

RETIREMENT SAVINGS LOST AND FOUND ACT OF 2016 (S. 3078)

INTRODUCED BY SENATORS ELIZABETH WARREN (D-MA) AND STEVE DAINES (R-MT) ON JUNE 21, 2016

ALSO H.R. 5805, INTRODUCED 7/14/16 BY REP. LUKE MESSER (R-IN), SUZANNE BONAMICI (D-OR), AND RICHARD NEAL (D-MA)

ISSUE	CURRENT LAW	S. 3078 / H.R. 5805
<p align="center">ONLINE REGISTRY OF PLANS</p>	<p>When an employee terminates employment, leaving a vested benefit, the plan must file a Form 8955-SSA reporting participants with deferred vested benefits. (See IRC section 6057(a)). The information reported on Form 8955-SSA is used by the Social Security Administration (SSA), which provides the reported information to separated participants when they file for Social Security benefits. This information is not generally available, however, prior to application for Social Security benefits.</p>	<p>The bill would require SSA and Treasury, within two years, to establish an online “Retirement Savings Lost and Found” (the Registry) that would allow individuals to locate the plan administrator of any plan with respect to which the individual is a participant or beneficiary.</p> <p>This Registry would apply to any plan subject to ERISA’s vesting standards. Thus, it would not apply to governmental and church plans and to most executive deferred compensation plans.</p> <p>The Registry would not provide specific information about the benefit – just the contact information of the plan administrator for the plan.</p> <p>The bill requires SSA and Treasury, within one year, to establish within “the appropriate agency or subdivision” the Office of the Retirement Savings Lost and Found. The Director of the Registry reports to both the Commissioner of SSA and the Secretary of the Treasury.</p>
<p align="center">REPORTING OF MANDATORY CASH-OUTS</p>	<p>Under current law, a plan may generally cash-out a participant who terminates employment if the value of his or her benefit does not exceed \$5000. Internal Revenue Code (IRC) section 401(a)(31)(B) requires that, if the cash out amount exceeds \$1000 if the participant does not elect otherwise, the cashed out amount must be rolled over into an IRA established in the participant’s name. This is often called an “automatic IRA rollover.”</p>	<p>The bill would require that a plan administrator inform a trustee that a distribution is an automatic IRA rollover (called a “mandatory distribution” in the bill). The bill would also apply the penalty that currently applies for failure to furnish the special tax notice (also called the 402(f) notice) to this new notice.</p> <p>The bill would also amend the reporting requirement for IRAs under IRC section 408(i) to require a filing with Treasury and the Registry that identifies the distribution as an automatic IRA rollover and identifies the receiving trustee.</p>

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<p>ENHANCED REPORTING AT TERMINATION OF EMPLOYMENT</p>	<p>The Form 8955-SSA provides information on the participant, his or her SSN, the type of benefit, and the amount of the vested benefit. It is focused on benefits that are not paid, so that the SSA can tell individuals where they may have a vested benefit.</p>	<p>The bill would enhance the information reported on Form 8955-SSA. It would include additional reporting for any participant (a) whose benefits were fully paid, (b) whose account was cashed out and distributed under the automatic IRA rollover rules, or (c) who was paid a distributed annuity.</p> <p>For automatic IRA rollovers, the plan would report the trustee that received the IRA rollover (and account number) and for a distributed annuity, the issuer and contract or certificate number.</p>
<p>ELECTRONIC REPORTING</p>	<p>Generally, IRS is prohibited from requiring filing of most forms electronically until the filer is required to file at least 250 returns during a calendar year. This includes filings such as the 8955-SSA under IRC section 6057 and other employee benefit returns (6058 and 6059).</p>	<p>The bill would lower the threshold for electronic filings under IRC sections 408(i), 6041, 6047, 6057, 6058, and 6059, to 50 returns. The purpose of this change is to limit the number of paper filings that must be reviewed for the Registry, but it also increases the number of plan sponsors that would be required to file their annual report (Form 5500) electronically. This change is effective immediately because it applies to returns and reports due after enactment.</p>
<p>INVESTMENTS FOR AUTOMATIC IRA ROLLOVERS</p>	<p>ERISA section 404(c)(3) provides fiduciary relief for automatic IRA rollovers, by treating a participant that has his or her account rolled over as if the participant exercised discretion over the account.</p> <p>In addition, under section 657(c)(2)(A) of the Economic Growth Tax Relief Reconciliation Act of 2011 (EGTRRA), the Department of Labor (DOL) was directed to provide a general fiduciary safe harbor. DOL's regulation requires the investment in the IRA to be a product that seeks to maintain the dollar value that is equal to the amount invested in the product. In other words, generally, the safe harbor relief requires the IRA be invested in a money</p>	<p>The bill would direct DOL to promulgate regulations within 180 days of enactment that would identify target date or lifecycle funds, or specify the characteristics of target date or lifecycle funds, that would meet the requirements of ERISA section 404(c)(3). Thus, it appears that relief under 404(c) would be available only if the automatic IRA rollover were invested in a target date or lifecycle fund.</p> <p>The bill does not explicitly amend EGTRRA section 657(c)(2)(A), and therefore the status of the general DOL safe harbor is unclear.</p>

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	market fund, FDIC-insured account, or guaranteed insurance product.	
EXPANSION OF CASH-OUT LIMIT	<p>The automatic IRA rollover rules in IRC section 401(a)(31)(B) apply to a plan which provides that any nonforfeitable accrued benefit for which the present value does not exceed \$5000 is immediately distributed to the participant.</p> <p>This requirement is closely related to another rule in the IRC (section 411(a)(11)), which provides that a plan generally cannot distribute before retirement a participant's benefit without consent, if the benefit exceeds \$5000.</p>	<p>The bill would raise the limit in IRC 401(a)(31)(B) from \$5000 to \$6000.</p> <p>The bill does not, however, raise the mandatory cash-out limit in IRC section 411(a)(11). Thus it is not clear under the bill whether the cash-out limit has been increased, or just affects the plans to which the automatic IRA rollover rules in 401(a)(31)(B) apply.</p>
TRANSFER OF LESSER AMOUNTS TO REGISTRY OR <i>myRA</i>	If a plan makes a mandatory distribution of \$1000 or less, the plan is not required to place this distribution in an automatic IRA rollover. The distribution can be paid in cash to the participant if the participant does not make another election.	<p>The bill would require a plan to provide that mandatory distributions of \$1000 or less, if the participant does not claim the distribution within 6 months, will be paid to the Director of the Registry or to an IRA established by Treasury (presumably to the <i>myRA</i>). The distribution is treated for tax purposes similar to a direct rollover to an IRA.</p> <p>If such a distribution is made to the government, the plan administrator would be required to report certain information to the Registry.</p> <p>If the payment were made directly to the Director of the Registry, rather than Treasury, the Director would be required to invest the amount transferred in U.S. securities and would be required to distribute the account upon application.</p>
EFFECTIVE DATE	Except where noted, the bill would be effective for distributions made 2 years or later after enactment. The new rules for transfer of distributions under \$1000 would apply to all vested benefits, regardless of date of separation from service.	

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APPROPRIATIONS	The bill authorizes “such sums as may be necessary to carry out the purposes of” setting up the Registry. The bill also provides that the Director of the Registry may contract with a third party to carry out the Director’s responsibilities. The House companion bill (H.R. 5805) does not contain this provision.	