Retirement Legislation and Insurance Companies

ABA Tax Section
2019 May Meeting
Insurance Companies Committee
Overview

- Setting Every Community Up for Retirement Enhancement (SECURE) Act (H.R. 1994, 116th Congress)
- Retirement Enhancement and Savings Act (RESA) (S. 972, 116th Congress)
- Retirement Plan Simplification and Enhancement Act (H.R. 4524, 115th Congress)
- Retirement Security and Savings Act (S. 3781, 115th Congress)
Bipartisan Effort

House Ways & Means Committee Chair and Ranking Member

- Richard Neal (D-MA)
  House W&M

- Kevin Brady (R-TX)
  House W&M

Senate Finance Committee Chair and Ranking Member

- Chuck Grassley (R-IA)
  Senate Finance

- Ron Wyden (D-OR)
  Senate Finance
Ways and Means Activity

- February 4 – Four-hour hearing on retirement improvement ideas
- April 2 – Ways and Means passes, unanimously by voice vote, the Setting Every Community Up for Retirement Enhancement (SECURE) Act of 2019
- Senate Aging and House Small Business Committee have also held bipartisan hearings
Bipartisan Ideas

Encouraging small businesses to have a 401(k) plan
- “Open” multiple employer plans
- Increased start-up business credits

Encouraging lifetime income products
- Fiduciary protection for employers
- Lifetime income disclosure on 401(k) statements
- Enhanced portability of in-plan annuities

Encouraging and preserving savings
- Move RMD age to 72
- Allow IRA contributions after age 70½
- Coverage for long-term part time employees
Fiduciary Safe Harbor for Selecting Annuity Providers

**Current Law**

- ERISA imposes fiduciary requirements on plan sponsors when making decisions affecting a plan.
- DOL regulations provide a safe harbor to satisfy those requirements when selecting an annuity provider for the plan.
- But the existing safe harbor is widely viewed as insufficient, so many plan sponsors are reluctant to offer in-plan annuity options.

**SECURE Act / RESA**

- New statutory safe harbor:
  - Reliance on representations about state law status for insurers’ financial capabilities;
  - Not required to select lowest-cost provider;
  - Not required to review after purchase for a participant or beneficiary; and
  - Allow reliance on annual representations from insurers.
## Annuity Portability

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<tr>
<th><strong>Current Law</strong></th>
<th><strong>SECURE Act / RESA</strong></th>
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<tbody>
<tr>
<td>Retirement plans are subject to in-service withdrawal restrictions</td>
<td>Create an exception to the withdrawal restrictions for lifetime income investments</td>
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<tr>
<td>Plan investment options, including those with lifetime income features, can change</td>
<td>Directly roll the investment to an IRA or another plan, or a plan-distributed annuity</td>
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<tr>
<td>If participants must liquidate a plan investment because the plan changes its options, they may not be able to preserve their lifetime income features through a rollover or otherwise</td>
<td>Only if the lifetime income investment is no longer authorized to be held under the plan</td>
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</table>
DC plans must provide participants with benefit statements that include account balance, vesting, and investment information.

The statements must be provided each calendar quarter or each calendar year, depending on whether the participant has the right to direct investments.

Require DC plan statements to include a lifetime income disclosure annually.

Disclosure would illustrate monthly payments if the participant’s total benefits were used to provide a single life annuity and a QJSA.

No ERISA liability solely for providing the disclosure if certain rules are met and certain assumptions are used.
Changes to Required Beginning Date ("RBD")

**Current Law**

- IRA and qualified plan distributions must begin by April 1 the year following:
  - The year in which the individual reaches age 70 1/2, or
  - For plans, the year the individual retires (except for 5% or more owners)

**SECURE Act (but not RESA)**

- Increases RBD to April 1 of the year following
  - The year in which the individual reaches age 72, or
  - For plans, the year the individual retires (except for 5% or more owners)

- Would apply to distributions required to be made after December 31, 2019, with respect to individuals who attain age 70½ after such date
## Contributions to Traditional IRAs

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<tr>
<td>No contributions after age 70 ½, even if still working</td>
<td>No age limit for contributions to Traditional IRAs</td>
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<tr>
<td>Contributions to Roth IRAs still allowed, if otherwise eligible</td>
<td>Must still have compensation (generally from work)</td>
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## “Stretch” RMDs

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<td>After-death RMD regulations permit a beneficiary to draw down the remaining plan or IRA benefits over the beneficiary’s life expectancy</td>
<td>Require distributions within 10 years of death</td>
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<td>Exception for spouse, disabled and chronically ill, beneficiary within 10 years of decedent, minors until age of majority</td>
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<td>Applies to deaths in 2020 and later</td>
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<td>Senate RESA package uses five years, but includes $400,000 per beneficiary exception</td>
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“Open” Multiple Employer Plans

