

MEMO# 34205

June 29, 2022

Senate Committees Advance Retirement Bills

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TO: ICI Members

Pension Committee

Pension Operations Advisory Committee SUBJECTS: Pension

Tax RE: Senate Committees Advance Retirement Bills

In recent weeks, the US Senate Committee on Health, Education, Labor and Pensions (HELP) and the US Senate Committee on Finance each approved bills that would make several improvements to the retirement system. These actions follow the US House of Representatives' approval of the "Securing a Strong Retirement Act of 2022" (or SECURE 2.0) on March 29, 2022.^[1] Like SECURE 2.0, the bipartisan bills approved by the Senate committees include retirement savings proposals intended to build upon the Setting Every Community Up for Retirement Enhancement (SECURE) Act,^[2] enacted at the end of 2019. The bills include many provisions long advocated by ICI that are intended to promote increased retirement savings, preserve retirement balances in retirement and reduce administrative burdens associated with plan sponsorship.

Congress is expected to combine provisions from the House-passed bill with provisions from the two Senate bills into one unified package of retirement savings reforms, for possible inclusion in a larger year-end spending or tax bill.

Below is a high-level summary of each of the two Senate bills, describing selected relevant provisions. (For a complete list of provisions, please refer to the official materials linked in footnotes 3 and 5 herein.) While there is some overlap between the two, many of the provisions differ and it is unclear which provisions ultimately will be included in any final package.

HELP Committee Bill

On June 14, 2022, the HELP Committee voted unanimously to advance the Retirement Improvement and Savings Enhancement to Supplement Healthy Investments for the Nest Egg Act (or "RISE & SHINE Act"). Notable provisions of the RISE & SHINE Act would:^[3]

- increase to \$7,000 the long-standing \$5,000 limit for making automatic rollovers into IRAs when employees terminate employment with small retirement plan balances

(section 101);

- allow employers sponsoring 403(b) plans (such as public schools, charities, and other nonprofit organizations) to band together in a new type of multiple-employer retirement plan—called a "pooled employer plan" or "PEP"—which was created by the original SECURE Act of 2019, but is not currently available to the 403(b) plan market (section 102);
- streamline and clarify information retirement savers receive regarding target date funds by allowing use of a single benchmark for the funds that more appropriately tracks its asset allocation (section 103);
- clarify a requirement for PEPs, as enacted under the SECURE Act of 2019, so that any named fiduciary for the plan (other than a participating employer) can be responsible for collecting contributions, rather than specifically requiring the plan's trustee—which may not have access to contribution information—to fill this role (section 104);
- simplify retirement plan notice and disclosure requirements with respect to employees who have chosen not to participate in the plan (section 107);
- amend the part-time worker eligibility requirement enacted under the SECURE Act of 2019, so that workers with two consecutive years of at least 500 hours of service must be allowed to participate in a 401(k) plan (reduced from three consecutive years) (section 109);
- provide employers the option to allow for after-tax emergency savings accounts within a defined contribution retirement plan, with a \$2,500 cap on the account (above which additional contributions would not be permitted), and with amounts required to be held as cash or in an investment designed to preserve principal (section 202);
- direct the Treasury and Labor Departments to permit consolidation of certain defined contribution plan notices, to streamline the volume of information provided to participants (section 302);
- require auto-enrollment safe harbor plans to incorporate automatic re-enrollment of employees who opt out, at least every three years (section 401);[\[4\]](#)
- preserve the intent of Congress in allowing a group of similar defined contribution retirement plans to file a consolidated Form 5500 annual report (as enacted under the SECURE Act of 2019), by clarifying that only large plans within a consolidated filing group are subject to independent audit requirements (section 502); and
- provide plans with extended deadlines for adopting amendments to reflect changes under this bill and certain prior legislation (section 701).

