

House Approves Retirement Legislation

Last week, the House approved three bills collectively called “Tax Reform 2.0.” One of these bills, the Family Savings Act of 2018, includes proposed changes for employer-based retirement plans and new individual savings options that are given good odds of passage this year.

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Tax Reform 2.0

Last week, the House considered and approved a trio of bills dubbed “Tax Reform 2.0.” These bills include:

- [H.R. 6760](#), the “Protecting Family and Small Business Tax Cuts Act of 2018,” would make permanent the individual and small business tax cuts in the 2017 Tax Act
- [H.R. 6757](#), the “Family Savings Act of 2018,” includes changes for employer-based retirement plans and new individual savings options
- [H.R. 6756](#), the “American Innovation Act of 2018,” offers tax breaks for startup companies

While the fate of “Tax Reform 2.0” in the Senate is uncertain, the Family Savings Act is a possible candidate to successfully cross the finish line by year-end even if the two other bills in the package are left in the dust. The bill was introduced by Mike Kelly, R-Pa., and 29 GOP co-sponsors. Earlier (see our [July 26, 2018](#) *Legislate*) the thinking was that retirement provisions might be able to slip through on the coattails of legislation to make the 2017 Tax Act individual changes permanent (H.R. 6760). But that leaves an uphill battle in the Senate before the bill would be presented to the president.

However, the retirement bill includes many components of Senate Finance Committee Chairman Orrin Hatch’s, R-Utah, Retirement Enhancement and Savings Act (RESA). Hatch’s bill was co-sponsored by Ron Wyden, D-Ore., back in March (see our [March 20, 2018](#) *Legislate*). Due to that support, it is possible that the Senate will choose to conference with the House on this one bill out of the trio.

Family Savings Act – What’s in the Bill?

The Family Savings Act would amend several retirement plan tax code rules to support pooled employer plans and relax nondiscrimination rules for closed defined benefit plans. It would also create new tax-preferred Universal Savings Accounts.

Defined Contribution Pooled Plans

The bill would reopen the multiple employer defined contribution plan doors to unrelated employers (open MEPs) run by pooled plan providers and limit employer fiduciary responsibility for operating the plans for plan years beginning after 2019. 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.

Closed DB Plans

For plans closed by April 5, 2017, or that have five years of history prior to closing without substantial increase in benefits during that period, the bill would suspend benefits, rights, and features testing and the minimum participation rule. In addition, the bill would allow DB cross-testing with DC plans without the need to meet current IRS regulatory conditions and would allow tests to include matching contributions, elective deferrals — including 403(b) contributions — and ESOP allocations. Defined benefit plans using this relief would need to show favorable benefits, rights and features, and general accrual tests without this relief for the year of closure and the two succeeding years and would need to avoid discriminatory amendments.

“Make-whole” contributions to a DC plan for a closed class of participants whose accruals under a DB plan have been reduced or eliminated could similarly be cross-tested and include matching contributions, elective deferrals — including 403(b) contributions — and ESOP allocations and would need to avoid discriminatory amendments. The bill would also offer helpful transition rules for merger and spinoff situations. Effective upon enactment, the bill would allow elective retroactive treatment for plan years beginning after 2013. (For background on current IRS relief for closed DB plans, please see our *FYI Alert* from [September 19, 2016](#).)

Universal Savings Accounts

Individuals would be permitted to contribute after-tax dollars of up to \$2,500 (compensation, if less) annually, grow their funds tax-free, and take tax-free distributions for any purpose. The new accounts would be available for years after 2018.

And Much More

The bill includes other familiar retirement plan provisions from RESA and elsewhere:

- A fiduciary safe harbor for annuity provider selections
- Refined safe harbor 401(k) requirements that would eliminate notice requirements for plans satisfying the safe harbor with nonelective contributions, and mid-year amendments to add non-elective contributions
- The option to adopt a qualified plan up to the due date of the employer’s tax return
- A prohibition on plan loans through credit cards and other similar arrangements
- Permission to withdraw retirement funds to pay for expenses (up to \$7,500) related to birth or adoption of a child, without penalty
- Portability of lifetime income investments
- Clarification of treatment of custodial accounts on termination of section 403(b) plans
- Clarification of retirement income account rules for church-controlled organizations

- Relaxation of required minimum distribution rules for individuals with low account balances (\$50,000 or less)
- Clarification of governmental plan retirement plan pick-up contributions where choice is permitted
- Elective deferrals by members of the Ready Reserve, a reserve component of the Armed Forces
- Expanded distribution options for section 529 plans, and the option of naming an unborn child as beneficiary of the account

And What's Not in the Bill?

The bill had initially included a call for a study to evaluate whether PBGC premiums should be higher. House Ways and Means Committee Chairman Kevin Brady, R-Texas, explained that this was omitted from the final version of the bill passed by the House on jurisdictional grounds and could be restored by the Senate in conference.

Retirement plan trade associations are opposed to the study because of a concern that it will focus on higher premiums and fail to study whether premiums are indeed too high.

Also omitted from the final bill was a provision that would have rolled back PBGC premiums for pension plans of multiple charities or cooperatives (CSECs) in recognition of the reduced risk of loss to PBGC.

RESA Omissions

Several other provisions in RESA are not in the Family Savings Act:

- Removal of the 10% cap applicable to automatic enrollment safe harbor plans
- Elimination of “stretch IRA” provisions that modify payment options for death benefits for qualified plans as well as IRAs
- Startup and automatic enrollment credits for small businesses (RESA would increase the startup cap to as much as \$5,000)
- Help with a framework for lifetime income illustrations from defined contribution plans

Looking Ahead

Although it is unlikely that the House and Senate will finish work on a conference before the elections in November, observers seem confident that Congress will come to agreement by year end.

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