

**Securing a Strong Retirement Act of 2020,
H.R. 8696, Introduced on October 27
by Ways and Means Chairman Neal
and Ranking Member Brady**

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Requiring automatic enrollment in new retirement plans.

- **All new 401(k), 403(b), and SIMPLE plans would be required to include (1) automatic enrollment at a minimum of 3% and (2) automatic escalation at one percentage point per year up to 10%. This would be effective for 2022, and plans in existence on the effective date would be grandfathered.**
- **Exceptions for government plans, church plans, employers with 10 or fewer employees, and new businesses that have not been in existence for three years.**



Small business incentives to offer retirement plans.

The three-year small business start-up credit is 50% of administrative costs, up to an annual cap that can be as much as \$5,000.

- **50% would be increased to 100% for employers with up to 50 employees.**
- **Except in the case of DB plans, an additional credit would be provided equal to the applicable percentage of the amount contributed by the employer on behalf of employees, up to a per-employee cap of \$1,000.**
 - This full additional credit would be limited to employers with 50 or fewer employees, and phased out for employers with between 51 and 100 employees.
 - The applicable percentage would be 100% in the first and second years, 75% in the third year, 50% in the fourth year, 25% in the fifth year, and zero thereafter.



Saver's Credit

- **Under current law, the Saver's Credit is a specified percentage of retirement savings contributions, up to \$2,000 (not indexed), made by certain individuals.**
- **The specified percentage is 50%, 20%, 10%, or 0%, based on the taxpayer's adjusted gross income ("AGI"). For example, married taxpayers are eligible for a 50% credit if their AGI does not exceed \$39,000, 20% if their AGI is between \$39,001 and \$42,500, 10% if their AGI is between \$42,501 and \$65,000, and 0% if their AGI is over \$65,000).**



Saver's Credit

The bill:

- **Increases the \$2,000 on contributions taken into account to \$3,000, and is intended to index that amount.**
- **Makes the credit a straight 50% until it starts to phase out.**
- **Begins the phase-out of the credit at \$40,000 (indexed) of AGI for single taxpayers, and \$80,000 (indexed) for joint returns. The credit is phased out over \$20,000 of AGI, so that joint returns with \$100,000 or more of AGI receive no credit.**
- **Directs Treasury to increase awareness of the credit.**



Allow 403(b) plans to invest in collective investment trusts.

- **403(b) plan investments are generally limited to annuity contracts and mutual funds, which appears to be an historical anomaly. This limitation cuts off 403(b) plan participants from access to collective investment trusts, which are often used by 401(a) plans due to their lower fees.**
- **Under the bill, 403(b) custodial accounts would be permitted to invest in collective investment trusts, and the securities laws would be amended to permit this.**



Increase in required beginning date to age 75 for mandatory distributions.

Under the required minimum distribution (“RMD”) rules, participants are generally required to begin taking distributions from their retirement plan at age 72, increased from age 70 ½ for 2020.

The bill would increase the RMD age from 72 to 75. Effective for distributions required to be made after December 31, 2020, with respect to individuals who attain age 72 after such date.

- In a separate technical correction section at the end of the bill, the bill clarifies that all defined benefit plan participants (other than 5% owners) who retire after the year that they turn 70 ½ are entitled to an actuarial adjustment for the post-70 ½ period for which they are not receiving distributions.**



Deferral of tax for certain sales of employer stock.

- **The bill extends to all domestic corporations, including S corporations, provisions allowing deferral of tax on gain from the sale of employer securities to an ESOP.**



Indexing IRA catch-up contribution limit.

- **Under current law, the limit on IRA contributions is increased by \$1,000 (not indexed) for individuals who have attained age 50. The bill would index such limit in the same manner as the regular IRA limit.**



Higher catch-up contribution for individuals who have attained age 60.

- **Under current law, employees who have attained age 50 are permitted to make catch-up contributions under a retirement plan in excess of the otherwise applicable limits. The limit on catch-up contributions for 2020 is \$6,500 (\$3,000 in the case of SIMPLE plans).**
- **The bill would increase these limits to \$10,000 and \$5,000, respectively, for individuals who have attained age 60.**



403(b) MEPs.

The bill would:

- **Clarify that 403(b) plans may be maintained on a multiple employer plan (“MEP”) basis, provided that governmental and non-governmental employers may not participate in the same 403(b) MEP.**
- **Permit open 403(b) MEPs (i.e., pooled employer plans (“PEPs”)) under the same rules that apply to qualified plans.**
- **Clarify that, under certain circumstances, the failure by one employer participating in a 403(b) MEP to satisfy the 403(b) plan rules does not affect the tax treatment of the rest of the MEP.**



Treatment of student loan payments as elective deferrals for purposes of matching contributions.

