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Will Congress Act on Retirement Savings?

A summary of current legislative proposals

Overview

With nearly a third of the private sector workforce lacking access to workplace retirement benefits, policymakers at all levels of government are discussing initiatives to increase retirement savings. The last major piece of federal retirement legislation to become law was the Pension Protection Act of 2006. During the ensuing 12-year lull in national focus, states have moved forward with a range of proposals to narrow the gap in retirement plan coverage, including automatic enrollment in individual retirement accounts (auto-IRAs) and open multiple employer plans (MEPs).

However, momentum behind a bipartisan package of proposals known as the Retirement Enhancement and Savings Act (RESA) may mark a return of congressional focus on retirement. While RESA is by no means guaranteed to become law, its broad support has encouraged backers and generated interest in other retirement legislation introduced this session. Although the measures differ in their specifics, they focus on the following: group retirement plans, automatic savings features and accounts, mandatory plans, lifetime income, and electronic statements. This brief examines these congressional efforts.

Table 1

Current Retirement Legislation

Bills introduced in the 115th Congress and featured in this brief

Number	Title	Sponsor
H.R. 854	Retirement Security for American Workers Act	Rep. Vern Buchanan (R-FL)
S. 695/H.R. 1688	Warner-Sánchez	Sen. Mark Warner (D-VA) Rep. Linda Sánchez (D-CA)
S. 1383	Retirement Security Act of 2017	Sen. Susan Collins (R-ME)
S. 1861/H.R. 3499	Automatic IRA Act of 2017	Sen. Sheldon Whitehouse (D-RI) Rep. Richard Neal (D-MA)
H.R. 4523	Automatic Retirement Plan Act of 2017	Rep. Richard Neal (D-MA)
H.R. 4524	Retirement Plan Simplification and Enhancement Act of 2017	Rep. Richard Neal (D-MA)
H.R. 4610	Receiving Electronic Statements to Improve Retiree Earnings Act	Rep. Jared Polis (D-CO)
H.R. 4637	Small Businesses Add Value for Employees Act of 2017	Rep. Ron Kind (D-WI)
S. 2526/H.R. 5282	Retirement Enhancement and Savings Act of 2018	Sen. Orrin Hatch (R-UT) Rep. Mike Kelly (R-PA)
S. 3218	Strengthening Financial Security Through Short-Term Savings Accounts Act of 2018	Sen. Heidi Heitkamp (D-ND)
S. 3219	Cotton-Young-Heitkamp-Booker	Sen. Tom Cotton (R-AR)
S. 3220	Refund to Rainy Day Savings Act	Sen. Cory Booker (D-NJ)
S. 3221	Retirement Security Flexibility Act of 2018	Sen. Todd Young (R-IN)

Group plans

Previous research by The Pew Charitable Trusts has found that small employers are reluctant to offer retirement plans because of perceived high startup costs and administrative responsibilities.[1] One possible solution is for employers to band together to adopt a shared retirement plan, thereby reducing costs, administrative burdens, and fiduciary liability. Open multiple employer plans (MEPs) are a type of group retirement plan in which several employers—unrelated through any direct ties (such as parent-subsidiary) or with no commonality of interest (such as belonging to the same industry trade association)—adopt a single shared plan.[2] Open MEPs could augment workers' access to retirement plans if the programs could reduce liability and costs beyond what is already available to employers in the small retirement plan market. However, since at least 2012, federal guidance has prevented unrelated businesses from joining a group plan, thus disallowing open MEPs.

One congressional proposal would codify a new kind of open MEP—a pooled employer plan (PEP). PEPs would enable unrelated businesses to join a common retirement plan, with a single regulatory filing, which would cover the employers' disparate workers in much the way MEPs operated before the 2012 guidance.

PEPs would also come with some technical fixes, because there are some instances in which a single filing could entail disadvantages. Under current rules, plans with fewer than 100 participants are exempt from having to perform an annual audit, which can be costly. Because a group plan that aggregated participants from several employers would be viewed as a single plan, it would quickly reach the 100-participant threshold. For this reason, PEP proposals would amend the audit rules to exempt plans with fewer than 1,000 participating employers from the annual audit so long as no single employer had 100 or more participants.

