



UNITED STATES SENATE
COMMITTEE ON FINANCE

RETIREMENT ENHANCEMENT AND SAVINGS ACT OF 2019

Technical modifications to RESA

The Finance Committee unanimously reported the Retirement Enhancement and Savings Act (RESA) as S. 3471 (114th) in November 2016, and Senators Hatch and Wyden reintroduced the bill in the 115th Congress with technical modifications (S. 2526). RESA, as introduced in this Congress by Chairman Grassley and Ranking Member Wyden, makes additional technical modifications, the most significant of which are updating the effective dates, modification of the exception to the required minimum distribution rules in section 501 and deleting section 505 (S. 2526) which provided for an acceleration of Pension Benefits Guaranty Corporation (PBGC) premiums.

Section by section summary

Sections 101 and 102. Increase Access for Workers in Small Companies to Retirement Plans by Authorizing Multiple Employer Defined Contribution Plans. (sec. 413 of the Code and secs. 3 and 103-104 of ERISA)

Multiple employer plans (MEPS) provide an opportunity for small employers to band together to obtain more favorable pension investment results and more efficient and less expensive management services. The legislation makes MEPS more attractive by eliminating outdated barriers to the use of MEPS and improving the quality of MEP service providers.

Section 103. Expand Retirement Savings by Removing Auto Enrollment Safe Harbor Cap (sec. 401(k) of the Code)

The legislation removes the cap that required automatic escalation of employee deferrals go no higher than 10 percent of employee pay under an automatic enrollment safe harbor plan. Lifting the cap after the first year of an employee's deemed election expands retirement contributions and increases retirement savings.

Section 104. Simplification of Safe Harbor 401(k) Rules (sec. 401(k) of the Code)

The legislation changes the nonelective contribution 401(k) safe harbor to provide greater flexibility, improve employee protection, and facilitate plan adoption. The legislation eliminates the safe harbor notice requirement, but maintains the requirement to allow employees to make or change an election at least once per year. The bill also permits amendments to nonelective status at any time before the 30th day before the close of the plan year. Amendments after that time would be allowed if the amendment provides (1) a nonelective contribution of at least 4 percent of compensation (rather than at least 3 percent) for all eligible employees for that plan year, and (2) the plan is amended no later than the last day for distributing excess contributions for the plan year, that is, by the close of following plan year.

Sec. 105. Increase Credit Limitation for Small Employer Pension Plan Start-Up Costs (sec. 45E of the Code)

Increasing the credit for plan start-up costs makes it more affordable for small businesses to set up retirement plans. The legislation increases the credit by changing the calculation of the flat dollar amount limit on the credit to the greater of (1) \$500 or (2) the lesser of (a) \$250 multiplied by the

number of non-highly compensated employees of the eligible employer who are eligible to participate in the plan or (b) \$5,000. The credit applies for up to three years.

Section 106. Small Employer Automatic Enrollment Credit (new sec. 45S of the Code)

Automatic enrollment is shown to increase employee participation and higher retirement savings. The legislation creates a new tax credit of up to \$500 per year to employers to defray startup costs for new section 401(k) plans and SIMPLE individual retirement account (IRA) plans that include automatic enrollment. The credit is in addition to the plan start-up credit allowed under present law and would be available for three years. The credit also would be available to employers that convert an existing plan to an automatic enrollment design.

Section 107. Treat Certain Taxable Non-Tuition Fellowship and Stipend Payments as Compensation for IRA Purposes (sec. 219 of the Code)

Stipends and non-tuition fellowship payments received by graduate and postdoctoral students are not treated as compensation and cannot be used as the basis for IRA contributions. The legislation removes this obstacle to retirement savings by taking such amounts that currently are includible in income into account for IRA contribution purposes. The change enables these students to begin saving for retirement and accumulate tax-favored retirement savings.

Section 108. Repeal of Maximum Age for Traditional IRA Contributions (sec. 219 of the Code)

The legislation repeals the prohibition on contributions to a traditional IRA by an individual who has attained age 70½. As Americans live longer, an increasing number continue employment beyond traditional retirement age.

