Host of retirement bills may hitch ride on final SECURE 2.0 package

By Geoff Manville, Matthew Calloway and Margaret Berger
March 25, 2022

In this article
Additional proposals in play as focus shifts to Senate | Next steps | Related resources

As Congress mounts a push this year to enact a broad, bipartisan retirement package building on the Setting Every Community Up for Retirement Enhancement (SECURE) Act of 2019 (Div. O of Pub. L. No. 116-94), lawmakers hope to fold in numerous retirement policy changes. Potential additions to "SECURE 2.0" legislation would encourage defined contribution (DC) plans to include annuity contracts as a default investment option and effectively require automatic re-enrollment of eligible employees in certain situations. Other proposals in the mix would help DC plan participants save for short-term emergency needs and would require spousal consent for many DC plan distributions. While none of these ideas are in the SECURE 2.0 bill headed for a House vote next week, they will be in play as the Senate ramps up work on counterpart legislation.

Additional proposals in play as focus shifts to Senate

The House is poised to soon approve the Securing a Strong Retirement Act of 2022 (SSRA), which will carry over most provisions in an earlier version (HR 2954). The measure also includes reforms found in substantially similar legislation cleared by the Education and Labor Committee, the Retirement Improvement and Savings Enhancement (RISE) Act (HR 5891). The leading Senate measure — the Retirement Security and Savings Act (RSSA) (S 1770) — shares many similar provisions aimed at expanding plan coverage, boosting savings, increasing lifetime income opportunities and easing plan administration. Many of these consensus provisions will form the basis of any final SECURE 2.0 package, but as the Senate legislative process moves forward, lawmakers may try to incorporate other features proposed in separate House and Senate bills.

Fiduciary relief for default investments in annuities

Bipartisan House legislation, the Lifetime Income for Employees (LIFE) Act (HR 6746), would provide fiduciary relief for default investments in annuity contracts, subject to certain conditions. The bill would extend the safe harbor rules for qualified default investment alternatives (QDIAs) to allow investing up to

50% of a participant's contributions (and up to 50% of the total account value in a rebalancing transaction) in an annuity providing guaranteed lifetime benefits. Plans would also have to provide certain advance notices to participants and couldn't impose any liquidity restrictions for 180 days after a participant's initial investment in the annuity.

Automatic re-enrollment effectively required for safe harbors

Bills from House and Senate Democrats aim to encourage automatic re-enrollment of eligible employees in DC plans at least every three years. The requirement would apply to plans with safe-harbor automatic contribution arrangements (ACA) that take effect after 2024. Under the Auto Reenroll Act (S 3712 and HR 6782), plans would need this feature to qualify for the automatic contribution nondiscrimination safe harbors. Automatic re-enrollment would apply to eligible employees who have affirmatively elected not to make contributions or elected a contribution rate less than the safe harbor rate.

'Financial emergency' distributions without penalty

Bipartisan Senate and House legislation would give DC plan participants some flexibility to cover financial emergencies. The Enhancing Emergency and Retirement Savings Act (S 1870 and HR 7146) would allow penalty-free withdrawals for emergency purposes. Under the bill, participants could take one distribution of up to $1,000 per calendar year to meet "unforeseeable or immediate financial needs relating to necessary personal or family emergency expenses." Employers could rely on an employee's certification that a distribution satisfies this condition. Employees would have to repay the money before taking an emergency expense withdrawal in a later year.

Other proposals to encourage employer-based emergency savings programs could be included in a SECURE 2.0 package. However, details remain in flux as policymakers and stakeholders consider different approaches to the issue. Considerations include whether such programs should be linked to DC plans, offered as separate programs or modeled on previous disaster relief legislation allowing emergency distributions.

Spousal consent requirement for DC plan distributions

The Senate Health, Education, Labor and Pensions (HELP) Committee is preparing its own SECURE 2.0 legislation that will likely propose, among other reforms, to apply the IRC and ERISA spousal consent rules to DC plans. This would subject DC plans to essentially the same spousal consent rules that already apply to defined benefit and money purchase pension plans.

HELP Committee Chair Patty Murray, D-WA, offered the proposal last year as part of the Women's Retirement Protection Act (S 2446). Under that bill, exceptions to the spousal consent requirement would apply to required minimum distributions, involuntary cashouts of up to $5,000, qualified joint-and-survivor or qualified optional survivor annuities, substantially equal periodic payments over the joint lifetimes of the participant and spouse, and certain direct rollovers. A related HELP Committee hearing scheduled for March 29 will consider issues about the legislation and possible changes to make in a new version.

Next steps

With a House vote on the SSRA likely within days, bill champions expect strong bipartisan approval that could create momentum in the Senate. The Senate HELP and Finance committees plan to hold hearings and votes on SECURE 2.0 legislation over the coming months. Some of the potential additions discussed above could be incorporated into the legislation during upcoming committee action and negotiations with the House on a final package. Stand-alone retirement bills don't often pass the Senate, and finding a larger legislative vehicle for retirement reforms this year could be a challenge. Nonetheless, a post-election lame-duck measure tying up legislative loose ends could carry a SECURE 2.0 package over the finish line.

Related resources

Non-Mercer resources

- S 3712 and HR 6782, the Auto Reenroll Act (Congress, Feb. 28 and Feb. 18, 2022)
- HR 6746, the Lifetime Income for Employees Act (Congress, Feb. 15, 2022)
- HR 5891, the Retirement Improvement and Savings Enhancement (RISE) Act (Congress, Feb. 25, 2022)
- Section-by-section explanation of the RISE Act (House Committee on Education and Labor, Nov. 5, 2021)
- S 1870 and HR 7146, the Enhancing Emergency and Retirement Savings Act (Congress, May 27, 2021, and March 17, 2022)
- S 1770, the Retirement Security and Savings Act of 2021 (Congress, May 20, 2021)
- HR 2954, the Securing a Strong Retirement Act of 2021 (Congress, May 4, 2021)
- Description of the Securing a Strong Retirement Act of 2021 (Joint Committee on Taxation, May 3, 2021)

Mercer Law & Policy resources

- 2022 legislative, regulatory and judicial outlook for retirement plans (March 15, 2022)
- House retirement bill advances, seeks scrutiny of pension risk transfers (Nov. 15, 2021)
- Senate bills seek spousal consent for DC plan, expanded saver's credit (July 29, 2021)
- Senators revive major retirement reform legislation (May 28, 2021)

- Senate bill boosts PEPs, eases fixes for plans with automatic features (May 24, 2021)
- Major bipartisan retirement reform bill gets House committee approval (May 6, 2021)

Note: Mercer is not engaged in the practice of law, accounting or medicine. Any commentary in this article does not constitute and is not a substitute for legal, tax or medical advice. Readers of this article should consult a legal, tax or medical expert for advice on those matters.