Finance Committee Bill

On June 22, 2022, the Finance Committee unanimously approved the Enhancing American Retirement Now Act (or "EARN Act").[\[5\]](#) This bill includes provisions that would:

- encourage higher contribution rates among workers by creating a new safe harbor automatic enrollment formula for 401(k) plans (exempting the plan from nondiscrimination and top-heavy testing requirements) as an alternative to the existing automatic enrollment safe harbor plan design, with the new safe harbor incorporating higher default deferral rates and matching contributions spread over a broader range of deferred compensation (section A.1);
- modify the Savers Credit for retirement plan contributions by making the credit refundable and requiring the credit to be deposited as a matching contribution into the retirement account (section A.2);
- amend the part-time worker eligibility requirement enacted under the SECURE Act of 2019, so that workers with two consecutive years of at least 500 hours of service must be allowed to participate in a 401(k) plan (reduced from three consecutive years)

(section A.3);

- allow employer matching contributions based on student loan payments, so that workers paying off student debt do not forego important employer-provided benefits (section A.4);
- provide employers the option to allow for penalty-free emergency expense withdrawals from a defined contribution retirement plan, limited to one withdrawal per year up to \$1,000, with the option to repay the distribution within three years (section A.5);
- allow employers who sponsor SIMPLE plans to make contributions in addition to the currently required three percent match or two percent nonelective contribution, as additional nonelective contributions of up to ten percent of compensation (or \$5,000 if less) (section A.6);
- index the IRA catch-up contribution limit to inflation (section A.8);
- permit an additional \$10,000 catch-up contribution to a plan (\$5,000 for SIMPLE plans) for workers nearing retirement age, from ages 60 to 63 (section A.9);
- permit plans to rely on an employee's self-certification that he or she satisfies the conditions for a hardship distribution, unless the plan administrator has actual knowledge to the contrary (section A.13);
- allow penalty-free distributions from retirement plans and IRAs for certain victims of domestic abuse, limited to the lesser of \$10,000 or 50 percent of the account balance, with the option to recontribute (section A.14);
- require Treasury to issue sample forms for direct rollovers that may be used by both distributing and receiving plans and IRAs (section A.17);
- provide a statutory prohibited transaction exemption under the Internal Revenue Code for service providers offering "auto-portability" services (i.e., transfer of a participant's automatic rollover IRA attributable to participation in a previous employer's plan to a new employer's plan) (section A.18);[\[6\]](#)
- increase the age for required minimum distributions (RMDs) from retirement accounts to 75 from 72 (section B.1);
- reduce the excise tax on missed RMDs from 50 percent to 25 percent, with an additional reduction to 10 percent if the RMD is taken within a specified correction period (section B.5);
- direct Treasury to maintain a database of contact information to help participants and beneficiaries to recover lost plan benefits and require Treasury to hold (in an IRA) automatic cash-out distributions of less than \$1,000 from a plan until the participant claims the benefits (section B.8);
- harmonize the RMD rules for Roth amounts in plans and IRAs by exempting Roth amounts in plans from RMD requirements during the life of the participant (section B.9);
- allow 403(b) custodial accounts to participate in group trusts with other tax-qualified plans and IRAs (section D.1);
- allow employers sponsoring 403(b) plans (such as public schools, charities, and other nonprofit organizations) to band together in a new type of multiple-employer retirement plan—called a "pooled employer plan" or "PEP"—which was created by the original SECURE Act of 2019, but is not currently available to the 403(b) plan market (section D.3);
- provide permanent relief for distributions from retirement plans and IRAs on account of certain federally-declared disasters (similar to the legislative relief often provided to individuals affected by major hurricanes and other federal disasters), where the distribution can be included ratably in income over a three-year period and may be re-contributed to an eligible retirement plan within three years, but with an aggregate

limit of \$22,000 per qualified disaster (section E.1);^[7]

