

2022 Nonprofit Symposium

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Plan Sponsor Council of America



PSCA

Plan Sponsor Council
of America

2022 LEGISLATIVE OUTLOOK



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ACRONYMS

**SECURE 2.0: General Name
for the Retirement
Legislative Process**

**SSRA: Securing a Strong
Retirement Act (House Bill)**

**EARN: Enhancing American
Retirement Now Act (Senate
Finance Product)**

**RISE Act: Retirement
Improvement and Savings
Enhancement Act (House Ed
& Labor Act)**

**RISE & SHINE Act: Same as
above + to Supplement
Healthy Investments for the
Nest Egg Act (Senate HELP
Product)**

SECURING A STRONG RETIREMENT ACT HIGHLIGHTS

Sec 101 – Require Automatic Enrollment for New Plans

- Only \$500 employer tax credit in Senate

Sec 102 – Enhanced Tax Credits for New Smaller Plans

- For new plans up to 50 employees, start-up credit increased to 100 %
- 100% tax credit for employer contributions up to \$1k per NHCE for 2 years then phased out by 25% over the next 3 years
- Senate only increases existing credit to 75% for employers with up to 25 employees

SECURING A STRONG RETIREMENT ACT HIGHLIGHTS

Sec 104 – Modify Existing Law SAVERs Credit

- Eliminates eligibility cliffs and increases income eligibility beginning phase out at \$48k for joint filers

Sec 105 – 403(b)s Allowed to Invest in CITs

Sec 106 – New Required Beginning Dates for RMDs

- Age 73 beginning in 2027
- Age 75 beginning in 2033
- Senate—age 75 beginning in 2031

Sec 108 – Catch-Up Contribution Limit Increased to \$10k

- \$5K for SIMPLEs
- Eligible individuals = Ages 62-64
- Senate—same but for ages 60-63

SECURING A STRONG RETIREMENT ACT HIGHLIGHTS

Sec 110 – 403(b) PEPs

Sec 111 – Student Loan Matching Program

- ADP testing disaggregation provision
- Senate bill treats student loan payments as elective deferrals for testing purposes

Sec 114 – Small Financial Incentives for Contributions Allowed

Sec 116 – New Long-term Part-time (LTPT) Worker Definition

- 500 hours for TWO consecutive years
- Prior service for vesting does not apply
- Effective as if included in SECURE Act (new eligibility rules begin in 2023)

SECURING A STRONG RETIREMENT ACT HIGHLIGHTS

Sec 305 – Eliminate Notice Requirements for Non-Participants

Sec 306 – Retirement Savings Lost and Found Program

- Requires DOL to create database
- Senate requires Treasury to hold forced cash-outs under \$1K

Sec 307 – Increase Cash-Out Amount from \$5k to \$7k

Sec 308 – Expansion of EPCRS

- Allows IRA RMD errors to be self-corrected within 180 days

SECURING A STRONG RETIREMENT ACT HIGHLIGHTS

Sec 314 – Paper Statement Mandate

- Requires at least one quarterly benefit statement to be delivered on paper
- Not in Senate bill—possible compromise re: IRS electronic delivery

Sec 315 – Top-Heavy Rules Do

Not Apply to Otherwise Excludable Employees

- Less than 1000 hours or under age 21
- Makes it easier to allow for immediate eligibility to make deferrals

SECURING A STRONG RETIREMENT ACT HIGHLIGHTS

Sec 319 – Family Attribution Rule Fixes

- Stock attribution rules do not apply for spouses with separate businesses in community property states
- Stock attribution rules do not apply for spouses with separate businesses on account of a minor child

Sec 320 – Discretionary Amendments That Increase Benefits Allowed for Previous Year Up Until Employer Tax Return Due Date

SECURING A STRONG RETIREMENT ACT HIGHLIGHTS

Sec 601 – SIMPLE and SEP Roth IRAs

- SIMPLE and SEPs are permitted to be designated at Roth IRAs

Sec 602 – Hardship Rules for 403(b) Plans

- Conforms the existing hardship distribution rules for 401(k)s to 403(b)s
- QNECs, QMACs, plus earnings in 403(b)s can now be distributed

