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U.S. House Passes Significant Retirement Bill

The U.S. House of Representatives passed the Securing a Strong Retirement Act of 2022 (SSRA) by a 414-5 vote on March 29, 2022. H.R. 2954 (also commonly referred to as “SECURE 2.0”) contains over 50 retirement plan provisions—nearly double the number as the original Setting Every Community Up for Retirement Enhancement (SECURE) Act of 2019. The U.S. Senate is expected to take up a similar bipartisan bill later this year, which could result in the need for a conference committee to reconcile differences between the two bills.

Background: Securing a Strong Retirement Act of 2022

The SSRA was first introduced by House Ways and Means Committee Chairman Richard Neal (D-MA) and Ranking Member Kevin Brady (R-TX) in October 2020 and was amended by the House Ways and Means Committee last year. The bill now includes provisions from the Retirement Improvement and Savings Enhancement (RISE) Act that came out of the House Education and Labor Committee last November.

The rest of this article explains the provisions included in the SSRA, grouped into broad categories.

Increased Access to Retirement Savings and Other Employee Benefits

- New 401(k) and 403(b) plans would need to provide for automatic enrollment of eligible employees—with certain exceptions and grandfathering provisions. Small businesses (those with fewer than 11 employees), and businesses that have existed for less than three years, would be exempt. Participants would be enrolled at a minimum deferral rate of 3 percent (and not more than 10 percent) and that rate would increase by 1 percent each year (but not to more than 15 percent). Of course, participants could elect a different deferral percentage—or could opt out entirely. (Effective for plan years that start after December 31, 2023.)
- The SSRA would reduce from three years to two years the period of service requirement for long-term, part-time workers, and disregards pre-2021 service for vesting purposes. Unlike typical eligibility requirements, which can exclude those with less than 1,000 hours of service in a year, this provision would require those with at least 500 hours of service in two consecutive years to become eligible to defer income into a 401(k) or 403(b) plan. (Effective for plan years that start after December 31, 2022, but vesting requirements start two years earlier.)
- Certain student loan repayments would qualify for employer retirement plan matching contributions as if the repayments were employee deferrals. This provision would allow those with student loan debt to qualify for matching contributions—even if they cannot afford to defer into the plan. Eligible plans include 401(k), 403(b), governmental 457(b), and SIMPLE IRA plans. (Effective for contributions made for plan years that start after December 31, 2022.)

- 403(b) plan participants would be able to take hardship distributions of salary deferrals, qualified nonelective contributions, qualified matching contributions, and earnings on any of these contribution types. This provision aligns the 403(b) rule with the existing 401(k) rule. (Effective for plan years that start after December 31, 2022.)
- 401(k) and 403(b) plan participants could self-certify that hardship distribution conditions are met. A plan administrator could rely on a participant's certification that the participant has met one of the reasons required for taking a hardship distribution (e.g., medical care). The SSRA would also codify the rule that currently allows participants to self-certify that the amount does not exceed what is required to satisfy the financial need. For 457(b) plans, similar rules apply for "unforeseeable emergencies." (Effective for plan years that start after December 31, 2022.)
- Participants who have experienced domestic abuse could withdraw the lesser of $10,000 or 50 percent of their account balance without being subject to the early distribution penalty tax. Participants could self-certify that they were victims of domestic abuse. The funds could be repaid to the plan over three years. This provision applies to IRAs and (if the employer allows) to 401(k), 403(b), and governmental 457(b) plans. (Effective for distributions made after the enactment date.)
- Employers would have until their business's tax return due date (plus extensions) to adopt discretionary amendments for the preceding year that increase benefits to participants (other than matching contributions). An employer could elect to treat the amendment as having been adopted on or before the last day of the plan year. (Effective for plan years that start after December 31, 2023.)
- Individuals who wholly own an unincorporated business would have until their business's tax return due date (without extensions) to make elective deferrals. This rule addresses a current quirk in the law, which allows such business owners to *establish* a 401(k) plan by their tax return due date, but prevents them from making *deferrals* that weren't elected by the end of the business's tax year. (Effective for plan years that start after the enactment date.)
- Catch-up contribution limits for plan participants who attain ages 62, 63, or 64 before the close of the taxable year would increase to $10,000 ($5,000 for SIMPLE plans). This amount would be indexed for cost-of-living adjustments. (Effective beginning with tax years that start after December 31, 2023.)
- The SSRA would establish a national online "lost and found" database to connect individuals with unclaimed retirement account benefits. This would be an information repository—not an actual transfer of lost assets—administered by the Department of Labor (DOL). The database would mostly contain data that employers are already required to report to the Treasury Department. Effective for plan years beginning after the second December 31 occurring after the bill's enactment date, plan administrators would have to submit information as prescribed by DOL regulations. (The database would need to be established within two years of the enactment date.)
- Private-sector firefighters would be eligible for the early distribution penalty tax exception at age 50. (Effective for distributions taken after December 31, 2022.)
- 401(a), 403(a), governmental 457(b), and 403(b) annuity plan participants who take disability-related distributions received in connection with first responder service could exclude those distributions from income. Detailed requirements dictate the amount that can be excluded. (Effective for taxable years that start after December 31, 2027.)

