

April 2019

## House Ways & Means Committee Approves SECURE (New RESA) Act



### THE SETTING EVERY COMMUNITY UP FOR RETIREMENT ENHANCEMENT ACT OF 2019 (THE SECURE ACT)

On April 2, by a bipartisan unanimous voice vote, the House Ways & Means Committee approved a new version of the Retirement Enhancement Savings Act (RESA), now renamed the SECURE (Setting Every Community Up for Retirement Enhancement) Act. The measure is now ready for a House floor vote. That is targeted for early-to-mid-May.

The SECURE Act was authored by the leaders of the Ways & Means Committee, Chairman Rep. Richard Neal (D-MA) and Ranking Member Rep. Kevin Brady (R-TX). The measure includes a number of single-issue retirement savings bills offered by other committee members, both Democrats and Republicans. Reps. Neal and Brady are also giving considerable credit for the SECURE Act package to the primary supporters of “the old” RESA, Reps. Ron Kind (D-WI) and Mike Kelly (R-PA).

The SECURE Act (H.R.1994) includes most of what is in earlier versions of RESA—including the multiple employer pension (MEP) provisions. The MEP provisions expand nexus rules for MEP participants, and repeal the “one bad apple” rule (under which failure to comply with the MEP rules by one MEP participant would create liability for the entire MEP—without the one bad apple rule, only the employer-participant in violation of the rules would be responsible for those violations).

The SECURE Act, beyond containing updated effective dates, includes several new provisions. They are:

- Addition of an offsetting revenue provision—the “stretch IRA” proposal—that would make most inherited 401(k) and IRA account balances subject to a requirement that they be distributed (and tax paid) to heirs (except for surviving spouses, minor children, chronically ill or disabled heirs, or “same-age” (within 10 years) heirs) within 10 years of inheriting

- Addition of a long-term part-time employer rule under which a new eligibility requirement—that will not count for purposes of nondiscrimination and coverage and top heavy rules—would allow long-term part-time employees to participate in an employer’s retirement plan—“long term” part-time employees are defined in the SECURE Act as those with at least three consecutive years of at least 500 hours/year of service
- Elimination of the RESA provision that would have exempted retirement account balances that in aggregate total \$50,000 or less from the required minimum distribution (RMD) rules
- An increase in the age at which RMDs are required from 70 ½ to 72
- An expansion of section 529 education account rules to allow section 529 education account money to be used for homeschooling, registered apprenticeships, and up to \$10,000 of qualified reimbursement payments for certain volunteer services

The principal provisions of SECURE, like RESA:

- Include LIDA (Lifetime Income Disclosure Act) provisions that require employers to annually show plan participants how much lifetime retirement income would result from their current account balances—these provisions include fiduciary protection for plan sponsors
- Increase the auto enrollment safe harbor cap from 10 to 15 percent of pay
- Simplify the 401(k) safe harbor discrimination rules
- Increase the tax credit for small employer plan start-up costs (to the greater of (1) \$500 or the lesser of \$250 multiplied by the number of non-highly compensated employees (NHCEs) or (2) \$5,000—the credit would be available for three years
- Create a new \$500 tax credit for start-up costs for automatic enrollment 401(k) or SIMPLE plans—this is in addition to the current law tax credit and would be available for three years
- Treat stipends and non-tuition fellowship payments received by graduate students as compensation that counts for purposes of IRA contribution eligibility and contribution limits
- Repeal the maximum age (70 ½) for contributing to traditional IRAs
- Allow trustee-to-trustee transfers from one retirement plan to another of a qualified plan distribution annuity if a lifetime income investment is no longer authorized to be held as an investment option under a plan
- Allow penalty-free pre-retirement withdrawals from retirement plans in the case of birth or adoption
- Ease administrative rules – including establishing that plans adopted by the filing due date can be treated as in effect as of the close of a tax year, allowing for combined annual reports

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for a group of plans, creating a safe harbor for purposes of the fiduciary rules applicable to the selection of a lifetime income provider, and relief from nondiscrimination rules for frozen defined benefit (DB) plans

The bill also increases penalties for failure to file required retirement plan returns (generally, Form 5500).

NAIFA, along with a large coalition of retirement savings community partners, is working closely with the Ways & Means Committee to win House approval of H.R.1994 by as big a margin as possible. The committee leaders are working with House leadership to schedule the bill for a House vote in May, well before the Memorial Day recess. Requesting support for the SECURE Act will be the top issue at NAIFA's May 14-15 Congressional Conference.

**Prospects:** The SECURE Act is bipartisan and most of it enjoys widespread support. However, there are challenges. There are provisions the Republicans want but the Democrats dislike (for example, expansion of the 529 education account rules to include homeschooling expenses), just as there are provisions that most Democrats support but some Republicans oppose (e.g., a community newspaper pension plan funding provision). That is, Committee staffers remind observers, the nature of a bipartisan compromise.

