# Congress Passes Landmark Retirement Legislation

## The SECURE Act has far reaching implications for recordkeepers, plan sponsors, advisors and participants, and individual retirement savers. A comprehensive list of the provisions in the SECURE Act is below.

On May 23, the House of Representatives passed H.R. 1994, the Setting Every Community Up for Retirement Enhancement (SECURE) Act of 2019, by an overwhelming bipartisan vote of 417 to 3. The broad bipartisan bill includes many common-sense, long-overdue reforms that could increase access to workplace plans and expand retirement savings. The landmark retirement legislation includes policy changes that would impact defined contribution (DC) plans, defined benefit (DB) plans, and individual retirement accounts (IRAs).

Fidelity generally supports the SECURE Act for its myriad of provisions that seek to bolster retirement security including opening multiple employer plans (MEPs) to address the retirement "coverage gap" by expanding access to workers currently without a workplace savings plan. Other provisions, including repealing the age limit for contributing to an IRA, and modifying the safe harbor regulation to improve flexibility, plan adoption, and participant protections, will also strengthen retirement savings.

### Provisions to Expand and Preserve Retirement Savings

- **Opens multiple employer plans (MEPs) and repeals the "one bad apple" rule.** The bill allows unrelated employers to join together in a MEP for the benefit of achieving economies of scale. The bill also eliminates the "one bad apple rule," which has been a significant barrier to MEP adoption. Removing this barrier would ensure a single participating employer does not jeopardize tax qualification for all participating employers in the MEP.
- **Raises the limit on auto-escalation from 10% to 15%** for safe harbor plans. The bill retains the 10% cap for the first year in which the employee is automatically enrolled, but increases the limit to 15% after that first year.
- **Increases the start-up credit for smaller employers** from 50% of the costs of starting up a retirement plan with an annual cap of $500, to $250 per non-highly compensated employees eligible to participate in the plan (but not less than $500 or more than $5000).
- **Creates a new automatic enrollment credit** for small employers. Employers that adopt automatic enrollment are eligible for an additional $500 credit for three years, regardless of whether the feature is adopted when the plan becomes effective, or later.
- **Allows stipends and non-tuition fellowship payments to count as income** for the purposes of contributing to an IRA. This change could enable graduate students to begin saving for retirement and accumulate tax-favored retirement savings.
- **Repeals the maximum age limit of 70½ to contribute to a traditional IRA.**
- **Prohibits retirement plans from distributing loans** through credit cards and other similar arrangements.
- **Facilitates portability of lifetime income products** in retirement plans by allowing participants to take a distribution of a "lifetime income investment" without regard to the restrictions on plan withdrawals if the lifetime income investment is no longer authorized as an investment option under the plan.
- **Directs the Treasury Department to issue guidance on the treatment of custodial accounts upon terminating 403(b) plans.** Under the bill, the individual custodial account would be maintained on a tax-deferred basis as a 403(b) custodial account until paid out, subject to the 403(b) rules in effect at the time that the individual custodial account is distributed.
- **Clarifies that employees of non-qualified church-controlled organizations** can participate in 403(b)retirement accounts.
- **Makes long-term part-time workers eligible for a plan.** The bill requires employers maintaining a 401(k) plan to have a dual eligibility requirement under which an employee must complete either one year of service (1,000-hour rule) or at least 500 hours of service in three consecutive years.
- **Allows penalty-free distributions upon the birth or adoption of a child** up to $5,000 from a defined contribution plan or IRA. Participants have the option to repay the withdrawal amount and the process would be treated as a rollover.
- **Increases the age at which an individual must begin taking required minimum distributions (RMDs)** from 70 ½ to 72.

- **Implements special rules for minimum funding standards for community newspaper plans.**
- **Allows "difficulty of care" payments for qualified foster care expenses** to be considered compensation for the purposes of determining retirement contribution limits.

## Provisions for Administrative Improvements

- **Extends the window for which a plan can be adopted** from the end of the employer's taxable year, to the date on which the employer's tax return is due for that year.
- **Directs the Department of Labor (DOL) and Department of Treasury** to revise Form 5500 rules to permit a single Form 5500 to be filed for multiple defined contribution plans if they have a common plan administrator, named fiduciary, investment menu, plan year, and trustee.
- **Requires a lifetime income disclosure** on benefit statements provided to defined contribution plan participants. The lifetime income disclosure must be provided at least annually and note the lifetime income stream equivalent to the participant's total account balance in the plan in the form of both a qualified joint and survivor annuity and a single life annuity.
- **Creates a fiduciary safe harbor for plan sponsors selecting an annuity provider.** Defined contribution plan fiduciaries may rely on representations from insurers regarding their status under state insurance laws for purposes of satisfying their fiduciary duty to consider an annuity provider's financial capability to fulfill its obligations.
- **Modifies nondiscrimination rules to protect older longer service participants.** To prevent unnecessary defined benefit plan freezes in the future, the bill allows plans to protect the benefits of the grandfathered group as long as the plan meets certain requirements.
- **Modifies PBGC premiums for CSEC plans** to conform the CSEC premium rules to the CSEC funding rules. (CSEC plans are generally multiple employer plans for cooperatives or charities).

## Provisions on Other Benefits

- **Expands 529 accounts** to allow tax-free distributions to repay student loans (up to $10,000) and to pay for certain apprenticeship programs.

## Provisions to Raise Revenue

- **Restricts beneficiaries' ability to "stretch" inherited assets** (from a defined contribution plan or IRA) to a 10-year period rather than over a lifetime.
- **Increases in penalty for failure to file Form 5500.** The bill increases the penalty for failing to file the Form 5500 from $25 to $250 for each day during which the failure continues, not to exceed $150,000 (currently $15,000).
- **Increases penalties for failure to file annual registration statements for plans subject to ERISA minimum vesting standards.** The bill increases failure to file a registration statement regarding deferred vested participants in a penalty of $10 (up from $1 under current law) for each participant to whom the failure applies, multiplied by the number of days during which the failure continues, subject to a maximum penalty of $50,000 (up from $5,000) within any plan year.
- **Increases information sharing to administer excise taxes.** The bill increases the penalty for failure to provide a required withholding notice to $100 (up from $10 under current law) for each failure, subject to a maximum penalty of $50,000 (up from $5,000) for any calendar year.

## What Happens Next?

The legislation is now in the Senate's hands. At this time, it is unclear when the Senate will take up the House's SECURE Act, or its own version of the bill, known as the Retirement Enhancement and Savings Act (RESA).

At Fidelity, we continue to analyze the legislation for impacts on our clients and customers and will make more information available as appropriate. Please reach out to your Fidelity representative with any questions.

For the full text of the bill, please click here.

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