Employer and Savers Credits

- For employers with no more than 50 employees, the SSRA would increase the three-year credit for retirement plan startup costs to 100 percent of qualified start-up costs (versus the current 50 percent). The SSRA also proposes a new, additional credit representing a percentage of contributions made to a plan by small employers, not to exceed $1,000 per employee. This additional credit will phase out for employers that have between 51 and 100 employees; it will also phase out gradually over the first four years of the start-up. (This provision applies to 401(a) and 403(a) plans, and to SEP and SIMPLE plans, effective for taxable years that start after December 31, 2022.)
- The SSRA would improve the saver's credit for lower-income individuals by replacing the tiered formula with a single 50 percent credit on contributions up to $2,000, with phase outs beginning at certain adjusted gross income thresholds. (Effective for taxable years starting after December 31, 2026.)

- The Secretary of the Treasury would be required to promote the saver's credit through a marketing campaign—and report to Congress on the expected promotional efforts within 90 days following enactment.
- Small employers could be entitled to a new tax credit for providing enhanced plan eligibility to military spouses. Often, military spouses may not be employed long enough to become eligible to participate—or to vest in employer contributions. The SSRA addresses this concern by providing a credit of up to $250 for each military spouse who becomes eligible to participate in the plan and up to $250 for each military spouse that receives an employer contribution. For the employer to receive the credit, the military spouse must be a non-highly compensated employee. (Effective for taxable years starting after the enactment date.)
- The SSRA would allow employers to give small ("de minimis") financial incentives, in addition to a matching contribution, to individuals for contributing to a retirement plan. Normally, such a gift would trigger a prohibited transaction, but for plan years starting after the SSRA's enactment, this will not create such a concern.

RMD and Related Provisions

- The age for required minimum distributions (RMDs) would increase from age 72 to age 75 gradually over a period of years. For those born in 1951 through 1956, age 73 applies; if born in 1957 or 1958, age 74 applies; and if born in 1959 or later, age 75 applies.
- Individuals who fail to timely distribute an RMD could reduce the excise tax from 50 percent to 25 percent. They could further reduce the tax to 10 percent if a missed RMD *from an IRA* is corrected within a certain time frame (generally by the last day of the second taxable year that begins after the end of the taxable year in which the tax is imposed). (Effective for taxable years that start after December 31, 2022.)
- The SSRA would remove life annuity RMD barriers that are caused by certain actuarial tests. These tests currently prevent investing retirement plan assets in annuities that contain fairly common features, such as a return-of-premium death benefit. Effective for calendar years ending after the SSRA's enactment date, many types of guarantees that provide only modest benefit increases would be exempted.