Plus, there is what some key Democrats are calling a “slow burn” among Republicans over Chairman Neal's demand for President Trump's personal and business tax returns. There is some concern that the angst from that could interfere with a bipartisan vote in favor of the SECURE Act (or any other otherwise bipartisan legislation). Whether either of these concerns (or some other) will slow (or stop) progress towards a successful House vote on H.R.1994 remains to be seen. So far, overall support for the package seems to be outweighing opposition to any specific provisions. Supporters are optimistic and activity over the next month should tell the tale.

## AHP, STLD Health Plans, and MEP Regulations at Risk

A judicial decision and moving legislation are putting association health plan (AHP), short-term limited duration insurance (STLDI) health plan and multiple employer pension plan (MEP) regulations at risk. At this time, it remains uncertain if any of these regulations will ultimately be overturned.

First, on March 28, a Washington, DC district court struck down the Trump Administration's AHP regulation. The court found that the regulation was an “end run” around the Affordable Care Act (ACA) and held that “the final rule was designed to expand access to AHPs in order to avoid the most stringent requirements of the ACA.” The AHP regulation permits health insurance that does not meet the ACA's minimum essential benefits rules. It was that part of the regulation that caused the court to overturn it. It is also the part of the regulation that is most likely to result in lower-cost health insurance which was the goal of the Administration in directing DOL to write the regulation.

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In response to the ruling, the Justice Department (DOJ) said on March 29 that it is “considering all available options,” including a potential appeal. DOJ said, “The Administration will continue to fight for sole proprietors and small businesses so that they can have the freedom to band together to obtain more affordable, quality healthcare coverage.” The Department of Labor (DOL) issued a statement on April 2 stating that existing AHPs must continue paying claims despite the district court’s ruling overturning the regulation. It is estimated that since the regulation was finalized at least 28 AHPs have formed, insuring thousands of individuals. The continued existence of those AHPs is now uncertain, pending a final resolution of the court case.

Second, the House Energy & Commerce Committee has approved legislation that would overturn the AHP and STLDI health insurance regulations. That legislation will likely pass the House, but it will almost certainly run into headwinds in the Senate.

Third, officials at the DOL are concerned that if the AHP regulation is invalidated then the MEP regulation could fall as well since it has the same the legal underpinnings.

**Prospects:** Democrats are almost unanimously opposed to the AHP and STLD health plan regulations and will approve legislation to overturn those regulations. However, those regulations have support in the Republican-controlled Senate, so we do not expect the AHP and STLDI rules to be overturned through the legislative process. Regarding the legal challenges to the rules, the outcome is uncertain although we anticipate that DOJ will appeal the district court ruling.

## NAIFA-MD Helps Kill Fiduciary Duty Legislation

NAIFA-Maryland played a key role in defeating Maryland Senate Bill 786, which would have imposed an onerous fiduciary duty on Maryland broker-dealers, investment advisers, their representatives and insurance producers. The fiduciary duty provisions, which were part of a comprehensive financial services bill, simply stated that persons subject to that section of the bill were fiduciaries and had a duty to act in the best interest of the customer without regard to interests

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of the firm/adviser. The bill would have left it to regulators to develop and implement the details of the fiduciary duty.

NAIFA-MD not only testified at hearings, submitted testimony and comment letters, but also took the lead in forming an industry coalition to oppose the bill. Our arguments against the bill included the concern that a strict fiduciary duty would result in small/mid-size investors losing access to products, advice and service because it would lead to many advisors and firms switching from a commission-based business model to a fee-based structure, and with both the SEC and NAIC working on standard of care proposals, individual states should put their efforts in these areas on hold in the interests of consistency and uniformity.



This issue is an active one in the states, with several other states, including Nevada and New Jersey, considering fiduciary duty proposals. Several other states are considering proposals that would require non-fiduciaries to disclose to their clients that they are not fiduciaries and are not required to act in the client's best interest. Despite the pending SEC and NAIC action, these states are reluctant to hold up their efforts and wait to see what the SEC and NAIC end up with.

## NAIFA Invites Their Industry Partners to the Congressional Conference



NAIFA's Congressional Conference will bring together hundreds of agents and advisors to Washington, DC to learn about the legislative issues that matter to people in our industry and how these issues impact our business and our clients' financial well-being. As a Conference participant, you will be educating your Members of Congress on issues of concern and helping to shape national public policy. Your attendance is particularly critical as we attempt to expand the diversity of our group to adequately match the diverse demographics represented in Congress. The 116<sup>th</sup> Congress is the most diverse Congress in the nation's history. Not only does the 116<sup>th</sup> Congress have the largest number of women ever serving in Congress (127), this Congress has the largest number of

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African Americans (55), Hispanic/Latin Americans (44), Asian/Pacific Islanders (15), and Native Americans (4) in history.

NAIFA asks you to lead the way for your industry and attend the 2019 Congressional Conference. Our goal is to ensure that laws and regulations enhance, not restrict, the ability of middle market families to have access to the products and services our industry offers. NAIFA will provide Conference participants with issues education and advocacy training so we can effectively convey the legislative message.

For more information, go to <https://www.naifa.org/events/congressional-conference> and contact Maggie Buneo – Program Manager, Government Relations, at [mbuneo@naifa.org](mailto:mbuneo@naifa.org) to register.

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