



# House Committee on Ways and Means

## Ranking Member Richard E. Neal

*Prepared by Ways and Means, Democratic Staff*

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### **The Automatic Retirement Plan Act of 2017 (Auto 401(k))**

**Proposal: except for the smallest employers, all employers would be required to have a plan.** Compared to IRAs, workplace-based defined contribution plans have much higher limits, employer contributions, and broader protections for participants.

- **Plans required for all employers except the smallest.**
  - The proposal would generally require all employers to maintain a 401(k) or 403(b) plan, subject to key exceptions. Except as noted below, the plan would have to satisfy certain requirements described below.
    - **Exemptions from plan requirement.** Governments, churches, small employers (10 or fewer employees), and new businesses (not in existence for three years) would be exempt from the requirement to maintain a plan.
    - **No employer contributions** would be required.
    - **For small employers (25 or fewer employees), new start-up credit covers 100% of small employer costs for five years.** For five years, small employers (25 or fewer employees) and independent contractors that elect to adopt a plan that meets the requirements described below would receive an annual tax credit equal to 100% of their plan-related expenses (other than contributions) up to \$5,000.
    - **Start-up credit for other small employers (more than 25 employees but not more than 100 employees).** The current start-up credit – equal to 50% of plan costs, up to a maximum credit of \$500, for three years – would be modified by (1) increasing the maximum credit to \$5,000, (2) extending the credit so that it applies for five years, not three, and (3) limiting the credit to adoptions of the required type of plan.
    - **Automatic enrollment credit for small employers.** Small employers that adopt the required type of automatic enrollment plan would be entitled to an annual tax credit equal to \$500 for five years.
    - **Open MEPs, relief from one bad apple rule, and option to have no fiduciary or administrative duties.** The proposal provides relief from the one bad apple rule applicable to multiple employer plans (“MEPs”), so that all employers in a MEP need not be penalized when one employer in the MEP violates the qualification rules. In addition, open MEPs would be available, which could, under the circumstances described below, relieve small employers (up to 100 employees) of all fiduciary and administrative

duties (other than passing on contribution amounts and conveying needed information, such as employee lists and payroll data.) This fiduciary relief would only apply if the designated MEP provider (1) receives no more than reasonable compensation, as agreed to by the employer, (2) agrees to assume all fiduciary responsibility not retained by the employer, and (3) notifies the employers of their obligations under the MEP.

- **Plan requirement.** The requirement to maintain a plan would be enforceable through an excise tax on employers that do not comply.
- **Current state auto IRA programs are exempt from the new rules.** The legislation provides that the states that have already enacted state auto IRA programs can continue such programs. For example, under the legislation, the state of Oregon can continue their state auto IRA program. Specifically, the bill provides that generally a state auto IRA requirement would apply to an employer in lieu of the federal requirement if the state auto IRA legislation was adopted before the date of enactment of this bill and the state auto IRA is not otherwise preempted by ERISA.

**Generally, all employees who have attained age 21 must be covered by the plan, including new, part-time workers.** The only employees not required to be covered are:

- Employees subject to a collective bargaining agreement.
- Nonresident aliens with no U.S.-source income.
- New employees until the first day of the second month beginning on or after their first day of employment.
- Employees under age 21.
- Seasonal or temporary employees not expected to work more than three months.

**Plan components.** The plans would be required to incorporate the following best practices, provided that certain existing plans would be grandfathered as described below.

- **Automatic enrollment at 6%.**
- **Automatic enrollment triennially at 6%.** Here is how triennial re-enrollment would work.
  - Assume that an employee opts out of making the 6% contribution in her first year. Under triennial automatic enrollment, in the fourth year, the employee is defaulted into a 6% contribution unless she opts out again.
  - Assume instead that in the first year, the employee opts to contribute a percentage lower than 6%. In the fourth year, the employee is defaulted into 6% unless she opts out again.
  - Assume instead that in the first year, the employee opts to contribute a percentage higher than 6%. In that case, the automatic escalation provisions referenced in the next bullet shall apply to the employee in subsequent years. So, for example, if the employee opts to contribute 9% in her first year, then there would be no automatic escalation in the second year, but in the fifth year, under the automatic escalation schedule described below, the employee would be defaulted into 10% unless she opts out.

- **Automatic escalation at 1% per year up to 10%, i.e., 6% to 7% to 8% to 9% to 10%.** Treasury would prescribe administrative rules to facilitate implementation of automatic escalation.
- **Testing rules.** Plans would fall into one of four categories:
  - **Employee contribution-only plans.** These plans would be exempt from testing because of the automatic enrollment rules. However, the limit on employee contributions would be \$8,000 (indexed), with post-age-50 catch-up contributions equal to \$1,000 (indexed).
  - **Safe harbor plans with employer contributions.** If a plan with employer contributions meets existing safe harbor requirements (modified to permit matching contributions on deferrals up to 10% of pay), the plan would be exempt from testing.
  - **Non-safe harbor plans with employer contributions.** These plans would be subject to testing.
  - **Grandfathered plans.** Grandfathered plans, as described below, would be exempt from testing to the extent the plans are covered by applicable safe harbors.
- **Use of qualified default investment alternatives (“ODIAs”),** such as target date funds.
- **Guaranteed income for life.** At least 50% of every vested account must be available for distribution in a form that provides guaranteed income for life, subject to an exception for vested accounts with \$5,000 or less.
- **Fee requirement.** Under the proposal, no participant may be charged unreasonable fees solely on the basis that the participant’s balance in an automatic contribution plan is small or solely on the basis that adoption of such a plan by the employee’s employer is mandatory.

### **Grandfathered plans**

A grandfathered plan is any plan that (1) is maintained as of the date of enactment, (2) has been maintained for at least a year as of such date of enactment, and (3) except as provided by the Secretary, has not decreased coverage or benefits substantially after the date of enactment. Grandfathered plans are exempt from the requirements set forth in the prior section except for (1) the fee requirement, and (2) the eligibility requirement, provided that the eligibility requirement would not apply to a grandfathered plan until the sixth plan year beginning after the date of enactment (eighth plan year in the case of a small employer with no more than 100 employees).

### **Other components of the proposal**

- **Portability of lifetime income options.** Consistent with a number of bipartisan proposals, this proposal would permit portability of lifetime income options. Under this provision, if an employer eliminates a lifetime income investment option from its plan menu, any employee invested in that option may roll over his or her investment in that option into an IRA, regardless of whether the employee is otherwise eligible to take a distribution. The proposal would apply to managed accounts in the same way that it applies to lifetime income investment options.

- **Increasing adequacy.** Under the proposal, the Saver's Credit would be modified as follows:
  - Make the Saver's Credit refundable;
  - Create one credit rate of 50%;
  - Establish the maximum amount of an individual's contribution that is eligible for the Saver's Credit at \$1,000;
  - Index the credit for inflation;
  - Increase the maximum income threshold to \$65,000 joint/\$32,500 individual (and create a phase out range for those earning slightly above those limits); and
  - Require the credit to be contributed directly to an IRA or plan (with a retirement bond as the default).
- **Authorization to require additional reporting.**
  - The IRS would be authorized to require additional Form 5500 reporting that would enable it to determine the effects of the nondiscrimination safe harbors on contribution levels for nonhighly compensated employees.
  - The DOL is authorized to prescribe simplified reporting for deferral-only arrangements, but is further authorized to distinguish in this regard between plans with less than 100 participants and other plans.

**Effective date.** The requirement to maintain a plan would apply to years beginning after December 31, 2019 (years beginning after December 31, 2021 in the case of a small employer with no more than 100 employees).