- Allows completely unrelated employers to participate in a single MEP, a “pooled employer plan”
- Must use a “pooled plan provider” that serves as the fiduciary
- Considered new opportunity to offer 401(k) plans to small businesses
- SECURE Act and RESA have similar provisions
Additional Provisions (among many)

- Allow plan withdrawals for birth or adoption (SECURE Act only)
- Increase or eliminate cap on automatic enrollment contributions
- Reform rules for safe harbor 401(k) plans
- Increase start-up credit for small employer plans
- New credit for small employers adopting automatic enrollment
- Treat plan loans through credit cards as distributions
- Clarify rules for terminating 403(b)(7) custodial accounts
- Clarify rules for 403(b)(9) church plans
- Require plans to allow certain long-term part-time employees to participate
- Expand 529 plans
The Retirement Plan Simplification & Enhancement Act

H.R. 4524, 115th Congress
Minimum Income Threshold Test

Current RMD Regulations (§ 1.401(a)(9)-6, Q&A-14(c))

- For any annuity with “increasing” payments, the total future expected payments must exceed the amount being annuitized, using certain limiting assumptions.

- This test is meant to implement the tax policy behind the RMD rules by prohibiting annuity payments from starting out small and increasing too much over time.

- In operation, however, the test commonly prohibits many important guarantees that provide only modest benefit increases, without which many people are unwilling to elect a life annuity.

- For example, guaranteed annual increases of only 1 or 2%, return of premium death benefits, and period certain guarantees for participating annuities are commonly prohibited by this test.
Exempt the following from the MITT:

- Annuity payments that increase by less than 5% per year (cf. DB plans)
- Commutations determined in good faith using reasonable actuarial methods and assumptions
- Certain accelerations of payments
- Payments from participating annuities determined reasonably
- Return of premium death benefits

Test deemed satisfied if the initial annuity payment is at least equal to the initial payment that would be required from an individual account

Test would be applied using the reasonable “tables or other actuarial assumptions” that the issuer “actually uses in pricing the premiums and benefits,” rather than IRS tables.
Qualifying Longevity Annuity Contracts

- QLACs are a type of deferred income annuity, or DIA
- Relatively inexpensive way for retirees to hedge the risk of outliving their savings
  - The start date is delayed until later in life and there is no liquidity before then
  - This allows the insurer to invest the premium in a way that can support higher payments
- QLACs are exempt from RMD rules until payments commence
  - Treas. Reg. § 1.401(a)(9)-6, Q&A-17
- QLAC premiums limited to lesser of (1) $130,000, or (2) 25% of the individual’s account balance under the plan or IRA
- Significant constraints on benefits for non-spouse beneficiaries
- DC plan participants usually must obtain a QLAC by rolling money out of a plan to an IRA
QLAC Reform Under the Bill

- Increase the dollar limit on QLAC contributions to $200,000 (indexed) to facilitate more lifetime income
- Better facilitate spousal benefits by clarifying the rules that apply if a divorce happens
- Repeal the 25% premium limit, which makes it hard to buy a QLAC using a rollover from a retirement plan and that results in unnecessary leakage from such plans
Many Other Provisions in H.R. 4524

- Facilitate in-plan annuity portability
- Clarify availability of annuity distribution options within plans
- Increase the starting age for required minimum distributions
- Repeal maximum age for traditional IRA contributions
- Exempt small balances from RMD rules
- Allow rollovers and transfers by non-spouse beneficiaries
- Improve EPCRS, including by expanding it to IRAs
- Simplify 402(f) notices
- Clarify 403(b) plan terminations
- Consolidate employee notices
The Retirement Security and Savings Act

S. 3781, 115th Congress
Another Bipartisan Effort

Ben Cardin (D-MD)

Rob Portman (R-OH)
Retirement Security & Savings Act

- Introduced 12/19/18
- Contains 56 sections – all Finance Committee jurisdiction
- Many proposals from previously introduced bills
- Adds new provisions
- Reintroduction mid-2019?
Some Key Provisions for Insurers

- **Create parity for annuities in RMD rules**: Annuity distributions in excess of the distributions required from an individual account could be applied to reduce the RMD that otherwise would be required from the account.

- **Annuity distribution options**: Facilitate plan distribution options such as annuity contract investments, GLWBs, and managed payout funds.

- **Update RMD life expectancy tables**: Update to reflect mortality improvements (see also Executive Order 13847).

- **Expand EPCRS**: Facilitate more self-correction for plan loan and other errors, extend program to IRAs, etc.

- **Expand 403(b)(7) custodial accounts**: Allow them to invest in collective investment trusts.
Many other helpful provisions, including some that overlap with other bills:

- MITT and QLAC issues in RMD regulations
- Annuity portability in qualified plans
- 403(b) plan terminations
- Increase RMD start age
- Exempt small balances from RMD rules