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Will RESA Succeed This Time?

No other legislation in recent memory is more deserving of the label "survivor" than the Retirement Enhancement and Savings Act (RESA). Since 2016, multiple versions of RESA have been championed by high-profile lawmakers (both past and present). This legislation has offered many innovative ideas to expand retirement savings opportunities and has served as a model for other retirement reform bills.

RESA 2019 has now been introduced by Senate Finance Committee Chairman Charles Grassley (R-IA) and Ranking Member Ron Wyden (D-OR). Its introduction came just one day before the House Ways and Means Committee gave unanimous approval to nearly identical legislation, the Setting Every Community Up for Retirement Enhancement (SECURE) Act of 2019 (for more information on the SECURE Act of 2019, see Ascensus' prior Washington Pulse). With this apparent unanimity in the Senate and House, hopes are high that 2019 may be a year for major retirement savings enhancement. The RESA 2019 provisions are described below.

Simplify, Create Incentives for New Plan Creation

The following RESA 2019 provisions are intended to reduce the complexity of establishing and enhancing retirement plans and offer tax incentives to do so.

- ***Reform multiple employer plans (MEPs)****:* Relax current rules for employer participation in a MEP and create a new variation to be known as a "pooled employer plan," or PEP. Both allow consolidation of administrative responsibility and expense *(effective for 2023 and later plan years).*
  - Multiple participating businesses with a common interest would generally be administered as MEPs
  - Multiple participating businesses without a common interest would generally be considered to be part of a PEP
  - Simplified Form 5500-SF plan reporting would be allowed for smaller MEPs or PEPs
  - Compliance failures by one or more participating employers would not jeopardize the qualified status of the entire MEP or PEP (ends the "one bad apple" rule)

- ***Allow more time to establish a plan****:* Permit qualified plans (e.g., profit sharing or pension plans) to be established as late as the sponsoring employer's tax return deadline, including extensions. Certain plan options—like employee deferrals—would not be eligible for the extension *(effective for 2020 and later taxable years)*.

- ***Increase plan start-up credit for small employers***: Increase the small employer retirement plan start-up credit from $500 to a maximum of $5,000 per year, available for three years beginning with the year the plan is established *(effective for 2020 and later taxable years)*.

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- ***Create automatic enrollment credit**:* Provide a tax credit of up to $500 per year for small employers (100 or fewer employees) that implement automatic enrollment in existing or new 401(k) or SIMPLE IRA plans. The credit would be available for three years beginning with the year that automatic enrollment is allowed *(effective for 2020 and later taxable years)*.

- ***Extend period for electing safe harbor 401(k) design**:* 401(k) plans could elect testing safe harbor designs without prior notice if an employer nonelective (vs. employer match) contribution is made; the deadline would be at least 31 days before the end of the plan year with a three percent contribution, or up to the deadline for removing excess contributions for a plan year—the close of the following plan year—if a four percent contribution is made *(effective for 2020 and later plan years)*.

- ***Create annuity selection safe harbor:*** Provide a new safe harbor for a plan fiduciary's selection of an annuity provider—deemed to satisfy the "prudent expert" standard—when offering lifetime income plan investments *(no specified effective date)*.

Promote Greater Saving in Employer Plans

RESA 2019 would encourage broader employee participation, greater employee saving, and clearer participant understanding of retirement savings adequacy.

- ***Remove the cap on deferrals in safe harbor 401(k) plans**:* Eliminate the 10 percent maximum deferral rate in a 401(k) plan that employs automatic enrollment and automatic deferral increases in a qualified automatic contribution arrangement (QACA) after the initial period *(effective for 2020 and later plan years)*.

- ***Require new lifetime income disclosure**:* Defined contribution plan sponsors would be required to provide, at least annually, a projection of a lifetime income stream that could be generated by a participant's accrued benefit; employers would not be held liable for the projection *(Effective for benefit statements provided more than 12 months after the DOL issues 1) interim guidance, 2) the interest assumptions to be used, and 3) a model disclosure)*.

General Provisions Affecting Employer Plans

RESA 2019 would make targeted changes to employer plans in order to encourage asset preservation, simplify plan administration, and enhance compliance.

