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The SECURE Act and the Retirement Enhancement and Savings Act Tax Proposals (H.R. 1994 and S. 972)

Both the House and the Senate have considered legislation that addresses issues associated with tax-favored retirement plans. On May 23, the House passed the Setting Every Community Up for Retirement Enhancement (SECURE) Act of 2019, H.R. 1994. Chairman Grassley and Ranking Member Wyden of the Senate Finance Committee introduced the Retirement Enhancement and Savings Act of 2019, S. 972. The two bills have a number of similar provisions. Many of the provisions were also included in legislation passed by the House at the end of the 115th Congress (H.R. 88). The Grassley-Wyden bill has also been introduced in past Congresses.

The provisions of the SECURE Act were included in the House amendment to the Senate amendment to H.R. 1865, the Further Consolidated Appropriations Act, 2020. This legislation was signed into law on December 20, 2019 (P.L. 116-94).

H.R. 1994

The SECURE Act has four parts: provisions that expand benefits for retirement savings, administrative improvements, certain other benefits, and revenue provisions. Provisions apply both to employer plans (in which employers set up either defined benefit or defined contribution plans for their employees) and individual retirement accounts (IRAs). IRAs include traditional accounts in which contributions are deducted and withdrawals taxed and Roth IRAs that simply exclude earnings from taxation.

Expanded Benefits for Retirement

The proposal liberalizes the treatment of multiple-employer retirement plans (generally plans provided by more than one employer in the same industry) by providing that failure of one employer to satisfy plan requirements will not cause all plans to fail. The proposal also provides for the transfer of assets for that employer to another plan. It also establishes pooled employer plans that do not require a common characteristic and can be administered by a single entity, simplifying administrative costs.

The proposal includes some provisions to further encourage automatic enrollment in employer plans, including raising the cap on automatic contributions from 10% to 15% of employee compensation. It also increases flexibility in adopting certain safe harbor rules from antidiscrimination issues via employer contributions.

The proposal also provides for small employer pension startup costs. The credit is currently the lesser of $500 or 50% of startup costs. The proposal changes the flat dollar amount to be the greater of (1) $500 or (2) $250 times the number of non-highly compensated employees, capped at $5,000. It also increases the credit by $500 for small employers that establish automatic enrollment plans. Small employers have no more than 100 employees and the credit applies for up to three years.

Several changes are made to individual retirement accounts, including allowing nontuition fellowships and stipends to be counted as compensation (IRA contributions cannot exceed compensation) and repealing the prohibition on contributions to traditional IRAs by those aged 70½ and older.

Other provisions impacting retirement plans include prohibiting plans from making loans through credit cards and similar arrangements; allowing the transfer of lifetime income investments (annuities) between plans or as a distribution if no longer allowed as an investment option in a plan; allowing custodial accounts on termination of certain plans (Section 403(b) plans) to be converted into IRAs; clarifying which individuals can be covered by church-controlled organization plans; requiring plans to allow participation by long-term employees working more than 500 but less than 1,000 hours per year; allowing penalty-free withdrawals from retirement plans for birth of a child or adoption; increasing the age for taking required distributions from retirement plans from 70½ to 72; allowing an alternative minimum funding rule for community newspaper plans; and treating "difficulty of care" foster care payments as compensation for the purpose of contribution limits to retirement plans.

According to the Joint Committee on Taxation, these provisions cost $14.6 billion over FY2020-FY2029, with the largest cost ($8.9 billion) due to increasing the age for required minimum distributions to 72. The multiemployer plan proposals cost $3.4 billion and the withdrawals for birth and adoption cost $1.2 billion.

Administrative Changes

The proposal also has some administrative changes. It would allow due dates for establishment of employer plans on the tax filing day rather than year-end; provide for combined annual reporting for all plans in a group; require defined contribution plans to provide a lifetime income discloser; provide a safe harbor to satisfy prudence requirements for fiduciaries who are trustees of plans; modify the nondiscrimination rules so they are not triggered by participation in the plan of older, longer-service employees; and reduce the premiums of the Pension Benefit Guaranty Corporation (PBGC) for cooperative and small employer charity plans that are a subset of multiple-employer plans. The proposal would also require plans to

use the same discount rate used for benefits to measure unfunded liabilities.