Pooled Employer Plans (PEPs) and Multiple Employer Plans (MEPs)

- The SSRA clarifies that any named fiduciary of a pooled employer plan (PEP) could be responsible for collecting employee contributions. This change would allow directed trustees to serve as PEP trustees without having to ensure that participating employers are making proper contributions, but only if a named fiduciary implements "reasonable, diligent, and systematic" collection procedures. (Effective for plan years that start after December 31, 2022.)
- The SSRA would allow 403(b) plans (other than church plans) to participate in multiple employer plan (MEP) arrangements, including PEPs. (Effective for plan years that start after December 31, 2022.)
- A small employer joining a MEP or PEP arrangement could potentially claim a small plan start-up credit during the first three years of the employer's participation, regardless of the length of the MEP/PEP arrangement's existence. This provision addresses an oversight in the SECURE Act, and so is retroactively effective to taxable years beginning after 2019.

Roth Contributions to Employer-Sponsored Plans Expanded

- SIMPLE IRA and SEP plan participants could elect to treat employer contributions and salary deferrals (where applicable) as Roth contributions. (Effective for taxable years that start after December 31, 2022.)
- The SSRA would require catch-up contributions to a 401(k), 403(b), or 457(b) plan to be made on a Roth basis. This provision does not apply to SEP plans or SIMPLE plans. (Effective for taxable years that start after December 31, 2022.)
- Plan sponsors of 401(a), 403(b), and governmental 457(b) plans could allow participants to elect to receive some or all of their matching contributions on a Roth basis, beginning with contributions made after the enactment date.

IRA Provisions

- IRA catch-up contributions would be indexed for cost-of-living adjustments in increments of $100, beginning with taxable years that start after December 31, 2023.
- The SSRA clarifies when the statute of limitations would start for certain IRA penalties. For excess contributions and failures to take RMDs, the statute of limitations would begin when the taxpayer files a return

(or would have filed, had they been required to file) for the year in which the transaction (or omission) created the tax liability. (Effective on the enactment date.)

- Only those IRA assets actually involved in a prohibited transaction (PT) would be treated as distributed. This is a substantial change to the current rule, which disqualifies the IRA and treats it as entirely distributed (and generally taxable) as of the first day of the year in which the PT occurs. (Effective for taxable years that start after the enactment date.)
- The SSRA would expand the types of distributions that could be considered IRA qualified charitable distributions (QCDs) and excluded from income. IRA owners could donate up to $50,000 (indexed) to a split-interest entity (e.g., a charitable remainder unitrust) instead of donating the QCD directly to a charitable entity. This would be subject to the overall $100,000 annual QCD exclusion limit. (This one-time taxpayer election would be available for taxable years ending after the enactment date.)

Disclosures and Notices

- The SSRA would require the Secretary of Labor, the Secretary of the Treasury, and the Director of the Pension Benefit Guarantee Corporation, to review the reporting and disclosure requirements for qualified retirement plans. Within two years following the date of enactment, these entities must report to Congress on the effectiveness of such requirements—and make recommendations that will simplify and improve these requirements.
- Employers with defined contribution plans would no longer have to send otherwise required notices to certain individuals who are eligible but who do not participate in the plan (“unenrolled participants”). Employers would still have to provide unenrolled participants an annual reminder notice about plan benefits—and any other documents that are requested. (Effective for plan years that start after December 31, 2022.)
- The SSRA would require defined contribution plan sponsors to provide paper benefit statements at least once annually, unless a participant specifically elects electronic delivery. For defined benefit plans, a paper benefit statement must be given at least once every three years. (Effective for plan years that start after December 31, 2023.)

