The Asset Management Industry
SERVING INDIVIDUAL INVESTORS
INVESTMENT COMPANY INSTITUTE

MEMO# 32971

December 8, 2020

Rep. Neal Releases Discussion Draft of Automatic Retirement Plan Act

[32971]

December 8, 2020 TO: Pension Committee
Pension Operations Advisory Committee RE: Rep. Neal Releases Discussion Draft of Automatic Retirement Plan Act

The Chairman of the House Ways and Means Committee, Richard E. Neal (D-MA), has released a discussion draft of legislation (the "Automatic Retirement Plan Act of 2020") that would require all employers (except for very small or very new businesses, governments, and churches) to offer employees a retirement plan or automatic IRA savings arrangement. The plan or IRA program would have to meet specified minimum standards (such automatically enrolling employees) and be offered to generally all employees who have reached age 21 and satisfied certain service criteria. The discussion draft is attached, along with a bill summary.

The Chairman has asked for comments on the discussion draft by December 15. Below is a brief summary and list of issues we plan to comment on. **Please contact Elena Chism (elena.chism@ici.org) by close of business on Friday, December 11 if you have comments or concerns to share.**

Summary

The proposal generally would require all employers to maintain an automatic IRA arrangement,[1] 401(k), 403(b) or SIMPLE IRA plan, except for: governments, churches, small employers (10 or fewer employees), and new businesses (not in existence for three years). The requirement would be enforceable by an excise tax.

Eligibility. The plan or arrangement would have to cover all employees except for: employees who have not attained age 21; employees subject to a collective bargaining agreement; nonresident aliens with no U.S.-source income; and employees who have not yet attained either (1) one year of service (generally a year in which the employee has at least 1,000 hours of service), or (2) two consecutive years in which the employee has at least 500 hours of service. These eligibility rules would not apply to SIMPLE IRAs, which have their own separate eligibility requirements.

Minimum standards. The plan or arrangement would have to meet the following minimum standards (although certain existing plans[2] would be exempt):

- Automatic enrollment at a minimum of 6 percent, with automatic escalation at 1 percent per year up to 10 percent.
- In the absence of an affirmative election by the participant, the account must be invested in a qualified default investment alternative ("QDIA")[3] or in a combination of a QDIA and another "class of assets or funds," as enumerated in the bill. Such "class of assets or funds" would include a principal preservation fund, a balanced fund that qualifies as a QDIA, a guaranteed income option, or another option specified by the Department of Labor.
- At least 50 percent of every vested account in a 401(k) or 403(b) plan (except for small employer plans) with a balance over $5,000 must be available for distribution in a form that provides guaranteed income for life.
- Except in the case of a plan subject to ERISA (which includes its own requirements regarding fees), no participant may be charged unreasonable fees solely on the basis that the participant's balance in an automatic contribution plan is small or solely on the basis that adoption of such a plan by the employee's employer is mandatory.

Testing. Plans generally would be subject to existing rules and safe harbors for nondiscrimination testing, except that the bill would create a new type of 401(k) and 403(b) plan exempt from testing. These plans would be deferral-only (no employer contributions) and would have lower elective deferral limits ($8,000 (indexed), with post-age-50 catch-up contributions equal to $1,000 (indexed)).

State-run programs. The bill would preempt state-run retirement savings programs for private-sector workers, but only with respect to employers that maintain a plan meeting the bill's minimum standards. In addition, the bill includes an exemption (or grandfather) for states that have already created a retirement savings program prior to enactment of the bill,[4] which would allow such state programs to continue so long as the programs are not otherwise preempted by ERISA.

Tax credit. Finally, the bill would expand the small business plan start-up tax credit by extending it to 5 years, applying the credit to automatic IRAs, and increasing the credit amount for very small employers (25 or fewer employees).

Issues for Comment

In our comments on the discussion draft, we intend to address the following issues:

- *Minimum standards*. We plan to express concern with establishing minimum standards for all plans, whether or not accompanied by a general mandate to offer a plan. We are concerned that these standards could undermine the successful voluntary system, making plan sponsorship more burdensome and, in many cases, requiring plan features or benefits undesired by workers. Two of the bill's minimum requirements (relating to default investments and guaranteed income options) are particularly concerning.
    - We plan to recommend clarifying that the default investment provision would not expand the existing safe harbor for QDIAs under ERISA section 404(c)(5) and Labor Reg. 29 CFR §2550.404c-5. As written, the provision may lead to confusion about which types of default investments are given fiduciary liability relief.
    - We plan to recommend modifying the requirement to offer guaranteed income distribution options to provide comparable treatment to non-guaranteed strategies for drawing retirement income, such as systematic withdrawals and

managed payout options, which offer inflation protection and liquidity. Because an individual's unique circumstances will determine the best decumulation strategy for him or her, we caution against the government making a value judgement to promote specific products.

- *State-run plan preemption and grandfather*. Instead of the bill's complex treatment of state-run retirement savings programs, we plan to recommend providing clear rules regarding what states can and cannot do under ERISA's preemption provision and regarding the application of ERISA standards to state programs.
- *Mandating plan sponsorship or auto-IRA*. Without specifically opposing the mandate, we plan to encourage that the various improvements to the voluntary employment-based retirement system enacted under the SECURE Act and under consideration in the Securing a Strong Retirement Act,[5] be given time to work before imposing far-reaching new mandates on employers.

Elena Barone Chism
Associate General Counsel - Retirement Policy

Attachment No. 1

Attachment No. 2

endnotes

[1] Automatic IRAs may be Roth or traditional, with Roth being the default. An employer can select an IRA provider to which all automatic IRA contributions from their employees will be sent. Alternatively, the employer may allow each individual employee to send contributions to an automatic IRA provider selected by the employee.

[2] A grandfathered plan is any plan (other than an automatic IRA or other payroll deduction IRA) that (1) is maintained as of the date of enactment, (2) has been maintained for at least a year as of such date of enactment, and (3) has not decreased coverage or benefits substantially after the date of enactment in a manner that demonstrates an intent to avoid the purposes of this bill.

[3] 29 CFR §2550.404c-5 (fiduciary relief for investments in qualified default investment alternatives)

[4] California, Illinois, and Oregon are among the states that have already created retirement savings programs.

[5] For a summary of the Securing a Strong Retirement Act, *see* ICI Memorandum No. 32885, dated November 2, 2020, *available at* https://www.ici.org/my_ici/memorandum/memo32885.

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