



TOP 10 PROVISIONS IN THE HOUSE BIPARTISAN RETIREMENT LEGISLATION

Last year, the House Ways and Means Committee unanimously passed landmark retirement legislation that provides significant new savings opportunities. Highlights of this legislation, which is expected to be up for a full House vote in February or March 2022, are listed below.

- 1. Tax credits for small businesses starting retirement plans.** The three-year tax credit for small businesses starting a retirement plan is currently 50% of administrative costs, up to an annual cap that can be as much as \$5,000.
 - **Covering 100% of costs to start a plan**, for employers with up to 50 employees.
 - **Dollar for dollar credit on employer contributions to the plan up to \$1,000 per employee.** Except in the case of defined benefit 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. *So, for example, if an employer has 40 employees, and hypothetically contributes \$500 per employee per year, the employer's total tax credit over five years would be \$70,000.*
 - 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.
- 2. Increase in required beginning date to age 73, then to 74, and ultimately to age 75 for mandatory distributions.** Under current law, under the required minimum distribution (“RMD”) rules, participants are generally required to begin taking distributions from their retirement plan at age 72. With updated effective dates, the bill would increase the RMD age from 72 to 73 in 2023, to 74 in 2030, and ultimately to 75 in 2033. RMD age was previously updated in the original SECURE Act of 2019.
- 3. Self-correction of inadvertent plan and IRA violations without a submission to the IRS.** Under the bill, subject to narrow exceptions, all inadvertent retirement plan violations may be self-corrected under the IRS’ Employee Plans Compliance Resolution System (“EPCRS”) without a submission to the IRS. In addition, the bill would apply the same rules to inadvertent IRA errors.
- 4. Higher catch-up contributions for individuals who have attained age 62, 63, or 64, but not older.** 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 2022 is \$6,500, except in the case of SIMPLE plans for which the limit is \$3,000. The bill would increase these limits to \$10,000 and \$5,000, respectively, for employees who have attained age 62, but not age 65.

5. **Allowing SIMPLE and SEP contributions to be made on a Roth basis.** Unlike 401(k), 403(b), and governmental 457(b) plans, SIMPLEs and SEPs are not permitted to offer a Roth option; instead, all contributions must be pre-tax. The bill would allow employers to permit employees to elect Roth treatment of both employer and employee contributions.
6. **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 student loan payments. This allows employers to make matching contributions for employees who are so buried in student loan debt that they cannot afford to make contributions to get the employer match. This provision is completely voluntary for employers, so no employer has to do it.
7. **Requiring automatic enrollment in new retirement plans other than SIMPLEs.** New 401(k) and 403(b) plans would be required to include (1) automatic enrollment at a minimum of 3% and a maximum of 10% and (2) automatic escalation at one percentage point per year up to at least 10%. With an updated effective date, the requirement to include auto enrollment and auto escalation would be effective for 2024, and plans in existence on the effective date would be exempt. There would be exceptions for government plans, church plans, employers with 10 or fewer employees, and new businesses that have not been in existence for three years. This provision would not require any employer to have a plan, but would rather simply apply to employers that decide to adopt a plan. SIMPLE plans would not be subject to this requirement.
8. **Matching contributions permitted to be made on a Roth basis.** Under the bill, employers may permit employees to elect for some of or all of their matching contributions to be treated as Roth contributions under a 401(k), 403(b), or governmental 457(b) plan.
9. **Reducing 50% penalty tax for RMD failures.** 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 (very generally within two years of the failure), the excise tax on the failure is further reduced from 25% to 10%
10. **Retirement plan catch-up contributions must be made on a Roth basis.** Under the bill, the special catch-up contributions permitted by reason of attaining age 50 must be made on a Roth basis under 401(k), 403(b), SIMPLE, grandfathered SARSEP, and governmental 457(b) plans. Obviously, this is not something that we support in any way, but this provision is critical to raising revenue so that the other provisions can be enacted.

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