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House Passes SECURE Act – Retirement Legislation Moves Closer to Enactment

The House passed the SECURE Act on May 23 with near unanimity, moving retirement legislation one step closer to enactment. Next up is the Senate, which might vote on the SECURE Act or on its previously introduced RESA, which would then be reconciled by a joint committee.

The SECURE Act moves out of the House

On May 23, with a vote of 147 to 3, the House passed [H.R. 1994](#), the Setting Every Community Up for Retirement Enhancement Act of 2019 (SECURE Act). As stated in our [April 4, 2019 Legislate](#), among other changes, the SECURE Act:

- Provides coverage, non-discrimination, and minimum participation testing relief for defined benefit plans that have been closed to new participants
- Provides new options for safe harbor 401(k) plans
- Requires 401(k) plans to expand eligibility to long-time part-time employees in 401(k) plans (three years with at least 500 hours of service)
- Requires disclosure of lifetime income projections on annual account statements for defined contribution plans and provides a new fiduciary safe harbor for annuity selection
- Increases the required beginning date for minimum distributions from age 70½ to 72
- Imposes a new 10-year distribution maximum for death benefits from IRAs and defined contribution plans for designated beneficiaries (five years for non-designated beneficiaries)
- Facilitates open multiple employer defined contribution plans
- Increases penalties for failure to file form 5500, 8955-SSA, 5310-A, or distribute a tax withholding election
- Expands 529 plans

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Changes made before heading out

Very few changes were made to the Act in a manager's amendment before passage:

- Eliminated permissible distributions from 529 plans for homeschooling expenses and certain elementary and secondary school expenses
- Increased the amount of the penalties for failure to file
- Changed the method for determining PBGC premiums for Cooperative and Small Employer Charity (CSEC) plans

Senate up next

Next up the bill will be sent to the Senate, which has its own retirement legislation pending: the Retirement Enhancement and Savings Act of 2019 (S. 972), or RESA. With provisions similar to the SECURE Act, the Senate might vote on the SECURE Act or vote on RESA, which would then be reconciled by a joint committee.

Meanwhile ...

On May 13, Senators Ben Cardin, D-Md., and Rob Portman, R-Ohio, introduced a revised version of their previous legislation: the Retirement Security and Savings Act. Among other items, it:

- Offers a new 401(k) qualified automatic contribution safe harbor arrangement with automatic contributions starting at 6% of pay and automatic escalation up to 10%. The new safe harbor would require employers to match contributions up to 10% of pay
- Increases the catch-up contribution limit for 401(k) plans, 403(b) plans, and governmental 457(b) plans from \$6,000 to \$10,000 for individuals over age 60
- Increases the income threshold for the Saver's Credit to \$40,000 and requires the credit to be contributed directly to a Roth IRA or designated Roth account (if permitted under the employer's plan)
- Allows employers to make a matching contribution to a defined contribution plan in the amount of the employee's student loan payment
- Expands eligibility of long-time part-time employees in 401(k) plans that complete between 500 and 1,000 hours of service for two consecutive years
- Increases the age for required minimum distributions from age 70½ to age 72 in 2023 and to age 75 by 2030
- Exempts designated Roth accounts from the required minimum distribution rules until the death of the employee

- Updates the mortality tables used for the minimum distribution calculations and requires updating them every 10 years
- Excludes individuals with \$100,000 or less in aggregate retirement savings from the requirement to take required minimum distributions
- Permits 60-day rollovers to inherited IRAs for non-spouse beneficiaries and allows non-spouse beneficiaries to roll over inherited IRAs to qualified plans, 403(b) plans, and governmental 457(b) plans
- Permits the minimum participation rules for defined benefit plans to be separately applied to bona fide subsidiaries or divisions of an employer
- Directs IRS to offer defined benefit plan sponsors mortality table relief
- Permits mergers of qualified plans and 403(b) plans of the same employer

In closing

With bipartisan support in both the House and Senate, and with many overlapping features in the SECURE Act and RESA and additional items in the Portman-Cardin bill, chances of retirement legislation passage in some form this year seem likely. Plan sponsors will want to monitor and identify the changes of interest for their employees.

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