Section 109. Expansion of IRA Ownership of S Corporation Bank Stock (secs. 1361 and 4975 of the Code)

The legislation permits an IRA to hold shares in an S corporation that qualifies as a bank, and revises the prohibited transaction rules to permit such holdings. The change provides additional flexibility for individuals to diversify their retirement savings.

Section 110. Qualified Employer Plans Prohibited from Making Loans through Credit Cards and Other Similar Arrangements (sec. 72(p) of the Code)

The legislation prohibits the distribution of plan loans through credit cards or similar arrangements, except under existing arrangements available before September 21, 2016. New limitations on existing arrangements include disqualification of transactions of \$1,000 or less or transactions with or on the premises of a liquor store, casino, gaming establishment or adult-entertainment establishment. The change ensures that plan loans are not used for routine or small purchases, thereby preserving retirement savings.

Section 111. Portability of Lifetime Income Options (secs. 401(a), 403(b) and 457(d) of the Code)

The legislation permits qualified defined contribution plans, section 403(b) plans, or governmental section 457(b) plans to make a direct trustee-to-trustee transfer to another employer-sponsored retirement plan or IRA of lifetime income investments or distributions of a lifetime income investment

in the form of a qualified plan distribution annuity, if a lifetime income investment is no longer authorized to be held as an investment option under the plan. The change permits participants to preserve their lifetime income investments and avoid surrender charges and fees.

Section 112. Treatment of Custodial Accounts on Termination of Section 403(b) Plans (sec. 403(b) of the Code)

No later than six months after enactment, the Treasury Department is required to issue guidance that permits an employer that terminates a 403(b) plan to distribute the account assets in kind to the new custodial account of the participant or beneficiary. This change provides a mechanism for the termination of a section 403(b) plan in a manner that preserves the assets that cannot otherwise be distributed, such as annuity contracts or mutual funds held in the participant's name, in a tax-favored retirement savings vehicle.

Section 113. Clarification of Retirement Income Account Rules Relating to Church-Controlled Organizations (sec. 403(b)(9) of the Code)

The legislation clarifies the individuals who may be covered by plans maintained by church controlled organizations. Covered individuals include duly ordained, commissioned, or licensed ministers, regardless of the source of compensation; employees of a tax-exempt organization, controlled by or associated with a church or a convention or association of churches; and certain employees after separation from service with a church, a convention or association of churches, or an organization described above.

Section 201. Plans Adopted by Filing Due Date for Year May Be Treated as in Effect as of Close of Year (sec. 401(b) of the Code)

The legislation permits a business to treat a qualified retirement plan adopted before the due date (including extensions) of the tax return for the business' taxable year to treat the plan as having been adopted as of the last day of the taxable year. The additional time to establish a plan provides flexibility for employers that are considering adopting a plan and the opportunity for employees to receive contributions for that earlier year and begin to accumulate retirement savings.

Section 202. Combined Annual Reports for Group of Plans (sec. 6058 of the Code and sec. 104 of ERISA)

The legislation directs the IRS and the Department of Labor (DOL) to effectuate the filing of a consolidated Form 5500 for similar plans. Plans eligible for consolidated filing must be defined contribution plans, with the same trustee, the same named fiduciary (or named fiduciaries) under the Employee Retirement Income Security Act of 1974 (ERISA), and the same administrator, using the same plan year, and providing the same investments or investment options to participants and beneficiaries. The change reduces aggregate administrative costs, making it easier for small employers to sponsor a retirement plan, thus improving retirement savings.

Section 203. Disclosure Regarding Lifetime Income (sec. 105 of ERISA)

The legislation requires benefit statements provided to defined contribution plan participants to include a lifetime-income disclosure at least once during any 12-month period. The disclosure will illustrate the monthly payments the participant would receive if the total account balance were used to provide

lifetime-income streams, including a qualified joint and survivor annuity for the participant and the participant's surviving spouse as well as a single-life annuity. The Secretary of Labor is directed to develop a model disclosure. Disclosure in terms of monthly payments provides useful information to plan participants in correlating the funds in their defined contribution plan to lifetime income. Plan fiduciaries, plan sponsors, or other persons will have no liability under ERISA solely by reason of the provision of lifetime income stream equivalents that are derived in accordance with the assumptions and guidance under the provision and that include the explanations contained in the model disclosure.

