

TaxNewsFlash

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Legislative update: Senate Finance reports broad retirement savings bill (with revenue offsets)

The Senate Finance Committee yesterday approved the Retirement Enhancement and Savings Act of 2016 ("RESA") by a vote of 26 to 0. RESA includes a host of provisions relating to qualified plans, as well as a small number of other provisions. It includes approximately \$5.662 billion of revenue offsets, including modifications to the required minimum distribution rules, changes to failure-to-file penalties, and repeal of the partnership technical termination rules.

Documents

- Read Joint Committee on Taxation (JCT) descriptions of the [Chairman's mark](#) and the [Chairman's modification to the mark](#)
- Read JCT's estimate of the [revenue effects](#) of the modified mark

Changes to retirement and qualified plan rules ("revenue losers")

Provisions in RESA relating to "expanding and preserving retirement savings" and to administrative improvements to the qualified plan rules include:

Multiple employer plans

- Provide that multiple-employer defined contribution plans meeting certain requirements would not fail to qualify for tax-favored treatment merely because one or more of the employers of employees covered by the plan failed to take the actions required of employers for the plan to meet such requirements. *Estimated to cost approximately \$3.179 billion over 10 years.*

Cooperative and small employer charity plans

- For cooperative and small employer charity plans (“CSECs”), reduce the premiums paid to the Pension Benefit Guaranty Corporation (PBGC) so that flat-rate premiums are \$19 per participant and the variable rate premiums paid to the PBGC to \$9 for each \$1,000 of unfunded vested benefits. *Estimated to cost approximately \$1.004 billion over 10 years.*

Section 401(k) plans

- For section 401(k) plans, remove the 10% limit on the deemed election rate under the automatic enrollment safe harbor after the first year that the deemed election applies. *Estimated to have negligible revenue effect over 10 years.*
- Change the rules for the “nonelective contribution 401k safe harbor” to: (1) eliminate the notice requirement; and (2) allow a plan to be amended to become a nonelective safe harbor plan to satisfy the safe harbor requirements during or after the plan year in certain cases. *Estimated to have negligible revenue effect over 10 years.*

Small employer credits

- Change the calculation of the flat dollar amount limit on the small employer start-up credit. *Estimated to cost approximately \$24 million over 10 years.*
- Allow eligible small employers a new credit of \$500 per year for up to three years for startup costs for new section 401(k) plans and SIMPLE IRA plans that include automatic enrollment, as well as for adding automatic enrollment as a feature of an existing plan. *Estimated to cost approximately \$1 million over 10 years.*

Contributions to qualified plans

- Treat certain non-tuition fellowship and stipend payments as compensation for purposes of determining the amount an individual may contribute to an IRA. *Estimated to cost approximately \$2 million over 10 years.*
- Repeal the prohibition on contributions to a traditional IRA by an individual who has attained age 70½ years prior to the close of a year. *Estimated to cost approximately \$58 million over 10 years.*
- Extend the period during which a qualified plan loan offset amount may be contributed to an eligible retirement plan as a rollover contribution. *Estimated to have negligible revenue effect over 10 years.*

Distributions and withdrawals

- Direct the Treasury to revise the applicable regulations to eliminate the requirement that an employee be prohibited from making elective deferrals and employee contributions for six months after the receipt of a hardship distribution in order for the distribution to be deemed necessary to satisfy an “immediate and heavy” financial need. *Estimated to have negligible revenue effect over 10 years.*

- Treat a plan loan that is made through the use of a credit card or similar arrangement as a deemed distribution, subject to special rules (contained in the Chairman's modification to the mark) for electronic card systems through which such loans are provided as of September 21, 2016. *Estimated to have negligible revenue effect over 10 years.*
- Provide that, if a lifetime income investment is no longer authorized to be held as an investment option under a qualified defined contribution plan, section 403(b) plan, or governmental section 457(b) plan, except as provided by guidance, the plan will not fail to satisfy Code requirements solely by reason of allowing: (1) qualified distributions of a lifetime income investment; or (2) distributions of a lifetime income investment in the form of a qualified plan distribution annuity contract. *Estimated to have negligible revenue effect over 10 years.*

Section 403(b) plans

- Provide that custodial amounts are deemed to be IRAs if an employer terminates a section 403(b) plan under which amounts are contributed to custodial accounts and the person holding the account assets is an IRS approved nonbank trustee. *Estimated to have negligible revenue effect over 10 years.*
- Clarify that employees of nonqualified church-controlled organizations, in addition to employees of churches and qualified church-controlled organizations, may be covered under a section 403(b) plan that consists of a retirement income account. *Estimated to have negligible revenue effect over 10 years.*

Fiduciary safe harbor

- Specify optional measures that a plan fiduciary may take with respect to the selection of an insurer and a guaranteed income contract to assure that the fiduciary meets ERISA's "prudent man" standard. *Estimated to have no budget effect over 10 years.*

