



## Retirement Plan Reform Becoming More SECURE

The legislative initiative to continue enhancing retirement savings opportunities made considerable progress during the second quarter.

After the House of Representatives passed its version of SECURE Act 2.0 legislation almost unanimously (Securing a Strong Retirement Act passed 414-5) in March, the Senate has been working on multiple versions of similar legislation. On June 14, the Senate Health, Education, Labor, and Pensions (HELP) Committee passed the Retirement Improvement and Savings Enhancement to Supplement Healthy Investments for the Nest Egg (RISE & SHINE) Act by unanimous vote. On June 22, the Senate Finance Committee passed its version of SECURE Act 2.0 legislation, the Enhancing American Retirement Now (EARN) Act, also unanimously. Both the RISE & SHINE Act and the EARN Act are ready for full Senate consideration and voting. With broad bipartisan support for this legislative initiative, it is anticipated the Senate will merge the bills and pass one consolidated Senate version, possibly this summer. After that, the Senate and House versions would need to be reconciled to finalize one SECURE Act 2.0 bill for voting in both chambers.

All three bills have similar provisions, including these, which are included in at least two of the three bills so far:

- Treating student loan payments as deferrals for purposes of matching contributions
- Allowing small incentives for contributing to a 401(k) plan

- Increasing catch-up contribution limits for certain ages
- Requiring catch-up contributions to be Roth (after tax)
- Raising the required minimum distribution (RMD) age
- Increasing the dollar amount for force-outs from \$5,000 to \$7,000
- Decreasing part-time employee eligibility from three years to two years
- Enhancing tax credits for saving and for establishing new plans

Each bill also has provisions that aren't found in the other bills, including these:

- Creating automatic portability arrangements
- Allowing plan sponsors to link an emergency savings account
- Requiring automatic enrollment in new retirement plans
- Introducing "Starter 401(k)" plans
- Creating a new stretch match 401(k) safe harbor feature

This legislation is pending, and Congress will need to reconcile the differences before passing a final bill to the president for signature. Because it has not been signed into law, stay tuned for details and developments on this significant legislation.



## IRS Starts Preexamination Compliance Program

The IRS has started a pilot compliance program that gives plan sponsors an opportunity to find and self-correct compliance errors and possibly prevent an IRS examination of the plan.

Beginning in June, the IRS will send letters to notify plan sponsors that their plan has been chosen for the program. The plan sponsor will have 90 days to review

the plan's document and operations to determine whether they meet the tax law requirements. If a mistake is found, the plan sponsor can self-correct using the IRS's Employee Plans Compliance Resolution System (EPCRS). Plan sponsors must respond to the IRS within the 90 days with a report of full compliance or description of an error found and corrected, as well as supporting documentation. For errors that are

not eligible for self-correction, the plan sponsor can propose a correction method and request a closing agreement. The IRS will use the fee structure under the Voluntary Correction Program to determine the sanction, which will most likely be significantly less than what the plan sponsor would face if the error were found by the IRS during an examination. Upon receiving the plan sponsor's response, the IRS will determine whether to issue a closing letter or proceed with a limited or full-scope examination. If a

plan sponsor does not respond to the IRS within the 90-day window, the IRS will schedule an examination of the plan.

It's smart to check on plan operations throughout the year so you can quickly identify or even prevent compliance mistakes. If you receive a 90-Day Pre-Examination Compliance letter from the IRS, you may want to talk to your plan's service providers, financial advisor, and legal counsel for assistance in responding.



## Midyear Testing Results Key to Compliance

---

Midyear testing is a best practice in the 401(k) plan industry for ensuring that a retirement plan is on track to meet the compliance requirements for the year. A midyear check can help you confirm your plan's compliance and document your oversight efforts. It can also give you time to address any issues and change the trajectory of your testing results before year-end.