Section 204. Fiduciary Safe Harbor for Selection of Lifetime Income Provider (sec. 404 of ERISA)

The legislation provides certainty for plan sponsors in the selection of lifetime-income providers, a fiduciary act under ERISA. Under the bill, fiduciaries are afforded an optional safe harbor to satisfy the prudence requirement with respect to the selection of insurers for a guaranteed retirement income contract and are protected from liability for any losses that may result to the participant or beneficiary due to an insurer's inability in the future to satisfy its financial obligations under the terms of the contract. Removing ambiguity about the applicable fiduciary standard eliminates a roadblock to offering lifetime-income benefit options under a defined contribution plan.

Section 205. Modification of Nondiscrimination Rules to Protect Older, Longer Service Participation (sec. 401(a)(4) of the Code)

The legislation modifies the nondiscrimination rules with respect to closed plans to permit existing participants to continue to accrue benefits. The modification protects the benefits for older, longer-service employees as they near retirement.

Section 206. Modification of PBGC Premiums for CSEC Plans (sec. 4006 of ERISA)

In 2014, different funding rules were adopted for three types of pension plans: single-employer, multiemployer and cooperative and small employer charity (CSEC) plans. The legislation establishes individualized rules for calculating PBGC premiums. For CSEC plans, the legislation specifies flat-rate premiums of \$19 per participant, and variable rate premiums of \$9 for each \$1,000 of unfunded vested benefits.

Sections 301 – 308. Benefits Relating to United States Tax Court

These provisions modify retirement and other benefits provided to U.S. Tax Court judges.

Section 401. Benefits for Volunteer Firefighters and Emergency Medical Responders (sec. 139B of the Code)

The legislation reinstates for one year the exclusions for qualified State or local tax benefits and qualified reimbursement payments provided to members of qualified volunteer emergency response organizations and increases the exclusion for qualified reimbursement payments to \$50 for each month during which a volunteer performs services.

Section 501. Modifications to Required Minimum Distribution Rules (sec. 401(a)(9) of the Code)

The legislation modifies the required minimum distribution rules with respect to defined contribution plan and IRA account balances upon the death of the account owner. Under the legislation, the account balance is required to be distributed and included in income by the beneficiary by the end of the fifth calendar year following the year of the employee's or IRA owner's death. The requirement does not apply to distributions to the surviving spouse of the employee (or IRA owner) or to beneficiaries who are disabled or chronically ill individuals, individuals who are not more than 10 years younger than the employee (or IRA owner), or the child of the employee (or IRA owner) who has not reached the age of majority. An exception to the five-year distribution deadline is provided for each beneficiary to the extent that the balance of the account they receive from the deceased employee or IRA owner does not exceed \$400,000, valued as of the date of death. The modification limits the tax benefit for bequests of retirement savings, while protecting the needs of surviving spouses and certain other beneficiaries, and continuing to encourage retirement savings by beneficiaries of such accounts. The legislation also adds new reporting requirements on the account balances held by beneficiaries of deceased employees and IRA owners to ensure compliance.

Section 502. Increase in Penalty for Failure to File (sec. 6651(a) of the Code)

The legislation increases the failure to file penalty to the lesser of \$400 or 100 percent of the amount of the tax due. Increasing the penalties encourages the filing of timely and accurate returns, thus improving overall tax administration.

Section 503. Increased Penalties for Failure to File Retirement Plan Returns (sec. 6652(d), (e), and (h) of the Code)

The legislation modifies the failure to file penalties for retirement plan returns. Failure to file a Form 5500 results in a penalty of \$100 per day, not to exceed \$50,000. Failure to file a registration statement would incur a penalty of \$2 per participant per day, not to exceed \$10,000. Failure to file a required notification of change would result in a penalty of \$2 per day, not to exceed \$5,000 for any failure. Failure to provide a required withholding notice would result in a penalty of \$100 for each failure, not to exceed \$50,000 for all failures during any calendar year. Increasing the penalties encourages the filing of timely and accurate information returns and statements and the provision of required notices, thereby improving overall tax administration.

Section 504. Increase Information Sharing to Administer Excise Taxes (sec. 6103(o) of the Code)

The legislation allows the IRS to share returns and return information with the U.S. Customs and Border Protection for purposes of administering and collecting the heavy vehicle use tax.