- enhance existing tax credits for small employers starting retirement plans, including by increasing the credit rate for very small employers and extending the start-up credit to employers joining an existing plan, such as a multiple employer plan (sections F.3 and F.5);
- permit retirement plans more opportunity to self-correct inadvertent, non-egregious failures to follow applicable tax-qualification rules and expand such correction methods to certain IRA failures (section F.4);
- add flexibility to SIMPLE IRA plans by raising the elective deferral limits for very small SIMPLE plans (or for larger plans that commit to making additional employer contributions) and by permitting Roth contributions (sections F.8 and K.1);
- create a new "starter 401(k) deferral-only plan" (and a similar new 403(b) safe harbor plan) exempt from certain testing requirements, requiring automatic enrollment and contribution limits equivalent to IRAs (section F.10);
- encourage plans to adopt an automatic re-enrollment feature, by creating a new \$500 credit for small businesses available for the first three years after the employer adds a new provision to re-enroll employees (at least every three years) who previously opted out of automatic enrollment or who opted to contribute a lower amount (section F.12);
- simplify retirement plan notice and disclosure requirements with respect to employees who have chosen not to participate in the plan (section G.3);
- incorporate a much-needed three-year deadline for making repayments of qualified birth or adoption distributions (penalty-free early withdrawals added by section 113 of the SECURE Act of 2019) (section H.1);
- provide plans with reasonable deadlines for adopting amendments to reflect changes under this bill and certain prior legislation (section I);
- require catch-up contributions to employer-sponsored plans to be made as Roth contributions (section K.2);
- permit employer matching contributions and non-elective contributions to a plan to be treated as Roth contributions (section K.3); and
- modify the definition of an eligible individual for purposes of establishing an ABLE account under a state's qualified ABLE program created pursuant to Internal Revenue Code section 529A, by raising the age by which blindness or disability must occur to age 46 (increased from 26) (section B.2 of the Chairman's Modification).

Elena Barone Chism
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endnotes

^[1] For a summary of SECURE 2.0 as approved by the House, see ICI Memorandum No. 34096, dated April 5, 2022, available at <https://www.ici.org/memo34096>.

^[2] For a summary of the SECURE Act of 2019, see ICI Memorandum No. 32118, dated

December 20, 2019, available at https://www.ici.org/my_ici/memorandum/memo32118.

[3] This is not a complete list of provisions; full text of the RISE & SHINE Act is available here:

<https://www.help.senate.gov/imo/media/doc/060322%20-%20WIL22204%20RISE%20%20SHINE%20intro.pdf> and a section-by-section summary is available here:

<https://www.help.senate.gov/imo/media/doc/060722%20-%20RISE%20%20SHINE%20Act%20Section-by-Section.pdf>.

[4] The text of the bill amends only section 514(e)(2) of ERISA (relating to the state-law preemption safe harbor for automatic contribution arrangements), but the section-by-section summary implies that the intent is to also incorporate automatic re-enrollment into the other existing automatic contribution arrangement safe harbors.

[5] The Finance Committee approved a conceptual bill without actual legislative text. A section-by-section summary of the EARN Act is available here:

<https://www.finance.senate.gov/imo/media/doc/EARN%20Act%20section%20by%20section%20summary1.pdf>. A description of the Chairman's Mark of the EARN Act is available here:

<https://www.finance.senate.gov/imo/media/doc/JCX-9-22%20%20SFC%20EARN%20Act%20Markup.pdf>, with estimated revenue effects here:

<https://www.finance.senate.gov/imo/media/doc/JCX1022.pdf>. A description of the Chairman's Modification to the Provisions of the EARN Act is available here:

<https://www.finance.senate.gov/imo/media/doc/JCX-11-22%20%20SFC%20EARN%20Act%20Modification.pdf>, with associated estimated revenue effects here:

<https://www.finance.senate.gov/imo/media/doc/JCX1222.pdf>.

[6] The exemption is based on an existing temporary individual exemption granted by the Department of Labor (DOL) to a specific service provider (PTE 2019-02). For background on the auto-portability program and associated DOL guidance, see ICI Memorandum No. 31510, dated November 30, 2018, available at <https://www.ici.org/memo31510>.

[7] The provision would also include the plan loan relief and relief for recontribution of home purchase withdrawals sometimes provided in major or wide-spread federal disaster situations.