Nondiscrimination relief

- Provide relief from nondiscrimination requirements with respect to benefit accruals and benefits, rights, and features for a closed class of participants under a defined benefit plan; and permit a defined contribution to be tested on an equivalent benefits accruals basis, without having to satisfy threshold conditions, if certain requirements are met. *Estimated to have negligible revenue effect over 10 years.*

Administrative "improvements"

- Provide that, if an employer adopts a stock bonus, pension, profit-sharing or annuity plan after the close of the tax year but before the time for filing the employer's return for the tax year (including extensions), the employer may elect to treat the plan as having been adopted as of the last day of the tax year. *Estimated to cost approximately \$142 million over 10 years.*

- Direct the IRS and Department of Labor to work together to modify Form 5500, *Annual Return/Report of Employee Benefit Plan*, so that all members of a group of plans meeting certain requirement may file a single consolidated Form 5500. *Estimated to have negligible revenue effect over 10 years.*
- Require a benefit statement provided to a defined contribution plan participant to include an annual lifetime disclosure setting forth the lifetime income stream equivalent of the participant's total account balance under the plan. *Estimated to have no budget effect over 10 years.*

Other revenue-losing provisions

RESA also includes the following other provisions that are scored as losing revenue:

- Allow a qualified employee to elect to defer for five years (for income tax purposes) inclusion of the amount of income attributable to qualified stock transferred to the employee by the employer. Such election would be made no later than 30 days after the first time the employee's right to the stock is substantially vested. Certain events would trigger inclusion of deferred income before the end of the five-year deferral period. *Estimated to cost approximately \$894 million over 10 years.*
- Allow an IRA (including a Roth IRA) to be a shareholder of an S corporation that is a bank without regard to whether the IRA held bank stock on October 22, 2004. The IRA's share of S corporation income and loss would be taken into account in determining its unrelated business taxable income. *Estimated to cost approximately \$198 million over 10 years.*
- Reinstate 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 increase the exclusion to \$50 each month during which a volunteer performs service. *Estimated to cost approximately \$109 million over 10 years.*

Revenue offsets

The bill includes revenue offsets relating both to qualified plans and to other, more general, provisions of the Code.

Qualified plan-related raisers

- Change the "after-death" required minimum distribution rules for IRAs and defined contribution plans to the extent the amount of an individual's aggregated account balances under all such IRAs and plans as of the date of death exceeds \$450,000 (indexed for inflation). *Estimated to raise approximately \$3.182 billion over 10 years.*
- Allow earnings on elective deferrals under a section 401(k) plan, as well as qualified nonelective contributions and qualified matching contributions (and

attributable earnings) to be distributed on account of hardship. *Estimated to raise approximately \$706 million over 10 years.*

- The JCT revenue table indicates that accelerating payment of variable rate premiums would raise approximately \$1.007 billion over 10 years. This item, however, is not described in either the Chairman's mark or the Chairman's modification to the mark. It is not clear whether this item is included in the bill and, if so, what the technical details are.
- Increase the penalty for failing to file Form 5500, certain registration statements, and required withholding notices. *Estimated to raise approximately \$113 million over 10 years.*
- The JCT revenue table indicates that accelerating payment of variable rate premiums would raise approximately \$1.007 billion over 10 years. This item, however, is not described in either the Chairman's mark or the Chairman's modification to the mark.

Other raisers

- Increase the section 6651 penalty for failing to file a return to not less than the lesser of \$400 (rather than \$205, as under current law) or 100% of the amount required to be shown as tax on the return. *Estimated to raise approximately \$235 million over 10 years.*
- Prohibit increases in the amount of the user fee associated with entering into a written agreement to pay taxes, interest, and penalties over an agreed schedule, and waive the user fee if a "low-income taxpayer enters into an installment agreement under which it agrees to make automated payments through a debit account (with reimbursement of the fee available for low-income taxpayers that are unable to make payments electronically). *Estimated to raise approximately \$49 million over 10 years.*
- Allow employees of U.S. Customs and Border Protection to have access to returns and return information related to the heavy vehicle use tax. *Estimated to raise approximately \$150 million over 10 years.*
- Repeal the partnership "technical termination" rules. *Estimated to raise approximately \$220 million over 10 years.*

Other Finance Committee action

At the same markup, the Senate Finance Committee also approved The Miners Protection Act, which provides funding of retiree health and pension benefits for employees in the coal industry. The revenue cost of that bill is offset by extending certain customs user fees that expire in 2025.

What's next?

The RESA bill has bipartisan support among members of the Finance Committee. The Senate is scheduled to adjourn on September 30; however, and it may adjourn earlier because of the upcoming elections. Congress is scheduled to return after the elections, but only for four weeks. The short legislative calendar makes passage of the bill in this Congress uncertain.

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