As noted, group plans shift much of the fiduciary risk associated with operating a plan from an individual employer to a third party while reducing administrative costs by taking advantage of economies of scale. To make sure employers remain engaged, they retain responsibility for selecting and monitoring the third party. In another technical fix, proposed legislation also makes clear that PEPs would be exempt from the "one bad apple" rule—that is, one participating employer's fiduciary or administrative failures would not disqualify the entire PEP.

PEPs could be 401(k) plans, profit-sharing plans, defined benefit pensions, and individual retirement accounts (IRAs), which would expand potential PEP offerings to include traditional and Roth IRAs, simplified employee pensions (SEPs), and Savings Incentive Match Plan for Employees (SIMPLE). SEPs and SIMPLE are low-cost plans designed for small employers, potentially offering an economical, if no-frills, plan for businesses that might otherwise not be able to afford one. Of note, legislation introduced to date would not allow nonprofit 403(b) plans (which apply to public schools and certain tax-exempt organizations) and 457 plans (which apply to certain state and local governments and nonprofits) to be structured as PEPs, making the pooled employer plan solely a for-profit option.

PEPs appear in several pieces of legislation before Congress and are a primary part of RESA. RESA is sponsored in the U.S. Senate by Orrin Hatch (R-UT), chairman of the Finance Committee, and co-sponsored by Ron Wyden (OR), the panel's ranking Democrat, and is modeled on a version introduced in 2016. RESA is a bipartisan amalgamation of many long-sought retirement modifications, not just PEPs, which helped it pass out of committee unanimously with 26 votes in 2016. An identical version introduced in the U.S. House of Representatives has the support of 39 co-sponsors—20 Republicans and 19 Democrats. The legislative package did not come to the floor in either chamber during the 2016 session, but with such large bipartisan margins it now stands an excellent chance of passage if it is considered alone or as part of a larger measure.

Before and after RESA was reintroduced in March 2018, several bills incorporating the PEP language were filed, illustrating the depth of congressional support for PEPs:

- The Retirement Security Act, introduced by Senators Susan Collins (R-ME) and Bill Nelson (D-FL), replicates RESA with only minor changes.
- The Automatic Retirement Plan Act (ARPA) was introduced by Representative Richard Neal (MA), ranking Democrat on the House Ways and Means Committee, and mirrors RESA's PEP language.

- The Retirement Security for American Workers Act was sponsored by Representatives Vern Buchanan (R-FL), Jim Renacci (R-OH), Ron Kind (D-WI), and Neal, and contains language virtually identical to the PEP language in RESA.
- S. 3219, a bipartisan proposal from Senators Tom Cotton (R-AR), Todd Young (R-IN), Heidi Heitkamp (D-ND), and Cory Booker (D-NJ), essentially mirrors RISA's PEP language but further reduces the employer's fiduciary responsibility by shifting liability from the employer to the plan provider.

In another iteration, Rep. Kind introduced the Small Businesses Add Value for Employees (SAVE) Act, co-sponsored by fellow House Ways and Means Committee member Dave Reichert (R-WA). Rather than creating PEPs as a special kind of MEP, SAVE would directly authorize open MEPs and exempt them from the bad apple rule but only for businesses with 500 or fewer employees.

Taking a different approach, Senator Mark Warner (D-VA) and Representative Linda Sánchez (D-CA) have introduced S. 695/H.R. 1688 (Warner-Sánchez), co-sponsored by Sen. Collins and Representative Phil Roe (R-TN), which would allow multiple plans to file the required information return with the Department of Labor on a single form if they were managed by the same trustee, fiduciaries, and administrator. While Warner-Sánchez doesn't address the plan-sponsor commonality issues that RESA does, it essentially would result in the same outcome by allowing multiple plans that are managed by the same third parties to file as a single plan with a single audit. This would carry the same advantages and disadvantages offered by an open MEP but would not have the associated benefits of PEP-like electronic document delivery and explicit statutory relief from the one bad apple rule.

Expanding coverage and automatic savings tools

Many bills under consideration contain additional approaches aimed at expanding coverage and boosting savings. Both RESA and the Retirement Plan Simplification and Enhancement Act (RPSEA), also introduced by Rep. Neal, would remove the cap on the automatic escalation of employee contributions that is now 10 percent of pay. To further incentivize automatic savings, both bills would create a $500 tax credit for including automatic enrollment as a feature of a new retirement plan. RESA, RPSEA, and another bill, the Automatic IRA Act, sponsored by Rep. Neal and Senator Sheldon Whitehouse (D-RI), would further encourage employers to offer their own qualified plan by increasing the small business plan startup tax credit from $500 to up to $5,000.

