Taxwriting chairs eye limits on 'mega-IRAs'

House Ways and Means Committee Chairman Richard Neal, D-Mass., and Senate Finance Committee Chairman Ron Wyden, D-Ore., announced this week that they intend to pursue legislation aimed at tightening the rules governing certain contributory individual retirement accounts in an effort to prevent wealthy investors from using IRAs as a tax planning tool rather than a traditional retirement savings vehicle.

In a joint statement released on July 28, Neal and Wyden cited data from the Joint Committee on Taxation (JCT) staff indicating that in tax year 2019 nearly 25,000 taxpayers had aggregate balances in traditional or "Roth" IRAs of between $5 million and $10 million, for an average aggregate balance of just over $6.4 million. Another 497 taxpayers had aggregate balances of $25 million or more, with an average aggregate balance in those accounts of more than $150 million. (The JCT provided the data at the request of Neal and Wyden.)
URL: https://www.finance.senate.gov/imo/media/doc/7.28.21%20JCT%20Mega%20IRA%20Data1.pdf

In their statement, Neal and Wyden also noted that the JCT's data reflect a three-fold increase in the number of such multimillion-dollar IRAs over what the Government Accountability Office (GAO) identified in a report that it released in 2014. The GAO report, which was based on 2011 tax return information and prepared at Wyden's behest, found that "[a] small number of taxpayers has accumulated larger IRA balances, likely by investing in assets unavailable to most investors – initially valued very low and offering disproportionately high potential investment returns if successful."
URL: https://www.gao.gov/assets/gao-15-16.pdf

According to Neal, the new JCT data "indicate that the exploitation of IRAs is a growing problem. IRAs are intended to help Americans achieve long-term financial security, not to enable those who already have extraordinary wealth to avoid paying their fair share in taxes and deepen existing inequalities in our nation." The Ways and Means Committee, he said, "is already looking at strategies to ensure that this retirement savings tool isn't misused as a tax shelter for folks at the very top."

Wyden, for his part, cited the JCT data as "the perfect example of what I've long called the tale of two tax codes." He added that "[a]s the Finance Committee continues to develop proposals to make the tax code more fair, closing these loopholes will be a top priority."

More discussion at Finance Committee retirement hearing

Wyden also raised the issue of what he called "double standard economics" during a July 28 Finance Committee hearing to consider what Congress can do to advance bipartisan retirement security legislation. He commented in his opening statement that wealthy, sophisticated investors such as hedge fund traders and investment managers are able to accumulate "massive" amounts in tax-preferred retirement savings vehicles using investments that generally are not available to typical retirement plan participants.

Wyden asked one of the witnesses at the hearing – Brian Graff of the American Retirement Association – how it would be possible to accumulate such large balances in an IRA given the annual contribution limits.

Graff drew a distinction between rollover IRAs, which a participant might use to consolidate assets from retirement plans held over the course of his or her working life and are subject to annual contribution limits and other restrictions, and certain contributory IRA arrangements in which a venture capitalist places stock valued at "zero or next to zero" from one or more start-up companies into one or more IRAs. If the stock from any of the start-ups gains significantly in value, it could lead to "hundreds of millions, and sometimes billions of dollars" in the related IRA.

The problem with these assets, Graff said, is that they're difficult to value; moreover, the IRS has "practically no ability to enforce how to value them because there's typically no appraisal associated with them." Graff commented that "this idea of putting start-up stock into an IRA really isn't a retirement tool, it's more of a tax planning tool." And he agreed with Wyden that this strategy is available only to a very limited universe of investors.

Wyden expressed hope that there would be bipartisan support for addressing the issue, but his remarks did not prompt any comments from Republicans on the panel.

Bipartisan accord on retirement security proposals

Democratic and Republican taxwriters at the hearing – along with the invited witnesses – were generally aligned, however, on a range of proposals aimed at building on the Setting Every Community Up for Retirement Enhancement (SECURE) Act, the bipartisan retirement security legislation that Congress approved in 2019.