Plan Corrections and Testing

- Employers could choose *not* to recover overpayments to plan participants. Sometimes participants receive more retirement benefits than they are owed. Under this provision, failing to recover an overpayment would normally not create a qualification failure. The SSRA contains many details, including rules on how an employer may properly collect overpayments and alternatively, how they can be treated as eligible rollover contributions. (Effective as of the enactment date.)
- More compliance failures would be eligible for self-correction under the Employee Plans Compliance Resolution System (EPCRS). (Effective date is the date of enactment, unless a failure was previously identified by the IRS.)
- Employers with defined contribution plans could separately apply top-heavy testing to otherwise excludable employees. This rule mirrors other nondiscrimination testing rules, which allow employees who are covered by a plan—even though they don’t meet the statutory age and service requirements—to be tested separately from those that do meet these requirements. (Effective for plan years that start after the enactment date.)
- The SSRA would change the stock attribution rules (under family attribution) for coverage and nondiscrimination testing. Revisions to the rules, such as disregarding community property laws, may require that employers redetermine whether their businesses are part of a controlled group or affiliated service group. (Effective for plan years that start on or after the enactment date.)
- Employers could correct certain employee salary deferral errors without penalty. Specifically, employers could fix “a reasonable administrative error in implementing an automatic enrollment or automatic escalation feature” in an eligible automatic contribution arrangement with 9½ months after the end of the plan year during which the error occurred. The correction must be uniformly and fairly applied, and must be “favorable to the participant.” The SSRA requires that the Treasury Department provide specific guidance on what this means. (Effective with respect to errors that are still within the 9½ month window after the SSRA’s enactment date, and for later errors.)

Investments

- 403(b)(7) custodial account plans would be able to invest in collective investment trusts. This provision would put such plans on more equal footing with other retirement plans. (Effective with respect to amounts invested after December 31, 2022.)
- Qualifying longevity annuity contracts (QLACs) would no longer be subject to the 25 percent limit for premiums—and former spouses could retain survivor rights after a divorce. QLACs, which are normally paid out toward the end of an individual's life expectancy, act as a hedge against depleting other retirement funds. The repeal of the 25 percent provision is effective upon enactment; the ex-spouse survivor provision has retroactive effect to July 2, 2014.
- The SSRA would require the Treasury Department to amend existing regulations to allow exchange-traded funds (ETFs) to be considered "insurance-dedicated" investments—and so available through individual variable annuities. This provision generally will be effective seven years after the enactment date.

Miscellaneous Provisions

- The SSRA would defer tax for certain sales of employer stock to an employee stock ownership plan sponsored by an S Corporation.
- The SSRA would expand securities treated as publicly traded in the case of employee stock ownership plans.
- The "first day of the month" deferral election requirement would be eliminated for governmental 457(b) plans. Instead of plan participants needing to make a deferral election *before the first day of the month* in which a deferral is made, the new rule would align with 401(k) plan rules, which require only that deferral elections be made before the cash is available to the participant. (Effective for taxable years that start after the enactment date.)
- The cash-out limit would increase from $5,000 to $7,000. This is the threshold that allows employers to distribute a former employee's plan assets, typically when the employee has failed to communicate with the employer. (Effective for distributions after December 31, 2022.)
- The SSRA would limit repayment of qualified birth or adoption distributions to three years following the date that such distribution was received. (Effective as if included in the SECURE Act.)
- The SSRA directs the DOL to review and report to Congress on the fiduciary standards under ERISA when selecting an annuity provider for a defined benefit pension plan. The information must be presented not later than one year following the bill's enactment date
- The SSRA also contains technical and clerical amendments related to the SECURE Act, including technical amendments related to difficulty of care payments, RMDs, and certain nondiscrimination requirements.
- The SSRA directs the Secretary of Labor to modify the participant disclosure regulation for performance benchmarks for asset allocation funds not later than one year following the bill's enactment date—and to report to Congress not later than three years after the enactment date with respect to these new benchmarking requirements.

Effective Dates and Amendment Requirements for SSRA

Many of the SSRA's effective dates are slated to take effect at the beginning of 2023. If the SSRA is enacted at the end of this year, a 2023 effective date could make it difficult to quickly adopt operational and compliance measures. In addition, the House version of SSRA not only establishes a December 31, 2024, amendment deadline for calendar-year plans, but it also applies the same amendment deadline to the SECURE Act, Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020, and the Taxpayer Certainty and Disaster Tax Relief Act of 2020. (Governmental and collectively bargained plans have until the end of their 2026 plan year.)

Looking Ahead

The overwhelming bipartisan support in the House for SSRA is encouraging. And the U.S. Senate is expected to take up a similar bipartisan bill later this year. We will continue to monitor and report on this bill's progress. As always, visit FuturePlan.com for future updates.