Published on *The National Law Review* https://natlawreview.com

Bipartisan Bill Paves the Way for Significant Retirement Plan Reforms

Article By:

Lisa K. Loesel

Sarah L. Engle

The House recently passed the most significant piece of proposed retirement plan legislation in more than a decade: the SECURE Act. Although the Senate must also approve the bill before it becomes law, its proposed changes have considerable bipartisan support in Congress. Plan sponsors should start considering how changes included in the SECURE Act could impact their retirement plans. Employers who do not currently offer retirement plans should also review the new retirement plan incentives included in the proposed legislation.

IN DEPTH

On May 21, 2019, the US House of Representatives passed the Setting Every Community Up for Retirement Enhancement Act of 2019 (SECURE Act) by a vote of 417 to 3. The SECURE Act is one of the most significant pieces of retirement plan legislation in more than a decade and proposes a number of changes to existing retirement plan rules that are designed to make it easier for employees to save for retirement. The legislation aims to help employees achieve retirement security by ensuring that more workers have access to a retirement plan, are able to save enough money to maintain their standard of living in retirement and do not outlive their retirement savings. **Key Changes Proposed Under the Secure Act** *Provisions Designed to Encourage Employer-Provided Retirement Plans* The SECURE Act includes provisions to encourage employers to adopt retirement plans for their employees and to expand access to existing plans. In particular, the bill:

- **Broadens eligibility rules for long-term, part-time employees.** Currently, an employer may require its employees to complete 1,000 hours of service during a 12-consecutive-month period to begin participating in its retirement plan. This can result in certain long-term, part-time employees being excluded from plan participation. As a result, the bill requires employers to permit long-term, part-time employees who work at least 500 hours in three consecutive 12-month periods to participate in their plans. However, an employer would not be required to make matching or nonelective contributions on behalf of such employees and could continue to impose an age-21 requirement.

- **Allows small, unrelated employers to adopt “open” multiple employer plans.** Existing

Department of Labor (DOL) rules require employers that band together to create a multiple employer plan (MEP) to share an economic nexus and commonality of interests completely unrelated to providing benefits. Although the DOL issued proposed regulations last fall that would expand the types of employer groups, associations and organizations that could establish MEPs, the proposal still requires some commonality of interest among employers participating in the MEP. The SECURE Act goes further, and would permit small employers with no commonality of interest to adopt “open” MEPs administered by what the bill refers to as “pooled plan providers.” This change is designed, at least in part, to allow small employers to reduce the administrative cost of providing benefits by leveraging the size of a larger group of employers participating in the plan. The bill also eliminates the so-called “one bad apple” rule and includes provisions designed to protect employers participating in a MEP from penalties that result from another member’s violation of certain plan and regulatory rules.

- **Increases the income tax credit for costs paid or incurred by small employers in connection with establishing a retirement plan.** The bill increases the annual start-up credit cap for small employers that adopt a new retirement plan from $500 to up to $5,000.

- **Creates a new income tax credit for small employers that add automatic enrollment.** The bill also creates a new income tax credit of $500 per year for up to three years for small employers that add automatic enrollment to their plan.

Provisions Designed to Promote Additional Savings The SECURE Act also includes provisions designed to increase retirement-readiness by closing the gap between what employees are and should be saving for retirement. For example, the bill:

- **Increases the percent cap on automatic enrollment contributions to safe harbor plans.** Currently, certain special types of safe harbor 401(k) plans may not automatically enroll or escalate employee contributions above 10% of the employee’s eligible compensation. The bill would raise this 10% cap on automatic contributions to 15% after the employee’s first plan year of participation.

Provisions Designed to Ensure Financial Security to and Through Retirement The SECURE Act includes a number of provisions designed to ensure that employees understand the amount of money needed to retire and do not outlive their retirement savings. For example, the bill:

- **Requires lifetime income disclosure statements.** The bill requires employers to provide defined contribution plan participants with information illustrating the amount of monthly payments a participant would receive if the participant’s total defined contribution plan account balance was used to provide lifetime income through an annuity.

- **Permits retirees to delay required minimum distribution (RMD) payments until age 72.** Under current law, RMD payments must generally start by April 1 of the calendar year following the later of the calendar year in which an employee reaches age 70-1/2 or terminates employment. The bill would increase the age at which RMD payments must begin from age 70-1/2 to age 72.

- **Enhances rules regarding lifetime annuity options under defined contribution plans.** The bill includes provisions designed to encourage defined contribution plan sponsors to offer in-plan annuity options that provide lifetime income during retirement by creating a new fiduciary safe harbor for employers that include such investments in their defined contribution plans. The bill also permits participants to roll over lifetime income investments to an IRA or other retirement plan as needed.

Other Changes Impacting Plan Administration Lastly, the SECURE Act includes a number of other changes that would impact retirement plan administration. Specifically, the bill:

- **Simplifies certain safe harbor plan rules and notice requirements.** The bill eliminates the safe harbor notice requirement for safe harbor plans that satisfy the safe harbor plan rules by making nonelective contributions to their employees. The bill also provides additional flexibility to add safe harbor nonelective contributions to plans mid-year.

- **Provides nondiscrimination testing relief for certain closed defined benefit pension plans.** Many employers have closed their defined benefit plans to new participants, but permit existing participants (or groups of participants) to continue to earn benefits under the plan. Because new employees can no longer enter the plan, closed plans can become discriminatory if the attrition rate of non-highly compensated employees outpaces the attrition rate of highly compensated employees. Therefore, the bill includes testing relief that would make it easier for closed pension plans to satisfy certain nondiscrimination testing requirements.

- **Modifies certain rules regarding RMD payments made following a participant's death.** The bill changes the post-death RMD rules to require that all distributions after death (other than distributions to certain types of beneficiaries) be made by the end of the tenth calendar year following the year of the participant's death. This rule would apply to defined contribution, but not defined benefit, plans.

- **Prohibits plan loans through credit cards or similar arrangements.**

- **Increases penalties for failure to timely file certain plan returns.** The bill significantly increases the penalties for failure to timely file (i) a plan's Form 5500, (ii) the registration statement for deferred vested benefits and (iii) the notification of certain changes in a plan's registration information. The bill also increases penalties for failing to timely provide a required withholding notice.

- **Permits penalty-free withdrawals for birth or adoption.** The bill allows penalty-free withdrawals from defined contribution plans of up to $5,000 within one year of the birth or adoption of a child to help cover related expenses.

- **Modifies rules related to the treatment of 403(b) custodial accounts upon termination.** The bill directs the Secretary of Treasury to issue guidance that will provide that, if an employer terminates a 403(b) custodial account, the account can be distributed in-kind to a participant or beneficiary. The individual custodial account will be maintained on a tax-deferred basis as a 403(b) custodial account until paid out.

- **Clarifies that employees of certain church-related organizations may be covered under a 403(b) plan that consists of a retirement income account.**

What's Next? The House's passage of the SECURE Act is a significant step toward potentially sweeping retirement plan reforms. While the bill must still make its way through the US Senate to become law, the changes proposed by the SECURE Act have considerable bipartisan support in Congress. In fact, the Senate is also considering a separate bill that proposes a number of similar changes (the Retirement Enhancement and Savings Act of 2019). As a result, many expect some version of the SECURE Act (or a similar bill) to successfully move forward through the Senate and be signed into law later this year. Accordingly, plan sponsors should start considering how changes included in the SECURE Act could impact their retirement plans. In addition, employers who do not currently provide retirement plans should review the new retirement plan incentives included in the bill.

National Law Review, Volume IX, Number 155