The SECURE Act, which was signed into law as part of the Further Consolidated Appropriations Act, 2020, included provisions intended to make it easier for smaller businesses to offer tax-qualified retirement savings plans to their employees, encourage individuals to participate in retirement plans, and promote savings for certain nonretirement expenses. (For details, see *Tax News & Views*, Vol. 20, No. 42, Dec. 19, 2019.)
URL: http://newsletters.usdbriefs.com/2019/Tax/TNV/191219_1.html

Finance Committee members have offered several bipartisan proposals in recent months that lawmakers hope to incorporate into a so-called SECURE Act 2.0 package. Chairman Wyden released the Encouraging Americans to Save Act earlier this month; Sens. Ben Cardin, D-Md., and Rob Portman, R-Ohio, reintroduced their Retirement Security and Savings Act of 2021 (S. 1770) on May 21; and Sens. Charles Grassley, R-Iowa, Maggie Hassan, D-N.H., and James Lankford, R-Okla., unveiled their Improving Access to Retirement Savings Act (S. 1703) on May 19.
URL: https://www.finance.senate.gov/download/savers-credit-bill-text
URL:
https://www.cardin.senate.gov/imo/media/doc/Retirement%20Security%20&%20Savings%20Act%20of%202021.pdf
URL: https://www.congress.gov/bill/117th-congress/senate-bill/1703/text?q=%7B%22search%22%3A%5B%22improving+access+to+retirement+savings+act%22%5D%7D&r=1&s=2

Across the Capitol, the House Ways and Means Committee on May 5 approved a proposal to expand the SECURE Act that was offered by Chairman Richard Neal, D-Mass., and ranking member Kevin Brady, R-Texas.

(For prior coverage, see *Tax News & Views*, Vol. 22, No. 24, May 7, 2021.) That measure has not yet been taken up by the full House of Representatives.
URL: https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2021/TNV/210507_2.html

Both Wyden and Finance Committee ranking member Mike Crapo, R-Idaho, identified retirement savings enhancements as a key priority for the committee and vowed to move a SECURE Act 2.0 bill on a bipartisan basis.

Required minimum distributions: South Dakota Republican Sen. John Thune noted at the hearing that the SECURE Act increased the age for beginning required minimum distributions from retirement plans to 72 (from 70-1/2 under prior law) and that recent congressional proposals, such as the recent Ways and Means-approved retirement package, would raise the threshold age gradually until it reaches 75 in 2032.

Thune asked the witnesses if 75 is an appropriate threshold age for beginning mandatory distributions. Witness David Certner of the AARP expressed support for the proposal, noting that it "ensures that people can keep money in their plans longer" and reduces the risk of plan participants outliving their retirement assets.

Catch-up contributions: Several taxwriters discussed proposals that would allow plan participants nearing retirement to contribute more to their qualified plans in addition to the "catch-up" contribution amounts that are already in effect under current law for individuals over age 50.

Sen. Cardin referred to a provision in his bill which would provide an additional boost to catch-up contribution limits for workers over age 60.

Sen. Hassan asked witnesses how Congress can address the "retirement gap for women," who often leave the workforce for periods of time because of family caregiving responsibilities. Aliya Robinson of the ERISA Industry Committee (ERIC) replied that "increasing catch-up contributions is enormously helpful for women who may not have had the money earlier in their careers."

Retirement plan parity for student loan payments: Sen. Wyden expressed support for provisions that would bring more younger workers into the retirement system, noting that in many cases they are making student loan payments and don't feel that have the available funds to also make contributions into an employer-sponsored retirement plan. He specifically advocated for his Retirement Parity for Student Loan Act (S. 1443), which would allow employers to treat student loan payments made by an employee as salary reduction amounts that would qualify for a matching contribution to an employer-sponsored retirement savings plan.
URL: https://www.congress.gov/bill/117th-congress/senate-bill/1443/text?q=%7B%22search%22%3A%5B%22retirement+parity+for+student+loans+act%22%5D%7D&r=1&s=3

Sen. Thune asked ERIC's Aliya Robinson how employers would be able to ensure that employees are making their monthly student loan payments in full. Robinson noted that employers offering student payment assistance programs already have systems in place to verify loan payments and expressed confidence that these existing mechanisms could be adapted to address issues around retirement plan matching contributions.

