



Rewards Policy Insider 2022-8



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House Passes Bipartisan Retirement Bill, SECURE 2.0

Proving once again that retirement policy can transcend partisan gridlock, the U.S. House of Representatives on

March 29, 2022 approved the “Securing a Strong Retirement Act” – aka, “SECURE 2.0” – by an almost unanimous 414-5 margin. The Senate is now in the process of crafting its own bill, which is expected to be similar – but not identical – to the House version.

What is in the House-passed Bill?

The bill features a variety of provisions addressing a range of issues relating to expanding coverage, increasing savings, plan administration, and compliance. Some of the more noteworthy provisions are as follows.

- **Mandatory Automatic Enrollment:** 401(k) and 403(b) plans would be required to automatically enroll participants when they become eligible. The initial automatic deferral rate could be anywhere from 3% to 10%, with an annual 1 percentage point increase each year until it reaches 10%. Employees could still opt out of coverage or affirmatively elect a different deferral rate. Current 401(k) and 403(b) plans would be grandfathered, so only new plans would be subject to this requirement.
- **Minimum Required Distributions:** The required beginning date for mandatory distributions would be increased to 73 starting on January 1, 2023, 74 starting on January 1, 2030, and 75 starting on January 1, 2033. The bill would not change the requirement for defined benefit plans to actuarially adjust benefits for those who continue working beyond age 70.5. Additionally, the bill would reduce the penalty for failing to take required minimum distributions from 50% to 25%.
- **Catch-up Contributions:** The \$6,500 catch up contribution limit for participants who are at least age 50 would be increased to \$10,000 for participants who are 62, 63, and 64 years old. Additionally, all catch-up contributions would have to be made on a Roth basis.
- **Matching Contributions for Student Loans:** Employers would be permitted to make matching contributions to 401(k), 403(b), and 457 plans based on employees’ “qualified student loan payments.” Plans would be permitted to separately test matching contributions on student loan repayments for nondiscrimination testing purposes.
- **Immediate Incentives for 401(k) and 403(b) Plan Participation:** Employers would be permitted to offer de minimis financial incentives, such as low dollar gift cards, to encourage employees to enroll in 401(k) and 403(b) plans. This would be an exception to the contingent benefit rule, which generally prohibits employers from making any benefits (except matching contributions) contingent on employees making a deferral election.
- **Recovery of Overpayments:** The bill would amend ERISA to give retirement plan fiduciaries latitude to decide not to attempt to recover inadvertent overpayments from retirees or the plan sponsor. In cases where fiduciaries do try to recoup such overpayments, new limitations and safeguards would be provided to protect innocent retirees. Also, defined benefit plan sponsors would still need to address overpayments as part of their minimum funding obligations.

- **Missing Participants:** The Department of Labor would be required to establish a national online searchable lost and found database for Americans' retirement plans, so individuals can obtain contact information for administrators of plans in which they may have vested benefits.
- **Mandatory Rollovers:** Employers currently can rollover a terminated vested participant's benefit to an IRA if their balance is between \$1,000 and \$5,000. The bill would increase the limit to \$7,000.
- **Periodic Benefit Statements:** For defined contribution plans, the bill would require a paper benefit statement at least once annually unless a participant elects otherwise. (The other three quarterly statements could still be delivered electronically.) For defined benefit plans (including frozen plans), the statement that must be provided at least once every three years must be a paper statement unless a participant elects otherwise.
- **Review of Pension Risk Transfer Interpretive Bulletin:** The Department of Labor would be required to review its current interpretive bulletin relating to pension risk transfers and determine if changes are needed.

Outlook

Both the Senate Health, Education, Labor, and Pensions (HELP) Committee and the Senate Finance Committee are expected to hold formal mark-ups of their own retirement savings packages. The Finance Committee could act in late May, though that could slip later into the summer.

While there is significant overlap between leading Senate proposals and the House-passed bill, the Senate is expected to make changes and to seek inclusion of additional provisions or varied approaches to issues addressed in the House bill.

Following the mark-ups in both the HELP Committee and the Finance Committee, differences between the House and Senate proposals likely will be reconciled before a final SECURE 2.0 package is included in a broader measure working through Congress, likely in the lame duck session following the November 2022 elections.