Additionally, RPSEA would expand plan coverage of part-time employees. Under the bill, those working at least 500 hours annually would be eligible to participate in an employer's 401(k). Many plans currently require 1,000 hours annually to participate. The bill also would make technical edits intended to lessen the administrative burden on employers.

The SAVE Act also includes tweaks and technical changes to current tax law aimed at encouraging employers and employees to save for retirement. Highlights include:

- Creating a new automatic enrollment safe harbor—making explicit standard plan features that would not violate the law—for 401(k) plans in which employee contributions would start between 6 and 10 percent of pay with automatic escalation at 2 percentage points a year to at least 10 percent; employer matching contributions would start at 100 percent of employee contributions up to 1 percent of pay, 50 percent of employee contributions over 1 percent up to 6 percent, and 25 percent of employee contributions over 6 percent to 10 percent.

- Creating a new automatic enrollment IRA; employee contributions would start at 3 percent of pay with automatic escalation of 1 percentage point a year to 15 percent.
- Amending the SIMPLE 401(k) to create an automatic enrollment deferral only plan—employer contributions would be prohibited—with a contribution limit up to $10,000. To avoid leakage (the movement of savings out of plans prior to retirement), the plan would not allow participant loans or withdrawals except in rare cases.

Finally, Sens. Booker, Cotton, Heitkamp, and Young have proposed several additional pieces of bipartisan retirement legislation. The Retirement Security Flexibility Act of 2018, sponsored by Sen. Young, would create its own automatic enrollment safe harbor. This bill would raise the cap on the automatic escalation of employee contributions from 10 percent of pay to 15 percent. It also would modify the amounts that highly compensated employees could save in the plan relative to lower-paid employees.

The same senators have proposed two additional measures to reduce retirement plan leakage caused by early withdrawals and loans that participants may make in the face of a financial shock. The Strengthening Financial Security Through Short-Term Savings Accounts Act (STSA) and the Refund to Rainy Day Savings Act (RRDSA) both create savings vehicles that could be drawn on when facing unexpected financial pressures, allowing retirement savings to remain untapped. The STSA would allow employers and depository institutions or payroll providers to offer an automatic-enrollment, payroll-deduction-funded account of up to $10,000. Contributions to the account would be made in addition to any retirement contributions. RRDSA would allow an individual to direct 20 percent of a federal tax refund into a new Treasury-managed rainy day fund. The fund would consist of Treasury bills, and the principal and interest would be available to the saver 30 to 180 days after investment.

The changes included in RESA, REPSA, and the SAVE Act could dramatically increase Americans' savings, especially allowing for a 6 percent auto-escalation default 401(k) safe harbor. This represents well more than a doubling of the existing safe harbor, and due to the impact of compound interest would result in significantly larger employee savings at retirement if widely adopted.

Automatic IRA

While RESA, REPSA, and the SAVE Act have many features designed to increase retirement plan coverage, another set of bills seeks to provide near universal plan access. Auto-IRA bills have been introduced in every session of Congress since at least 2006, often with bipartisan sponsorship. The effort behind a national auto-IRA became less bipartisan when President Barack Obama began including the proposal in his budgets in 2008. Now, with cities and states across the country adopting auto-IRA plans—six have done so—and industry worried about a patchwork of benefit regulations, Congress may take another serious look at a federal auto-IRA program.[3]

The Automatic IRA Act would require businesses with 10 or more employees that had been in operation for at least a year and that did not sponsor a tax-qualified retirement savings plan (with some exceptions) to automatically enroll their workers in a payroll deduction IRA. Employees could opt out of the program, and businesses subject to it could offer their own qualified retirement plan to avoid participating.

The default contribution rate would be set by the treasury secretary at between 2 and 6 percent but could be adjusted by the employee. The bill also would allow the secretary to implement automatic escalation of up to 1 percentage point a year for program participants. Contributions would be invested in Treasury bonds by default, but workers could select from a range of options, including target date funds that seek an age-appropriate risk profile, principal preservation funds that seek to retain value at the expense of high returns, and annuities intended to provide lifetime income. Because IRAs are held in the investor's name, the federal government would not directly manage the contributions or have a claim on them. Contributions would never be comingled with the government's General Fund.