ESOPs: Ranking member Crapo asked witnesses whether Congress should encourage employers to offer employee stock ownership plans (ESOPs) as part of their retirement savings options.

Robinson responded that ERIC supports ESOPs, noting that they promote employment stability and that participants who take advantage of an ESOP tend to save more and earn higher rates of returns than they otherwise might in a traditional 401(k) retirement plan.

MEPs and small-business plans: Sen. Charles Grassley, R-Iowa, asked for comments about a provision in his Improving Access to Retirement Savings Act that would allow sponsors of section 403(b) retirement plans to participate in multiple employer pension plan (MEP) arrangements.

The American Retirement Association's Brian Graff expressed support for the proposed change, noting that nonprofit organizations want to be able to offer low-cost retirement savings options to their employees. This proposal would "go a long way towards increasing access" to retirement savings plans, he said.

Automatic enrollment, state-sponsored retirement savings plans: Taxwriters in both parties expressed interest in auto-enrollment and auto-escalation provisions in the context of employer-sponsored plans and as a feature of certain state-sponsored retirement savings vehicles for individuals who lack access to a workplace retirement plan. (Auto-enrollment generally means an employee would be automatically enrolled in an employer plan and auto-escalation would allow an employee's salary reduction contribution to increase automatically at stated intervals, although the employee would be allowed to opt out of both features.)

Witnesses generally cited auto enrollment as one of the most effective tools for getting individuals into the retirement system and keeping them there, particularly in the case of younger, lower-wage workers.

Sen. Wyden commented that a state-run IRA program in Oregon (in which businesses that do not offer a retirement savings plan are required to enroll their employees in a salary-reduction IRA plan administered by the state) can "pave the way" for a similar program at the federal level.

Expanding the saver's credit: In an exchange with Sen. Tom Carper, D-Del., the AARP's David Certner identified the saver's tax credit (a nonrefundable tax credit that is available, subject to income-based limitations, to certain individuals who contribute IRA or employer-sponsored retirement plan) as an effective tool to promote retirement savings.

Responding to a question from Sen. Maria Cantwell, D-Wash., Certner also noted that the federal government could encourage enrollment in state-based auto IRA programs by expanding the credit.

(Sen. Cardin's Retirement Security and Savings Act would expand the income thresholds to make the credit available to a wider pool of potential savers. Sen. Wyden's Encouraging Americans to Save Act would replace the current-law saver's credit with a 50 percent government match on contributions of up to $2,000 per year made to 401(k)-type plans and IRAs by individuals, subject to certain income-based limitations.)

Retirement plan portability: Lawmakers expressed concern that as a growing number of workers make frequent job changes over the course of their careers, they risk losing track of their accumulated retirement savings. Sen. Grassley asked witnesses what Congress can do to that ensure workers who change jobs do not inadvertently leave their retirement savings behind.

ERIC's Aliya Robinson advocated for an "auto-portability" provision to ensure that as participants leave a job they are "automatically tracking their retirement account into their next job." She also supported a federal "lost and found registry" database to allow participants to find accounts they left at a previous employer.

Sen. Steve Daines, R-Mont., promoted his bill, the Retirement Savings Lost and Found Act (S. 1730), which would create a national lost and found registry for retirement accounts.
URL: https://www.congress.gov/bill/117th-congress/senate-bill/1730/text?q=%7B%22search%22%3A%5B%22retirement+savings+lost+and+found+act%22%5D%7D&r=1&s=1

Robinson discussed the issues employees face when former employers are renamed through mergers or acquisitions and argued that such a registry would be "very helpful."

— Michael DeHoff and Katherine Izzo
Tax Policy Group
Deloitte Tax LLLP