If you operate your 401(k) plan on a calendar year, you should be receiving your plan's midyear testing results from your recordkeeper or third-party administrator soon, if you haven't already. Your midyear testing package may include several components, but should address the employee salary deferral limit, the limit on total contributions to each participant's account, the Actual Deferral Percentage (ADP) test, and the Actual Contribution Percentage (ACP) test. There are no consequences if your plan fails a midyear test, but any excess contributions or test failures at year-end must be corrected for the plan to stay qualified. Corrective measures include making additional contributions for lower-paid employees or making taxable distributions to highly compensated employees.

If your plan fails a midyear test, it's likely to fail at year-end if no further action is taken. Here are steps you can take now to help your year-end results.

- Ensure that your service provider is using accurate census and payroll data for testing.
- Consider limiting contributions by your highly compensated employees for the rest of the year.
- Explore whether a participant education program or communications campaign could increase savings rates this year and in years to come.

If your plan consistently fails ADP and ACP tests, you could consider plan design options that drive higher participation rates and increase contributions.

- Automatic enrollment has proven to be effective in raising 401(k) plan participation rates, according to a [recent study](#) conducted by the Society for Human Resource Management.
- A 401(k) safe harbor plan automatically satisfies the ADP/ACP testing each year if the employer meets 401(k) safe harbor requirements, including making a safe harbor contribution. This plan design may also increase plan participation and contribution rates.



## Don't Dawdle with Deferral Deposits

---

Make sure summer vacations and other potential gaps in scheduling don't result in delayed deposits of your participants' 401(k) plan salary deferrals and loan repayments.

Plan sponsors are required to deposit employee deferrals into the plan on the earliest date contributions can reasonably be segregated from the employer's

general assets but no later than the 15th business day of the following month. The earliest date standard is determined based on your typical payroll processing and history of deposit dates. Small plans (fewer than 100 participants) are deemed to meet the earliest date requirement if they deposit deferrals by the seventh business day following the day on which deferrals would otherwise have been paid to employees.

If you don't make timely deposits, you may be considered to have used the assets for your own interests, which is a fiduciary breach and a prohibited transaction. Identifying and correcting delinquent deferral deposits is a top enforcement initiative for the Department of Labor (DOL) and the IRS. To help monitor whether plan sponsors are meeting these requirements, both agencies require plans to report whether they made any late contribution deposits each year on their Form 5500, Annual Return/Report of Employee Benefit Plan. Plan sponsors may use the DOL's Voluntary Fiduciary Correction Program to make the plan whole after a late deposit. This program includes a calculator for computing the lost investment earnings that must be paid to the plan, along with the original deposit amount.

You may want to set up internal processes to ensure that your deposit timing remains consistent.

- Determine the earliest date you can segregate deferral deposits from general assets.
- Establish and follow consistent procedures for depositing deferrals to the plan trust within that target timing.
- Periodically compare actual deposit dates with the target timing.
- Identify and train backup staff for each role in the payroll process.
- Develop procedures in case a deferral deposit is identified as incorrect or delinquent.



### Upcoming Plan Deadline: July 31

---

July 31 is the deadline for plan sponsors to restate their preapproved plan documents to an updated document under the IRS's current six-year restatement cycle. If you use a preapproved plan document and don't execute a new plan document by July 31, talk to your document provider as soon as possible. Based on

recent IRS guidance, your plan document could lose its preapproved status and become an individually designed document. This would require a review for the proper prior interim and discretionary amendments and possible correction through the IRS's EPCRS.



### We Can Help

---

We are ready to provide you with the ideas, guidance, and foresight to position your firm for success. If you would like to review your plan's operations or any industry happenings that may affect your plan, we're here to assist you.

Commonwealth Financial Network® does not provide legal or tax advice. Please contact your legal or tax advisor for advice on your specific situation.

Securities and advisory services offered through Commonwealth Financial Network® Member FINRA/SIPC, a Registered Investment Adviser.

Authored by the Retirement Consulting Services team at [Commonwealth Financial Network](#).

© 2022 Commonwealth Financial Network®

RCS-1479-22114\_07/22