According to the Joint Committee on Taxation, these provisions cost $1.4 billion for FY2020-FY2029, with $1.3 billion due to the PBGC revisions.

Other Benefits

There are also two provisions unrelated to retirement. One provision would reinstate for a year a provision that allows an exclusion from gross income of a reduction in property taxes by volunteer firefighters and emergency medical responders. The provision also increases the amount that could be excluded from income taxes from $30 per month to $50 per month. The second provision would modify qualified tuition programs (529 plans) that involve prepayment costs for a designated beneficiary. Distributions from these plans used for tuition, fees, books, and supplies, as well as room and board, are exempt from tax. The proposal would extend tax-free treatment to apprenticeship programs, distribution (up to $10,000) for payment of student loans (and can also extend to a sibling of the beneficiary), and certain costs associated with elementary and secondary education. The cost of both provisions is $0.2 billion from FY2020 to 2029, primarily due to 529 plan modifications.

Revenue Provisions

The bill contains four revenue-raising proposals that increase revenues by $16.2 billion for FY2020-FY2029. Of that revenue, almost all ($15.7 billion) would arise from changes in the treatment of plans referred to as "stretch IRAs" in which assets are left to beneficiaries such as children and grandchildren, who can include the income over their lifetime. The proposal would shorten the distribution period for a defined contribution plan for most beneficiaries from the lifetime of the beneficiary to 10 years (with certain beneficiaries excepted, including spouses, those disabled or chronically ill, minor children while still minors, and those no more than 10 years younger than the owner). Other provisions include increases in penalties for failure to file income tax returns and failure to file retirement plan returns, and increased information sharing for the purpose of administering and collecting excise taxes on heavy vehicles.

Unearned Income of Certain Children

The bill would reverse a provision subjecting unearned income of children at the higher rates applicable to trusts and estates and tax it at the parent's rates, for a cost of $0.5 billion.

According to the Joint Committee on Taxation, the gain from the revenue provisions would largely offset the losses over the FY2020-FY2029 period (with an overall loss of 0.3 billion), although the proposal loses revenue during the FY2020-FY2024 period and gains it in the latter part of the period.

S. 972

S. 972 contains many of the same or similar provisions as H.R. 1994, but excludes some, adds additional ones, and has modifications of the major revenue-raising proposal.

Expanded Benefits for Retirement

S. 972 includes provisions providing additional benefits for retirement, including liberalizing treatment of multiple-employer plans, removing the 10% cap on automatic contributions (H.R. 1994 would increase this cap), increasing the credit for small employer pension startup costs, changing IRAs (fellowships as compensation and repeal of maximum age for contributions), disallowing loans through credit cards and similar arrangements, allowing the transfer of lifetime income investments (annuities) between plans or as a distribution if no longer allowed as an investment option in a plan, allowing custodial accounts on termination of certain plans (Section 403(b) plans) to be converted into IRAs, and clarifying which individuals will be covered by church-controlled plans. The proposal also includes a provision not in H.R. 1994 to allow expanded IRA ownership of S corporation bank stock.

Administrative Improvements

S. 972 also includes the administrative improvements offered in H.R. 1994. It includes the benefits for volunteer firefighters and emergency responders but not the changes in 529 tuition plans.

Treatment of U.S. Tax Court Judges

S. 972 includes additional provisions that modify retirement and other benefits provided to U.S. Tax Court judges.

Revenue Provisions

S. 972 also contains the revenue provisions in H.R. 1994, but in the case of the major revenue-raising proposal, it has two important differences. It requires inclusion of amounts for other than qualified beneficiaries over 5 years rather than 10 years. This 5-year requirement, however, applies only to amounts in excess of the first $400,000.

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