***Provide lifetime income portability**:* Allow participants in a qualified plan, 403(b), or governmental 457(b) plan to roll over lifetime income investments to an IRA or another retirement plan without an otherwise available distribution event if the employer's plan no longer offers such investments *(effective for 2020 and later plan years)*.

***Allow distributions of terminating 403(b) plans**:* Allow the plan administrator or custodian of a 403(b) plan to distribute such accounts in-kind to a participant or beneficiary when the 403(b) plan is being terminated *(enabling guidance to be issued within six months of enactment)*.

Prohibit credit card loans*:* Treat as distributed and subject to taxation a retirement plan loan enabled through a credit card or similar program. Existing loans provided through credit card systems in place as of September 21, 2016 are considered "grandfathered" unless one of the following conditions apply *(effective for 2020 and late plan years)*.

- The loan is for $1,000 or less.
- The loan is used for gambling or for the purchase of certain items such as liquor.

Permit shared Form 5500 filing*:* Allow employers that sponsor defined contribution plans that have the same trustee, administrator, fiduciaries, plan year, and investment options to file a common Form 5500 *(effective for 2022 and later plan years)*.

Allow nondiscrimination relief for closed defined benefit plans*:* Provide nondiscrimination testing relief for defined benefit pension plans that are closed to new participants; such employers generally offer a defined contribution plan to new employees *(effective generally upon enactment, or—if elected—for 2014 and later plan years)*.

Increase penalties for plan reporting failures*:* Retirement plan information reporting failures would result in the following penalties *(effective for returns, statements, and notices required January 1, 2020, and thereafter)*.

- Form 5500, $100 per day, up to a maximum of $50,000
- Form 8955-SSA (deferred benefit reporting), $2 per participant per day, up to a maximum of $10,000 for failing to file, $2 per day, up to a maximum of $5,000 for failing to file of notification of change
- Withholding notice, $100 per failure, up to a maximum of $50,000

Clarify church retirement plan rules*:* Clarify which employees are eligible to participate in retirement plans sponsored by church-controlled organizations *(effective for all years (i.e., years beginning before, on, or after the date of enactment)*.

Lower premiums for pension plans of cooperatives and charities: Reduce Pension Benefit Guaranty Corporation (PBGC) insurance premiums for defined benefit plans of certain cooperatives and charities to $19 per participant for fixed-rate premiums, and $9-per-$1,000 of under-funded vested benefits for variable rate premiums *(effective for 2019 and later plan years)*.

Changes Affecting Employer Plans and IRAs

These RESA 2019 provisions would affect employer plans and IRAs.

Require quicker payout to beneficiaries*:* With limited exceptions, most nonspouse beneficiaries of IRAs, qualified defined contribution, 403(b), and governmental 457(b) plans would be required to distribute inherited amounts within five years. New reporting requirements to ensure compliance would apply *(effective for plan participant/IRA owner deaths occurring in 2020 or later, and to beneficiary reporting beginning with the 2021 calendar year)*.

Exceptions include the following.

- Aggregate inherited IRA and employer plan balances that do not exceed $400,000

- The disabled
- The chronically ill
- Beneficiaries not more than 10 years younger than the deceased participant or IRA owner
- Minors (a 5-year payout period would begin upon reaching the age of majority)

Enhance IRA Contributions
RESA 2019 would significantly expand Traditional IRA contribution eligibility.

Permit Traditional IRA contributions at any age*:* Similar to Roth IRA owners, Traditional IRA owners with earned income could make IRA contributions at any age, not just before age 70½ *(effective for 2020 and later taxable years)*.

Allow graduate student IRA contributions*:* Certain fellowship, stipend, and similar payments to graduate students and postdoctoral students would be treated as earned income for IRA contribution purposes *(effective for 2020 and later taxable years)*.

Permit IRAs and S Corporation bank shares*:* IRAs would be permitted to hold shares of S Corporation banking entities *(effective January 1, 2020)*.

Will RESA 2019 Become a Reality?
With apparent bipartisan support in both the House and Senate, there seems to be growing momentum that could result in 2019 being the year in which we see significant retirement legislation get passed. Ascensus will continue to monitor the progress of RESA 2019 and its counterpart legislation in the House, the SECURE Act. Visit Ascensus.com for the latest developments.