IRS Proposes Changes to ACA Affordability and Minimum Value Rules for Premium Tax Credit Purposes

Attempting to expand eligibility for ACA premium tax credits, the IRS has issued proposed regulations that would change the rules for determining if employer-sponsored health coverage is affordable and provides minimum value with respect to employees' spouses and dependents. The proposed changes should not affect employers' exposure to shared responsibility penalties.

Reason for the Proposed Change

An individual who is eligible for “minimum essential coverage” through an employer’s group health plan cannot qualify for an ACA premium tax credit (PTC) unless the employer’s coverage is not “affordable” or fails to provide “minimum value.”

Under current rules, an employer’s coverage is deemed “affordable” to an employee if the employee’s required contribution for self-only coverage does not exceed 9.61% of household income. Additionally, an employer’s coverage does not provide “minimum value” if the plan’s share of the total allowed costs of benefits provided to an employee is not at least 60%.

The issue is how these affordability and minimum value rules apply with respect to employees’ family members who are also eligible to participate in the employer’s plan. Basically, if the employer’s coverage meets the affordability or minimum value thresholds with respect to the employee, then these requirements are met with respect to the employee’s family members too. As a result, if the employee can’t qualify for a PTC, his or her family members can’t either.

For example, assume an employer offers a group health plan that doesn’t charge employees anything for self-only coverage, but requires employees to pay 50% of the premium cost of family coverage. Because the self-only coverage option is free to all eligible employees, the plan meets the affordability requirement. As a result, eligible employees and their family members will not be able to qualify for a PTC (assuming the minimum value requirement is also met) even if some employees are forced to pay significantly more than 9.61% of household income for family coverage.

In order to address that, the proposed regulation would modify existing rules to create a separate minimum value rule for eligible family members. Under the proposed rule, the employer’s coverage would not be affordable with respect to an employee’s family members if the employee’s required premium contribution for family coverage exceeds 9.61% of household income.

Thus, in the example above, the employee still would not qualify for a PTC. However, the employee’s eligible family members may qualify if the employee’s contribution for family coverage exceeds 9.61% of household income.

Similarly, the proposed rule would create a separate minimum value test with respect to employees’ eligible family members. So even if a plan provides minimum value to employees, it might not meet the test with respect to eligible family members.

Impact on Employers

As noted, the proposed rules should not affect employers’ potential exposure to the ACA’s Employer Shared Responsibility penalties. Those penalties are similarly tied to the affordability and minimum value requirements, but only to the extent the *employee* qualifies for a PTC. Even though the proposed rules would enable more employees’ family members to qualify for a PTC, they would not change the PTC eligibility criteria for employees.

However, the proposed rules might indirectly affect some employers in that more employees may end up obtaining coverage for their families through the ACA exchanges.

House Approves Bill to Cap Cost-Sharing for Certain Insulin Products

Group health plans would be required to cover certain insulin products without a deductible and subject to certain cost-sharing limits under a bill the U.S. House of Representatives passed on March 31, 2022. Although not overwhelmingly bipartisan, the bill did draw support from 12 Republicans and all 220 Democrats who voted.

Bill Summary

The Affordable Insulin Now Act would require group health plans to cover “selected insulin products” on a first dollar basis and limit any cost-sharing for each 30-day supply to the lesser of \$35 or 25% of the negotiated price net of all price concessions by or on behalf of the plan. Any cost-sharing payments made by a participant would count against the plan’s deductible and out-of-pocket maximum.

The term “selected insulin products” would be defined as licensed insulin products *selected by the plan* that include:

- one of each *dosage form* (e.g., vial, pump, or inhaler), and
- one of each *type* (e.g., rapid-acting, short-acting, intermediate-acting, long-acting, ultra long-acting, and pre-mixed).

Note that plans would not have to comply with these requirements with respect to insulin products that the plan has properly not designated as “selected insulin products.”

For plans with provider networks, the bill would not require coverage of any insulin products delivered by out-of-network providers. It also would not limit the cost-sharing requirements plans could impose on insulin products delivered by out-of-network providers.

The bill would impose similar limits on insulin coverage by Medicare Part D.

Outlook

A similar bill is now pending in the Senate and could be voted on in the near future. However, some Senators have expressed concerns that the bill should be adjusted to also help the uninsured. A bipartisan group of senators are reportedly working on alternative proposals to address those issues.

If and when a bill does make it to the Senate floor, there is also the question of whether it will get enough Republican support to invoke cloture and get to a final vote. Assuming all 50 Democrats support the cloture motion, at least 10 Republicans would have to join them to move the bill forward.

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