Bipartisan retirement security bill clears House

The House voted 414-5 on March 29 to approve bipartisan retirement security legislation aimed at making it easier for businesses to offer tax-qualified retirement savings plans to their employees and for individuals to participate in retirement plans and grow their tax-preferred savings.

The Securing a Strong Retirement Act of 2022 (H.R. 2954) cleared the chamber under an expedited procedure known as "suspension of the rules," which requires a two-thirds majority vote for passage. It would build on bipartisan retirement security legislation (the SECURE Act) that was signed into law at the end of 2019. (The SECURE Act was incorporated into the Further Consolidated Appropriations Act, 2020 (P.L. 116-94). For additional details, see *Tax News & Views*, Vol. 20, No. 42, Dec. 19, 2019.)
URL: https://www.congress.gov/bill/117th-congress/house-bill/2954/text
URL: https://www.congress.gov/116/plaws/publ94/PLAW-116publ94.pdf
URL: http://newsletters.usdbriefs.com/2019/Tax/TNV/191219_1.html

The House bill was introduced last year by Ways and Means Committee Chairman Richard Neal, D-Mass., and ranking member Kevin Brady, R-Texas, and was approved unanimously at a committee mark-up last May. (For prior coverage, see *Tax News & Views*, Vol. 22, No. 24, May 7, 2021.) But it was amended before it was brought to the floor to incorporate provisions in the Retirement Improvement and Savings Enhancement (RISE) Act (H.R. 5891)—a largely nontax measure that was reported out of the House Education and Labor Committee on February 25—plus a handful of other provisions. (A section-by-section summary of the measure as amended is available from the Ways and Means Committee Democratic staff.)
URL: https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2021/TNV/210507_2.html
URL: https://www.congress.gov/bill/117th-congress/house-bill/5891/text?r=1&s=2
URL:
https://waysandmeans.house.gov/sites/democrats.waysandmeans.house.gov/files/documents/SECURE2.0_SxS_032822.pdf

Highlights of retirement security enhancements

The tax-focused retirement security provisions in the original Ways and Means legislation have been folded into the House-approved bill without change. At a high level, these provisions would, among other things:

- Allow plan participants nearing retirement to contribute more to their retirement accounts—by increasing the limits on catch-up contributions for certain employees, for example—and allow plan participants to take advantage of the benefits of tax-deferred earnings over a longer period of time by raising the age for taking mandatory minimum distributions;
- Expand the universe of workers that participate in employer-sponsored retirement plans—for example, by requiring employers offering certain types of retirement plans to automatically enroll their employees in those plans (though employees could opt out), allowing employers to treat student loan payments made by their employees as elective deferrals for purposes of determining retirement plan matching contributions, reducing the service requirements for part-time employees to participate in an

employer plan, and providing a tax credit for employers who reduce service requirements and accelerate vesting schedules for employees who are military spouses;

- Modify certain retirement plan design rules to ease administration burdens for plan sponsors—particularly small businesses—and provide additional flexibility and other relief for plan participants;
- Remove barriers to offering certain types of annuity products within a defined contribution plan; and
- Make certain technical amendments to 2019's SECURE Act.

Enhanced saver's credit and other new tax provisions: A new tax provision that was added to the legislation after it cleared the Ways and Means Committee would simplify the current-law saver's credit (available to low- and moderate-income individuals who make contributions to a retirement account) by scrapping the two-tiered rate structure and replacing it with a single credit rate of 50 percent. The credit would be available subject to an income-based phase-out.

Other new tax provisions would provide greater flexibility for employers offering employee stock ownership plans (ESOPS) by: (1) permitting deferral of tax under section 1042 for certain sales of employer stock to an ESOP sponsored by an S corporation and (2) permitting certain non-exchange securities to be treated as publicly traded for ESOP purposes.

