Q2 2022 Retirement Legislation Update

Congress is considering multiple proposals that have the potential to dramatically reshape the retirement plan marketplace. Among the proposals, House Resolution (HR) 2954 "Securing a Strong Retirement Act of 2021" (SSRA) and the Senate's (S) 1770 "Retirement Security and Savings Act" (RSSA)—two overlapping bills with strong bipartisan support—have come out on top and are most likely to be combined into expansive retirement reform legislation that the industry, for months, has dubbed "SECURE 2.0." Both the House and Senate must pass a bill in identical form before the President can sign it into law—so there is a way to go yet. However, confidence is high that Congress will pass a substantive retirement package in the first half of 2022, with 2022 effective dates expected for some provisions. The outcome hinges on the battles among Congress's many competing goals, two of which are reducing the deficit and increasing retirement savings. The following provides a brief overview of the key retirement themes in HR 2954 and S 1770, and highlights what the impact may be if a final bill becomes law.

HR 2954 was introduced in the House on May 4, 2021, and unanimously approved by the House Ways and Means committee on May 5, 2021. After a lull in activity, on March 29, 2022, the full House of Representatives passed the bill, with a 414-5 vote, and sent the proposal to the Senate where it was referred to the Committee on Finance. As it currently stands, HR 2954 has 51 retirement-related provisions.

S 1770 was introduced in the Senate on May 20, 2021 and immediately referred to the Senate's Committee on Finance. It contains 59 provisions that are the same or similar to those in HR 2954. S 1770 also would support reforming defined benefit plans and harmonizing qualified retirement plan and IRA rules.

Q2 2022 Retirement Legislation Update

Both bills have three overriding goals: 1) expand employee coverage in workplace retirement plans; 2) increase retirement savings; and 3) preserve retiree income. Next begins the “sausage-making” process of combining the proposals to, hopefully, reach a uniform bill that both chambers can approve. The cost of these reforms will likely be the sticking point. Measures that expand coverage, increase savings and preserve income will be expensive and add to the budget deficit, which reached $2.8 trillion for fiscal year 2021, and is running at $475 billion for the first five months of fiscal year 2022. The good news is that amount is less than deficits recorded during the same period in the two prior fiscal years. HR 2954 does include revenue offsetting measures, while the cost estimates for S 1770 have not yet been released. Here is a closer look at some of the key retirement-related provisions contained in the two bills:

Expanding Employee Coverage

Both HR 2954 and S 1770 would attempt to increase access to workplace retirement plans by encouraging small businesses to offer plans using the following incentives:

- Clarifying that a Pooled Employer Plan may designate an entity other than the employer of the plan to collect contributions;
- Increasing the current plan start-up tax credit for small businesses from 50 to 100 percent of costs for the first three years;
- Allowing plans to self-correct all unintentional plan violations under the IRS's Employee Plans Compliance Resolution System;
- Simplifying "top-heavy" rules for small business plans to reduce the cost of enrolling new employees;
- Treating 403(b) plans like 401(k) plans with respect to their ability to invest in collective investment trusts (i.e., Revenue Ruling 81-100 group trusts), provided the plans satisfy certain conditions; and
- Allowing highly regulated companies with liquid securities that are quoted on non-exchange markets to treat their stock as "public" for ESOP purposes.

HR 2954 would allow 403(b) plans to participate in multiple employer and pooled employer plans, and would give them relief from the "one-bad-apple" rule. That means, the actions of one noncompliant participating employer would not spoil the favorable tax treatment of an entire multiple employer or pooled employer plan.

1 Congressional Budget Office, Monthly Budget Review, February 2022

Increasing Retirement Savings

Both HR 2954 and S 1770 would expand employee coverage and savings by:

- Enhancing automatic enrollment (HR 2954 would mandate it);
- Improving the Saver's Credit by creating a single credit rate of 50%, plus increasing and adjusting for inflation the income phaseout limits;
- Reducing the period of service requirement for long-term, part-time workers from three to two years;
- Creating a national, online, "lost and found" for U.S. workers' retirement plan assets, managed by the Pension Benefit Guaranty Corporation;
- Granting plan coverage to military spouses, who change jobs frequently, to save for retirement;
- Treating student loan payments as elective deferrals in a 401(k), 403(b), governmental 457 or SIMPLE IRA plan for purposes of employer matching contributions;
- Increasing catch-up contribution annual limits; and
- Including sales of employer stock to S corporation ESOPs under IRC Sec. 1042, thereby deferring the recognition of capital gains, subject to a 10 percent limit.

