill directs the Pension Benefit Guaranty Corporation (PBGC) to arrange for an independent study examining PBGC premium levels and methods of estimating PBGC assets and liabilities.
- Establish a New Tax-Advantaged Savings Vehicle – the "Universal Savings Account" (§301). The bill would add Code section 530U providing for Universal Savings Accounts (USAs), which are generally tax-exempt vehicles similar in structure to IRAs (but not limited to retirement). The bill provides that:
    - USA contributions are made on an after-tax basis and are limited to $2,500 (indexed) per year.
    - Distributions are generally tax free.
    - At the death of the account holder, if the beneficiary is not the account holder's spouse, all amounts in the account shall be treated as distributed on the date of death. A spousal beneficiary may treat the account as his or her own.
- Expand 529 Plans (§302). The bill would expand section 529 plans to permit qualified distributions for:
    - Certain specified apprenticeship program expenses.
    - Certain homeschooling expenses, subject to an annual $10,000 limit per beneficiary.

    - 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.
    - More types of elementary and secondary school expenses (i.e., no longer limited to tuition expenses).
- Exempt from Early Withdrawal Penalty Certain Distributions for Birth or Adoption of a Child (§303). 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 $7,500 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.

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endnotes

[1] The text of each bill is available at https://waysandmeans.house.gov/committee-passed-tax-reform-2-0/.

[2] Several provisions of the Family Savings Act also were included in the Retirement Enhancement and Savings Act of 2018 (known as "RESA"), introduced in the Senate as S. 2526 and in the House as H.R. 5282. The Senate Finance Committee unanimously approved an earlier version of RESA (S. 3471, 114th Congress) in 2016. The Family Savings Act provisions also appearing in RESA include, among others, a similar version of the open MEP provision described below, repeal of the maximum age for making traditional IRA contributions, special distribution rules for lifetime income options, and treatment of 403(b) custodial accounts as IRAs upon plan termination.

[3] Based on input from members, ICI has repeatedly asked Treasury and IRS for 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, much like grandfathered 403(b) accounts created pursuant to a Rev. Rul. 90-24 transfer. See letter to W. Thomas Reeder dated November 12, 2008, available at https://www.ici.org/policy/retirement/plan/403b/09_treas_403b_com.