- **Under the bill, for purposes of the nondiscrimination testing and safe harbor rules, an employer would be permitted to make matching contributions under a 401(k) plan, 403(b) plan, or SIMPLE IRA with respect to “qualified student loan payments.” Governmental employers would also be permitted to make matching contributions in a section 457(b) plan or another plan with respect to such repayments.**



Extending the start-up credit to small employers that join a MEP (which includes PEPs).

- **The bill provides that small employers that join a MEP are entitled to the start-up credit for their first three years in the MEP (or the first two years in the MEP and the preceding year) regardless of how long the MEP has been in existence. This addresses a glitch in current law.**



Military spouse retirement plan eligibility credit for small employers.

- **Small employers (i.e., up to 100 employees) would be eligible for a three-year tax credit up to \$500 per nonhighly compensated military spouse if they (1) make military spouses eligible to participate in a defined contribution plan within two months of hire, (2) upon plan eligibility, make the military spouse eligible for any matching or nonelective contribution available to a similarly situated employee who has at least two years of service, and (3) make the military spouse 100% immediately vested in all employer contributions.**



Small immediate financial incentives for contributing to a plan.

- **Under current law, immediate incentives for making 401(k) contributions, like \$25 gift cards, are prohibited by the rule generally prohibiting any incentives other than matching contributions. Under the bill, de minimis financial incentives would be permitted under 401(k) and 403(b) plans.**



Safe harbor for corrections of employee elective deferrals.

- **The bill would allow a grace period to correct, without penalty, reasonable errors in administering automatic enrollment and automatic escalation features if they are corrected prior to the date that is 9 ½ months after the end of the plan year in which the mistakes were made.**



Long-term part-time workers: three years to two years.

- Prior to the SECURE Act, employers generally could exclude certain part-time employees (i.e., employees who have not satisfied a requirement that they have 1,000 hours of service in a year) when providing a plan to their employees. SECURE generally required 401(k) plans to have a dual eligibility requirement under which an employee must complete either a one year of service requirement (with the 1,000-hour rule) or *three* consecutive years of service where the employee completes at least 500 hours of service. The bill reduces the three consecutive year requirement to two years.



Parity for firefighters and emergency medical personnel.

- **Many state political subdivisions contract with tax-exempt public safety agencies to provide firefighting and out-of-hospital emergency medical services. The bill clarifies that plans established by a government but maintained by such agencies are governmental plans, so that the agencies' employees can be treated in the same manner as other emergency personnel employed directly by the government.**



Remove RMD barriers for life annuities.

- **The bill would eliminate barriers to the availability of life annuities in plans and IRAs that arise under current law due to an outdated actuarial test in the RMD regulations. The bill would update the actuarial test and exempt certain types of benefits from the test, such as (1) annuity payments that increase by less than 5% per year, and (2) lump sum return of premium death benefits.**



Qualifying longevity annuity contract reforms.

- **Qualifying longevity annuity contracts (“QLACs”) are generally deferred annuities that begin payment at or near the end of an individual’s life expectancy. The QLAC regulations limit the premiums an individual can pay for a QLAC to the lesser of (1) \$135,000 and (2) 25% of the individual’s account balance under the plan or IRA.**



QLACs

The bill:

- **Repeals the 25% limit.**
- **Raises the \$135,000 limit to \$200,000.**
- **Facilitates the sales of QLACs with spousal survivor rights.** The bill clarifies that a divorce occurring after a QLAC is purchased but before payments commence will not affect the permissibility of the joint and survivor benefits previously purchased under the contract.
- **Provides a free-look period.** Generally, QLACs are prohibited from having any cash surrender value or similar right. The bill clarifies that this prohibition does not apply to free-look periods, up to 90 days.



Variable ETFs

- ETFs are similar to mutual funds, except the shares can be traded throughout the day, and the expense ratios are generally very low.
- However, outdated Treasury regulations have prevented ETFs from being widely available through individual variable annuities; simply because the regulations were written before the evolution of ETFs, ETFs cannot satisfy the regulatory requirements to be “insurance-dedicated.” The bill would direct Treasury to update the regulations to reflect the ETF structure. The bill also would clarify that similarities between an insurance-dedicated fund and another fund will not cause the insurance-dedicated fund to be treated as “publicly available” under the diversification rules involving “investor control.”



Recovery of retirement plan overpayments.

- **Sometimes, retirees mistakenly receive more money than they are owed under their retirement plans. The legislation would allow retirement plan fiduciaries the latitude to decide not to recoup inadvertent overpayments. If plan fiduciaries do choose to recoup overpayments, limitations and protections on the amount of the recoupment would apply to safeguard retirees. In addition, rollovers of the overpayments would remain valid, which is another important protection for participants.**



Reducing 50% penalty tax.

- **Failures by an individual to take minimum distributions are subject to a 50% excise tax. The bill reduces that tax to 25%. If a failure to take a required minimum distribution from an IRA is corrected in a timely manner (as defined under the bill), the excise tax on the failure is further reduced from 25% to 10%.**



Performance benchmarks for target date funds.