Eligible small businesses with 100 or fewer employees would receive a tax credit of $25 per employee up to a maximum of $250 a year plus an additional $500 tax credit in the first year they participated in the program and $250 the second year. Any failure to enroll eligible employees or facilitate the required contributions would result in a fine of up to $100 per employee per year.

Mandatory employer plans

In an even more robust approach to directly addressing the coverage gap, Rep. Neal's ARPA requires most private and public sector employers to maintain a 401(k) or 403(b) plan. The idea has received some industry backing, with the Insured Retirement Institute, a retirement industry trade association, supporting the legislation and State Street Global Advisors CEO Ronald P. O'Hanley calling for similar measures.

Differing from IRAs, these plans would allow for larger employee contributions as well as employer contributions. The coverage requirement would take effect in 2020 for those with more than 100 employees—2022 for those with 100 or fewer—and would apply to businesses that had been operating for at least three years and had more than 10 workers.

To incentivize compliance, businesses subject to the legislation that do not offer a qualifying plan would be subject to a penalty of $10 per employee per day. Workers would be automatically enrolled at a default 6 percent of pay, though they could opt out or change their contribution rate. Contributions would automatically escalate by 1 percentage point a year up to 10 percent of pay.

Lifetime income and plan distributions

Many retirees worry about outliving their savings, and annuities are designed to mitigate this risk. RPSEA promotes lifetime income via annuities. The legislation would raise the amount that could finance qualified longevity annuity contracts (QLACs)—annuities that are funded by a retirement plan and payable later in retirement, for instance at age 85. As an annuity, a QLAC guarantees monthly payments for the contract holder until death regardless of market performance. The limit would be raised from the current maximum—the lesser of $125,000 or 25 percent of the retirement account—to $200,000.

The SAVE Act also would encourage lifetime income payments with a required balance statement reporting the monthly income a participant would receive when converting his or her account balance to an annuity and by creating a safe harbor for plan sponsors when selecting an annuity provider.

Both RESA and RPSEA would modify the minimum required distribution rules while repealing the maximum age for traditional IRA contributions, now 70 years, 6 months.

Electronic statements

To modernize the regulations dictating communications from investment managers to clients, Representative Jared Polis (D-CO) has offered the Receiving Electronic Statements to Improve Retiree Earnings (RETIRE) Act, co-sponsored by Rep. Roe. The focus of this bill is entirely on electronic delivery of required plan documents, allowing them to be provided via email, posted to a website, or by other means. Participants must be able to modify their method of delivery or elect to receive paper versions at no additional cost. Additionally, an annual paper notice would be required, informing participants of their method of delivery and right to modify it. RESA also would allow participants to receive communications electronically by default.

This is a change long sought by the retirement industry but is not unique to it. Mailings can be expensive and can drive up plan costs for all. However, some advocates worry about the disadvantages to those without regular access to or facility with the internet.

Conclusion

While Congress has been largely absent from the retirement debate since 2006, members may be ready to re-engage with RESA. In most cases, the proposals bundled together in RESA have been floated for many years and their adoption is a real possibility. Even if the momentum behind RESA carries the package through to passage, either as a stand-alone bill or part of a larger, must-pass measure, issues with the American retirement system will remain. Congress could address these shortfalls by considering some of the other retirement legislation currently pending that are designed to expand access to group retirement plans, promote automatic savings features, mandate plan access, encourage lifetime income, and allow for the wider use of electronic statements.

Endnotes

1 The Pew Charitable Trusts, "Employer Barriers to and Motivations for Offering Retirement Benefits: Insights From Pew's National Survey of Small Businesses" (June 2017), http://www.pewtrusts.org/~/media/assets/2017/09/employer_barriers_to_and_motivations.pdf.

2 MEPs are similar to, but should not be confused with, multiemployer plans, which are collectively bargained group plans but are governed by a separate set of laws and rules.

3 California, Connecticut, Illinois, Maryland, Oregon, and Seattle have passed legislation implementing automatic IRA programs.

For further information, please visit:

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