Preserving Retiree Income

HR 2954 and S 1770 would help preserve retiree income by:

- Raising the required minimum distribution (RMD) age from 72 to 75 by 2032;
- Removing RMD barriers for life annuities;
- Lifting the 25% contribution cap on qualifying longevity annuity contracts;
- Updating regulations for insurance-dedicated exchange-traded funds;
- Modifying regulations for target date funds and other investments that use a mix of asset classes so plans can bench mark them against a blend of broad-based market indices;
- Raising the plan cash-out limit from $5,000 to $7,000; and
- Directing the DOL to review the current ERISA fiduciary standards that apply when selecting an annuity provider for a defined benefit pension plan to determine whether amendments are warranted.

PENTEGRA PERSPECTIVE: Pentegra continues to monitor developments very closely and will provide alerts as warranted.

Q2 2022 Retirement Regulatory Update

New Proposed RMD Regulations

The IRS released proposed Treasury regulations (REG-105954-20) on February 24, 2022, that, when finalized, will update the required minimum distribution (RMD) rules for qualified retirement plans, IRAs and annuities. The proposed changes primarily relate to provisions in the Setting Every Community Up for Retirement Enhancement (SECURE) Act of 2019 and Division O of the Further Consolidated Appropriations Act of 2019.

In part, the SECURE Act revised the required beginning date for RMDs to April 1 of the year following the year in which an individual turns age 72 or, in the case of a plan participant who works past age 72, retires. The SECURE Act also changed beneficiary distribution rules. The proposed regulations will apply for determining RMDs for calendar years beginning on or after January 1, 2022. For 2021 distributions, affected individuals must apply the existing regulations, considering a reasonable, good-faith interpretation of the SECURE Act amendments.

Q2 2022 Retirement Regulatory Update

DOL Issues Strong Caution on Cryptocurrency

On March 10, 2022, the Department Labor of Labor (DOL) issued Compliance Assistance Release No. 2022-01 to provide official guidance on 401(k) plan investments in cryptocurrencies. The DOL has serious concerns about the prudence of a plan fiduciary's decision to expose 401(k) plan participants to direct investments in cryptocurrencies, or other products whose value is tied to cryptocurrencies. The agency has surmised these investments present significant risks and challenges to participants' retirement accounts, including significant risks of fraud, theft, and loss, because the investments: 1) are speculative and volatile; 2) present a challenge for making informed investment decisions; 3) raise custodial and recordkeeping concerns; 4) are difficult to value; and 5) are subject to an evolving regulatory environment. The DOL warns it will conduct investigations of plans that offer cryptocurrencies and related products as investments, and take appropriate action to protect the interests of plan participants and beneficiaries with respect to these investments.

New Lifetime Income Illustrations Coming June of 2022

Sponsors of participant-directed defined contribution (DC) plans must provide the first "lifetime income illustrations" to participants for their plans no later than with the second quarterly benefit statements of 2022. This means, the first illustration needs to be in place for the quarter that ends June 30, 2022. For non-participant-directed DC plans, sponsors must provide the lifetime income disclosure on the annual pension benefit statement for the 2021 calendar year (e.g., making October 15, 2022, the deadline).

Q2 2022 Retirement Regulatory Update

Section 203 of the Setting Every Community Up for Retirement Enhancement (SECURE) Act of 2019 amended the Employee Retirement Income Security Act of 1974 (“ERISA”) to require 401(k) and other DC plans to include additional disclosures (i.e., lifetime income illustrations) in participant benefit statements on an annual basis. Final interim regulations regarding the lifetime income illustrations took effect on September 18, 2021.

To satisfy the lifetime income disclosure requirement, plan sponsors must provide participants at least two illustrations of lifetime income payments each year. Using the participant’s accumulated account balance, the illustrations are to show what monthly income payments would look like as a single life annuity and a qualified joint and 100 percent survivor annuity.