- **Under the bill, by six months after the date of enactment, DOL is directed to modify its regulations so that an investment that uses a mix of asset classes can be benchmarked against a blend of broad-based securities market indices.**



Review and report to Congress related to reporting and disclosure requirements.

- **The bill would direct Treasury, DOL and PBGC to review the current ERISA and Code reporting and disclosure requirements and make recommendations to Congress by 18 months after the date of enactment to consolidate, simplify, standardize and improve such requirements.**



Unenrolled employees.

- **Under current law, employees eligible to participate in a retirement plan are required to receive a broad array of notices of their various rights under the plan. In the case of eligible employees who have not elected to participate in the plan (“unenrolled participants”), these notices are generally unnecessary, just adding costs. Accordingly, under the proposal, defined contribution plans would cease to be required to provide notices to unenrolled participants, other than an annual reminder notice of the participant’s eligibility to participate in the plan.**



Retirement savings lost and found.

- **Many people are unable to find and receive the benefits that they earned—often because the company they worked for moved, changed its name, or merged with a different company. Similarly, many employers are unable to find their retirees, because the former employees changed their names or addresses. The legislation would use data that employers are already required to report to the Treasury Department to create a national, online lost and found for Americans’ retirement accounts.**



Exception from RMD rules when retirement savings do not exceed \$100,000.

- **Under current law, participants are generally required to begin taking regular distributions from their retirement plan at age 72 (changed to 75 under this bill). The bill would provide that defined contribution plan participants and IRA owners are not required to comply with the lifetime RMD rules if they have a balance in their defined contribution plans and IRAs of not more than \$100,000 (indexed) on December 31 of the year before they attain 75.**



Self-correction of inadvertent plan and IRA violations.

- **Under the bill, except as otherwise provided in regulations, generally all inadvertent plan violations may be self-corrected under the IRS' Employee Plans Compliance Resolution System ("EPCRS") without a submission to the IRS, provided that this rule does not apply if the IRS discovers the violation on audit and the employer has not at that point taken actions that demonstrate a commitment to correct the violation. In addition, the bill would (1) apply EPCRS to inadvertent IRA errors, and (2) exempt inadvertent RMD failures from the otherwise applicable excise tax if the failure is corrected within 180 days.**



Eliminate the 457(b) “first day of the month” requirement.

- **Participants in a 457(b) plan must request changes in their deferral rate prior to the beginning of the month in which the deferral will be made. The bill allows such elections to be made at any time prior to the date that the compensation being deferred is available, thus conforming the 457(b) rule to the 401(k) and 403(b) rule.**



Expansion of IRA charitable distribution rule.

- **Certain IRA distributions to a charity can be excluded from income up to \$100,000. The legislation expands the IRA charitable distribution provision to allow for one-time distributions to charities through charitable gift annuities, charitable remainder unitrusts, and charitable remainder annuity trusts. The bill also increases the annual IRA charitable distribution limit from \$100,000 to \$130,000.**



Allow plan participants to make charitable distributions.

- **Under the bill, the same IRA charitable distribution rule described above, as amended, would apply to plans.**



Distributions to firefighters.

- **Under current law, if an employee terminates employment after age 55, and takes a distribution from a retirement plan, the 10% early distribution tax does not apply. There is, however, a special rule for “qualified public safety employees” in governmental plans, under which age 50 is substituted for age 55 for purposes of this exception from the 10% tax. This exemption applies to public sector firefighters, but not private sector firefighters. The bill extends the age 50 rule to private sector firefighters, who merit the same treatment.**



Exclusion of certain disability-related first responder retirement payments.

- **The bill would allow first responders to exclude service-connected disability pension payments from gross income after reaching retirement age.**



Statute of limitations.

- **Under the bill, the statute of limitations for taxes for prohibited transactions, excess contributions, or required minimum distribution failures shall start as of the date that an income tax return is filed for the year in the violation occurred (or the date that such return would have been due in the case of a person not required to file a return). This bill addresses the current-law problem under which the statute of limitations could never start in the absence of the filing of a return regarding a violation that a taxpayer may not be aware of.**



Annual paper benefit statement.

- *Very generally*, the bill amends ERISA to provide that with respect to defined contribution plans relying on the 2020 e-delivery regulations, unless a participant elects otherwise, the plan is required to provide a paper benefit statement at least once annually. The other three quarterly statements required under ERISA are not subject to this rule. For defined benefit plans using the 2020 regulations, unless a participant elects otherwise, the statement that must be provided once every three years under ERISA must be a paper statement.



Plan amendments.

- **The bill allows plan amendments made pursuant to this bill to be made by the end of 2022 (2024 in the case of governmental plans) as long as the plan operates in accordance with such amendments as of the effective date of a bill requirement or amendment.**

