

RETIREMENT ENHANCEMENT AND SAVINGS ACT OF 2018

Technical modifications to RESA as compared to S. 3471 (114th)

The Finance Committee unanimously reported RESA as S. 3471 (114th) in November 2016. The following is a summary of technical modifications made to RESA as compared to S. 3471:

- Technical modification to ERISA fiduciary safe harbor for selection of lifetime income provider (section 204): The first sentence of the safe harbor is modified by replacing “selection of an insurer and a guaranteed retirement income contract” with “selection of an insurer for a guaranteed retirement income contract.” This one-word change clarifies that the safe harbor is solely for the selection of the insurer and the possibility that the insurer may not be able to make payments due under the contract.
- Technical modification to benefits of the Tax Court: (1) modifies the survivor annuity benefit to remove deadwood reference to the United States Board of Tax Appeal (section 305 and sec. 7448(n) of the Code); and (2) conforms the legislative language for the deadline by which magistrate judges may elect Tax Court retirement benefits to the committee report for S. 3471 (section 307 and sec. 7448(b) of the Code).
- Provisions deleted because of prior enactment: (1) extended rollover period for plan loan offsets (section 110 of S. 3471; enacted as part of Public Law 115-97); (2) modification of hardship withdrawal rules from 401(k) plans (section 111 of S. 3471; enacted as part of the Bipartisan Budget Act of 2018); (3) tax treatment of qualified equity grants (section 402 of S. 3471; enacted as part of Public Law 115-97); (4) modification of user fees for installment agreements (section 504 of S. 3471; enacted as part of the Bipartisan Budget Act of 2018); and (5) repeal of partnership technical terminations (section 506 of S. 3471; enacted as part of Public Law 115-97).
- Modification of effective dates: RESA as originally introduced was generally effective for years beginning after December 31, 2016; these effective dates have been changed to years beginning after December 31, 2018. Additionally, the acceleration of PBGC premiums in section 505 has been modified by accelerating additional months of 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 grows 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 four percent of compensation (rather than at least three 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 will make 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 nonhighly 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 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 would also 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 are includible in income into account for IRA contribution purposes. The change will enable 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 any IRA to be a shareholder of any S corporation that is a bank.

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 will ensure 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 will permit 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)

The legislation deems custodial accounts held by IRS approved nonbank trustees pursuant to a termination of section 403(b) plan to be IRAs. Custodial accounts under a section 403(b) plan that are designated Roth accounts are treated as a Roth IRA upon termination of the section 403(b) plan. The modification 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 individuals that 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 businesses to treat qualified retirement plans adopted before the due date (including extensions) of the tax return for the 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 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 ERISA, and the same administrator, using the same plan year, and providing the same investments or investment options to participants and beneficiaries. The change will reduce aggregate administrative costs, making it easier for small employers to sponsor a retirement plan and 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 would 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 and a single life annuity. The Secretary of Labor is directed to develop a model disclosure. Disclosure in terms of monthly payments will provide 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 will protect 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 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 balances upon the death of the account owner. Under the legislation, for aggregate account balances over \$450,000, distributions to individuals other than the surviving spouse of the employee (or IRA owner), disabled or chronically ill individuals, individuals who are not more than 10 years younger than the employee (or IRA owner), or child of the employee (or IRA owner) who has not reached the age of majority are required to be distributed by the end of the fifth calendar year following the year of the employee or IRA owner's death. The modification would limit the tax subsidy for retirement savings once the needs of the individual and surviving spouse, and certain other beneficiaries, have been met.

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 will encourage the filing of timely and accurate returns which, in turn, will improve 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. The Form 5500 penalty would be modified to \$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 results in a penalty of \$100 for each failure, not to exceed \$50,000 for all failures during any calendar year. Increasing the penalties will encourage the filing of timely and accurate information returns and statements and the provision of required notices, which, in turn, will improve 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.

Section 505. Pension Plan Acceleration of PBGC Premium Payment (sec. 4007 of ERISA)

The legislation accelerates the payment of variable-rate premiums for single employer pension plans for which the due date under present law occurs during the period after September 30, 2027, and before June 1, 2028, to September 30, 2027. The change will strengthen the financial status of the PBGC insurance program.