Raising revenue through 'Rothification'

These and other proposed retirement plan enhancements and savings incentives in the House-passed measure would reduce federal receipts by nearly $35.8 billion over 10 years, according to an updated revenue estimate released by the nonpartisan Joint Committee on Taxation (JCT) staff on March 28. But that amount would be more than offset by nearly $35.9 billion in pay-fors, most of which would expand "Roth" treatment of certain retirement accounts and certain retirement account contributions. ("Roth"-style retirement accounts, named for former Senate Finance Committee Chairman William Roth, R-Del., require contributions to be made with after-tax funds rather than on a pre-tax basis, with distributions paid out tax-free during retirement.)
URL: https://www.jct.gov/publications/2022/jcx-3-22/

The offset provisions in the House-approved bill—which are unchanged from the earlier Ways and Means Committee package—would:

- Require a section 401(a) qualified plan, section 403(b) plan, or governmental section 457(b) plan that permits an eligible participant to make catch-up contributions to treat those contributions as after-tax Roth contributions. Under current law, catch-up contributions to a qualified retirement plan can be made on a pre-tax or Roth basis (if permitted by the plan sponsor).
- Allow participants in a section 401(a) qualified plan, a section 403(b) plan, or a governmental 457(b) plan to designate employer matching contributions as Roth contributions.
- Permit SEPs and SIMPLE IRAs to be designated as Roth IRAs, subject to an employee election.
- Conform the hardship withdrawal rules for section 403(b) retirement plans with those in effect for section 401(k) plans.

Same offsets, more money: It's worth noting that although the offsets in the House-approved bill are identical those in the original Ways and Means proposal, the JCT's updated score of $35.9 billion for the revenue package represents a significant jump over the $27.4 billion in new revenue the agency had projected in the estimate it released last May in conjunction with the committee mark-up.

The bulk of that increase is attributable to the proposal for mandatory Roth treatment of catch-up contributions to 401(a), 403(b), and 457(b) plans, which the JCT staff scored as raising $13.2 billion in its May estimate and $22.3 billion in the new estimate it released this week.

On to the Senate—but what then?

The measure now heads to the Senate, where it is expected to get a favorable reception, given that lawmakers on both sides of the aisle have expressed support for expanding the SECURE Act. But Senate taxwriters have retirement security proposals of their own that they likely will want to incorporate into any new legislation that Congress eventually sends to the White House.

Thus far in the 117th Congress, Finance Committee Chairman Ron Wyden, D-Ore., has released the Encouraging Americans to Save Act (S. 2452); taxwriters Ben Cardin, D-Md., and Rob Portman, R-Ohio, have reintroduced their Retirement Security and Savings Act (S. 1770); and taxwriters Charles Grassley, R-Iowa, Maggie Hassan, D-N.H., and James Lankford, R-Okla., have introduced their Improving Access to Retirement Savings Act (S. 1703).
URL: https://www.congress.gov/bill/117th-congress/senate-bill/2452/text?q=%7B%22search%22%3A%5B%22%5C%22encouraging+americans+to+save+act%5C%22%22%2C%22%5C%22encouraging%22%2C%22americans%22%2C%22to%22%2C%22save%22%2C%22act%5C%22%22%5D%7D&r=2&s=1
URL: https://www.congress.gov/bill/117th-congress/senate-bill/1770/text?q=%7B%22search%22%3A%5B%22s.+1770%22%2C%22s.%22%2C%221770%22%5D%7D&r=3&s=9
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

Wyden has not yet announced plans for a Finance Committee mark-up of a retirement security bill.

"We're talking amongst ourselves," Wyden told reporters March 30. "We've [got] a lot on our plate."

MORE Act also wins House passage

In other House developments, the chamber approved the Marijuana Opportunity Reinvestment and Expungement (MORE) Act (H.R. 3617) on April 1 by a largely party-line vote of 220-204. (Three Republicans broke ranks to support the bill and two Democrats switched sides to oppose it.)
URL: https://docs.house.gov/billsthisweek/20220328/BILLS-117HR3617RH-RCP117-37.pdf

The bill, which was sponsored by House Judiciary Committee Chairman Jerrold Nadler, D-N.Y., would remove marijuana from the list of scheduled substances under the Controlled Substances Act and eliminate criminal penalties for an individual who manufactures, distributes, or possesses marijuana. On the revenue side, it would impose an excise tax on cannabis products produced in or imported into the United States and an occupational tax on cannabis production facilities and export warehouses. These levies would provide a revenue stream for a trust fund that would be created under the legislation to support various programs and services for individuals and businesses in communities impacted by the war on drugs. The measure also includes other assorted nontax provisions.

The JCT staff has estimated that the MORE Act would raise nearly $8.1 billion from 2022 through 2031.
URL: https://www.jct.gov/publications/2022/jcx-4-22/

It is currently unclear whether the House-approved measure has enough support in the Senate to survive a likely Republican filibuster.

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