

# Legislate<sup>®</sup>

## Key Legislative Developments Affecting Your Human Resources US

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### Will Congress Pass a 2018 Retirement Bill?

With campaigning for 2018 mid-term elections the primary concern for both Republicans and Democrats, most observers seemed to dismiss the idea that legislation of any kind would gain traction this year. There seems little reason to think retirement benefits would be an exception. But of late, interest in making individual tax breaks permanent just might pull retirement bills along for the ride.

#### RESA Resurrected?

Last week, House Ways & Means Committee Chairman Kevin Brady, R-Texas, suggested he will move ahead with “Tax Reform 2.0” primarily to make the individual changes in the Tax Cuts and Jobs Act [permanent](#). He has also indicated that some components of Senate Finance Committee Chairman Orrin Hatch’s, R-Utah, Retirement Enhancement and Savings Act (RESA) may be included. Hatch’s bill, co-sponsored by Ron Wyden, D-Ore., back in March (see our [March 20, 2018 Legislate](#)), and a companion House bill, was barred from piggybacking on the budget bill over concerns that it could trip up the main budget agreement.

Some have expressed concern that reconsidering RESA may resurrect the notion of Rothification — but staffers have confirmed there are no plans to include it.

#### Mini RESA and Emergency Savings

Meanwhile, legislation introduced on July 17, co-sponsored by a bipartisan group in the Senate — Cory Booker, D-N.J., Tom Cotton, R-Ariz., Heidi Heitkamp, D-N.D., and Todd Young, R-Ind., — picks up select elements of RESA among bills aimed at improving retirement and economic security for individuals and their families.

#### Retirement Bills

The [Small Business Employees Retirement Enhancement Act \(S.3219\)](#) is intended to increase access to workplace retirement plans by making it easier for small business owners to offer plans. This is the pooled plan provider concept that would reopen the multiple employer plan doors to unrelated employers (“open MEPs”) and limit employer fiduciary responsibility for operating the plans. The bill would fix the “one bad apple” problem (disqualification of the entire plan due to the failure of any



participating employer to operate correctly) and eliminate the common interest (“nexus”) requirement for plans with pooled plan providers.

The [Retirement Security Flexibility Act \(S.3221\)](#) seeks to expand the use of automatic enrollment and automatic escalation by adding a nondiscrimination safe harbor for small employers, boosting the current 10% cap of the automatic escalation safe harbor to 15% and allowing the initial contribution percentage to start as high as 10%, rather than 3%.

**Note.** RESA’s nondiscrimination relief for closed pension plans does not make an appearance in either of these proposals.

## Savings Bills

The [Strengthening Financial Security Through Short-Term Savings Act \(S.3218\)](#) hopes to reduce leakage from retirement accounts by allowing emergency savings accounts with automatic enrollment through employer payroll on a stand-alone basis or as an adjunct to salary deferrals to retirement accounts. The maximum account balance would be \$10,000 and would not be tax-favored.

The [Refund to Rainy Day Savings Act \(S.3220\)](#) would allow individuals to defer payment of 20% of their tax refund for six months. The deferred payment would be credited with interest.

## Private-Sector Thrift Savings Plan

Separately, Sen. Jeff Merkley, D-Ore., reintroduced the [American Savings Act \(S.3242\)](#) to make available to employees without workplace access to a retirement savings plan an “American savings account,” with the same low-fee investment options in the federal Thrift Savings Plan. The program would aim for a 3% automatic contribution that could be waived or increased, with a maximum contribution rate of \$18,000 per year. Participants would be able to roll in funds from other employer-sponsored 401(k) or 403(b) plans.

## Community Newspapers

Reps. Erik Paulsen, R-Minn., and David Reichert, R-Wash., with four additional co-sponsors, last week introduced the [Save Community Newspaper Act of 2018 \(H.R.6377\)](#). This bill would relax funding obligations for hard frozen defined benefit plans sponsored by community newspapers that have been struggling due to consolidation in that industry. The bill would substitute a flat 8% interest rate for the current segment rates under the minimum funding rules and would allow a 30-year payoff period for outstanding liabilities. The bill has been approved by the House Ways and Means Committee.

## Looking Ahead

Despite this new flurry of activity, the outlook for enactment this year remains uncertain, with RESA attaching to a Tax Reform 2.0 bill the approach to watch most closely. The House breaks for its August recess next week, so Brady’s proposal will not see action before the fall. But the bill is expected to provide favorable talking points to those on the campaign trail during the break. The Senate will also soon break for an August recess; predictions are that any additional tax bill that emerges from the House is unlikely to make it past the goal line in the Senate.

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