Fiduciary Commentary: Retirement Legislation Update – Here we go Again

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Retirement Legislation Update – Here we go Again

The most comprehensive changes to the retirement systems since the Pension Protection Act of 2006 is finally gaining momentum in Congress. In April, the House Ways and Means Committee approved the bipartisan retirement legislation the SECURE Act (Setting Every Community Up for Retirement Enhancement Act of 2019). The legislation packages many of the small issues that have arisen since then into a comprehensive bill.

The SECURE Act is the result of a multi-year, bipartisan process and has the support of many key lawmakers. The legislation includes many of the elements of the Senate's 2018 legislation Retirement Enhancement and Savings Act (or RESA) that was approved by the Finance Committee but never went to a full vote.

Legislative Detail

The proposal represents a broad effort to expand opportunities for savers. The legislation is a mix of several needed updates to US retirement legislation enhancements to encourage additional retirement savings. The breakdown of the bill's developments are as follows:

Incentives to adopt an employer-sponsored retirement plan

- *Pooled Employer Plans.* Permits unrelated employers to combine their resources and adopt a new type of Multiple Employer Plan or MEP; referred to as Pooled Employer Plans. Additionally, the bill addresses a previous limitation of these plans by providing relief from the "one-bad-apple" rule that disqualification of one plan effect of an entire MEP.
- *Small Employer Plan Start-Up Credit.* Increases the tax credit provided to small employers with 100 or fewer employees to establish plans with an automatic enrollment feature.
- *Plan Adoption Date*. It allows an employer to adopt a qualified retirement plan up to the tax filing deadline for the employer's tax return.

Promoting lifetime income feature from retirement plans

- *Fiduciary Safe Harbor for Selection of Lifetime Income Provider.* Creates a new fiduciary safe harbor for employers when choosing group annuity issuers as plan investments. A sponsor would be deemed to have satisfied its fiduciary requirements with respect to the selection of the insurer if the fiduciary receives certain representations from the product provider as to its satisfaction of state insurance laws.
- *Lifetime Income Portability*. Addresses the portability of the investments by permitting participants to make direct trustee-to-trustee transfers of a plan lifetime annuity.
- *Lifetime Income Disclosures*. Requires employers to provide defined contribution plan participants with an estimate of the amount of monthly annuity income the participant's balance could produce in retirement.

Other changes to qualified retirement plans

- *Long-term Part-Time Employees*. Requires 401(k) plans to allow participation by long-term, part-time employees who work at least 500 hours for three consecutive 12-month periods.
- *Increase on Limit on Automatic Enrollment Safe Harbor Default Rate*. Increases the automatic contribution rates to 15 percent from 10 percent for the automatic enrollment safe harbor 401(k) plan nondiscrimination rules limit to be met.

- *Nonelective 401(k) Safe Harbor Changes*. Simplifies the safe-harbor 401(k) rules by (1) eliminating the safe harbor notice requirement for nonelective 401(k) safe harbor plans; (2) allowing an amendment to become a nonelective 401(k) safe harbor plan at any date before the 30th day before the close of the plan year. Amendments would be permitted after the 30th day before the end of the plan year if the plan if a nonelective contribution of at least 4 percent of compensation (rather than 3%) for all eligible employees and the amendment is made by the last day for distributing excess contributions for the plan year, that is by the close of following plan year.
- *Required Minimum Distribution Rules for Death Distributions*. Changes to the post-death required minimum distribution ("RMD") to generally require that all distributions after death to beneficiaries (with certain exceptions for spousal and minor children) be made by the end of the tenth calendar year following the year of death.
- *Age for Required Beginning Date for RMDs*. Increases the age at which required minimum distributions must begin from 70 ½ to 72.

All House tax bills are required to adhere to the pay-as-you-go budget rules. The cost to implement the SECURE Act is offset by the provision to accelerate inherited IRA and retirement plan distributions. This stepping up of taxable distributions is estimated to raise over $15 billion.

There is a significant amount of interest in Congress on retirement security prompting lawmakers to again push through an update to the US retirement system. Features of this legislation have been debated for years and have widespread support among both parties. Politicians on both sides of the aisle have been working on retirement legislation for several years, and the SECURE Act has a real likelihood of passage.