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Senate Committee Advances its Version of SECURE 2.0

On June 22, 2022, the Senate Finance Committee advanced provisions that form its version of what has been called SECURE 2.0. The House passed its version in a bipartisan 414-5 vote in late March. Both bills aim at increasing retirement savings and expanding availability and participation in employer sponsored retirement plans. There is optimism that the House and Senate will be able to iron out the differences in their proposals before the end of the year. Following are some of the key provisions of the Senate bill:

Provisions to Increase Savings

- Allows individuals to save for retirement longer by **increasing the RMD** age from 72 to 75. Effective after 12/31/31.
- Provides **indexing** of the current $1,000 IRA **catch-up contribution** for those age 50 and older. Effective date of enactment.
- **Increases annual catch-up limits** for employer plans to $10,000 for individuals between ages 60 to 63 and $5,000 for SIMPLE IRA/401(k) plans. Effective after 12/31/23.
- Allows employees with **qualified student loan balances** to repay the loan while employed and have the employer contribute a matching contribution to the employee's retirement account. Effective after 12/31/23.
- **Permits an employer to make an additional uniform nonelective contribution to Simple plan** not to exceed lesser of 10% of compensation or $5,000 (indexed). Effective after 12/31/23.
- **Increases contribution limits for SIMPLE** from $14,000 and $3,000 catch-up to $16,500 (indexed) and $4,750 (indexed) in case of employers with no more than 25 employees. For employers with 26-100 employees permitted to increase contribution limits, but only if employer provides a 4% matching contribution or a 3% employer contribution. Effective after 12/31/23.
- **Simplifies Saver's credit** by creating one rate of 50% to encourage individuals with incomes below a specific level to save for retirement and make the credit refundable if deposited into the retirement account. Effective after 12/31/26.

Provisions to Increase Availability/Participation

- Instead of an auto enrollment provision as provided by the House bill, the Senate proposal provides small employers (100 or fewer employees) a **credit if they adopt a re-enrollment feature** in their plan which requires employers to reenroll employees at least every 3-years at the default contribution rate if the employee has initially opted out or elected a lower contribution rate. Effective after 12/31/23.
- Provides a small employer (100 or fewer employees) with a **credit if they adopt an automatic portability arrangement**. Effective after date of enactment.
- To encourage participation employers are allowed to offer employees small, immediate, incentives (gift card) for making retirement plan contributions. Effective after date of enactment.
- **Improves coverage for part-time workers** in 401(k) plans by reducing the period of service requirement from three years of 500 hours to two years of 500 hours. Effective after 12/31/22. Also, would permit employers of domestic employees (e.g., nannies) to provide retirement benefits under a SEP. Effective after date of enactment.

• Offers small employers a new tax credit if they **make it easier for military spouses to save for retirement**. Effective after date of enactment.
• **Modifies tax credit** to cover new retirement plan start-up costs for small employers. Effective after 12/31/23.
• **Permits not-for-profit employers to participate in MEP** to gain more favorable investment result and reduced costs as well as provide relief from the one bad apple rule. Effective after date of enactment.
• **Permit employers with no retirement plan to offer a starter 401(k) (or safe harbor 403(b)).** The annual deferral limits would by the same as IRA contributions limits. Effective after 12/31/23.

Provisions to Preserve Income
• **Removes RMD barriers to certain life annuities** in qualified plans/IRAs that are the results of existing regulations. The actuarial test prohibited many guarantees that provided modest benefit increases such as annual increases up to 5%. Effective after date of enactment.
• **Eliminates penalty on partial annuitization** by permitting a plan participant to aggregate distributions from the annuity and fund portion for purposes of determining RMD. Effective after date of enactment.
• Addresses a barrier to growth of **Qualified Longevity Annuity Contracts** (QLACs) in IRAs/define contribution by **repealing the 25% limit** for contracts purchased or received in an exchange and **increases the dollar limit to $200,000 (indexed)**. Also facilitates the sale of QLACS with spousal survivor rights. Effective after date of enactment.
• **Eliminates pre-death distribution requirement of Roth Accounts.** Effective after 12/31/23.

Other Key Provisions
• Permits penalty-free distributions of up to $2,500 per year from retirement plan for the **payment of premiums for certain "high quality" long-term care insurance contracts**. Effective 3 years after date of enactment.
• **Reduces RMD excise tax from 50% to 25%** for individuals who take a distribution from a retirement plan that is less than required. This can be reduced to 10% if corrected within 2 years. Effective after date of enactment.
• **Surviving spouse given option to elect to be treated as the employee for purposes of RMD.** Effective after 12/31/23.
• **Increases charitable donations** by indexing the $100,000 charitable IRA distribution and permitting an individual to make a one-time charitable donation up to $50,000 (indexed) to a split-interest entity. Effective after 12/31/23. Also modifies RMD rules for special needs trusts so that the trust can have a charitable organization as remainder beneficiary. Effective after date of enactment.
• Expands ability to defer 10% of the long-term capital gain tax for certain **sales of employer stock to ESOP to plans sponsored by an S corporation** under IRC Section 1042. Effective after 12/31/27.
• Distributions up to $10,000 (OR 50% of account balance if less) for participants who experience **domestic abuse would not be subject to 10% penalty.** Also eliminates the penalty for **distributions to terminally ill individuals**. Furthermore, **corrective distributions on excess contribution**s are not subject to the 10% penalty. Effective after date of enactment.
• **Penalty free withdrawals up to $1,000** during a 3-year period **for personal & family unforeseen emergency expenses.** Effective after 12/31/23.
• Permits penalty free distributions from employer plans and IRA of up to $22,000 in connection with **qualified federally declared disasters** with income spread over 3-years or recontributed to retirement account. For disasters occurring after 1/26/21.

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• Extends exemption from the 10% early distribution penalty that applies to public safety officers who reach 50 to those who have 25-years of service. It also extends the 10% penalty exemption to private-sector firefighters and correction officers who are employees of state and local governments. Effective after date of enactment.
• Mandates the creation of a national online searchable retirement savings **lost and found database.**
• Requires Treasury to **simplify and standardize rollover process** by issuing sample forms for direct rollovers by 1/1/25.
• Conforms 403(b) hardship distribution to 401(k) hardship rules. Effective after date of enactment.
• Employer allowed to replace SIMPLE accounts with safe harbor 401(k). Effective after 12/31/22.

Revenue Raisers
• All **catch-up contributions to qualified retirement plans are required to be Roth.** Effective after 12/31/23.
• Allows participants to elect to receive **employer matching contributions and other employer contributions as Roths.** Effective after 12/31/23.
• Allows **SIMPLE IRAs and SEPs to accept Roth** contributions from participant and employer. Effective after 12/31/23.