SECURING A STRONG RETIREMENT ACT HIGHLIGHTS

Sec 603 – Catch-Up Contributions Required to be Roth

- Does not apply to SIMPLEs or SEPs
- Senate—not required if employee made less than 100k in prior year
- Senate—delays effective date to 24 but also prohibits recharacterization of excess contributions to “catch-ups” if employee makes more than 100k

Sec 604 – Optional Roth Treatment of ER Matching Contributions

- Employer may permit an employee to designate matching contributions as Roth

ENHANCING AMERICANS RETIREMENT NOW ACT AND RISE AND SHINE ACT HIGHLIGHTS

Starter 401(k) Plans

- Deferral-only 401(k) safe harbor plan so no testing
- Contributions limits same as with IRAs (currently \$6k—indexed) plus catch-up (currently \$1k—indexed under the bill)
- Auto-enrollment required at 3%

New Stretch Match 401(k) Plan Safe Harbor

- Match: 100% for the first 2%; 50% for the next 4%; 20% for the next 4%
- Auto-enroll required at 6% with auto-escalation of 1% up to 10%
- Adopting employers with less than 100 employees would get tax credit for 5 years for NHCE matching contributions up to 2%

ENHANCING AMERICANS RETIREMENT NOW ACT AND RISE AND SHINE ACT HIGHLIGHTS

SAVERS Credit Matching Contribution

- Changes tax credit to government match regardless of tax liability
- Contributed directly into the plan account IRA of the taxpayer

- 50% match on contribution up to \$2k per person
- Match phased out between \$41-\$71k for joint filers (half for singles)
- Effective in 2026

ENHANCING AMERICANS RETIREMENT NOW ACT AND RISE AND SHINE ACT HIGHLIGHTS

Emergency Savings

- EARN Act allows distributions from DC plans up to \$1k per year without penalty that must be repaid within 3 years before another distribution
- R&S Act allows plans to create “pension-linked emergency savings accounts”
 - Employees must be opted in at 3% with a cap of \$2500—can be taken out at any time
 - Contributions to PLESA are after-tax but must still get matching contributions as if an elective deferral

ENHANCING AMERICANS RETIREMENT NOW ACT AND RISE AND SHINE ACT HIGHLIGHTS

Permanent Rules for Natural Disasters

- Would automatically allow for penalty-free distributions for affected taxpayers when a natural disaster is declared but only up to \$22k (not 100k)

Clarifies Incidental Plan Expenses Allowed to be Paid from Plan Assets

RMDs No Longer Required for Roth Plan Accounts

Enables Plans to Utilize a Rollover Clearinghouse

Allow Cash Balance Plans to Use Variable Interest Crediting Rate Up to 6%

STATE RETIREMENT PLAN OVERVIEW

Since 2012, 46 states have acted to implement, study, or introduce legislation to establish state-facilitated retirement savings programs

14 states and 2 cities have enacted a state-facilitated retirement savings program for private sector workers

Programs are currently open to employers in 6 states

- California = Mandatory Auto-IRA
- Illinois = Mandatory Auto-IRA
- Massachusetts = Voluntary Open MEP
- Oregon = Mandatory Auto-IRA
- Washington = Voluntary Marketplace

Programs Pending with Mandates

- New York, New Jersey, Maryland, Virginia, Maine, and Colorado

2022 LITIGATION UPDATE

BlackRock Index Fund Cases

- Complaints Claim Plan Sponsors Failed to Prudently Evaluate BlackRock Index Funds as an Investment Option
- 11 Plan Sponsors Sued by Same Law Firm
- Are any Plans Safe from Litigation?
- ARA Joined Other Orgs in Filing Amicus Brief
- Two Lawsuits Dismissed

2023 LEGISLATIVE OUTLOOK



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House Leadership

**Majority: House
Republicans with 221+ (1
undecided)**

Speaker of the House:

**What will it take for Kevin
McCarthy to be elected
Speaker?**

**Minority: House Democrats
with 213+ (1 undecided)**

Minority Leader:

Hakeem Jefferies (D-NY)

House Ways & Means Committee

Chair: Vern Buchanan?

(Moderate Republican from Florida)

Priorities: TBD

Jason Smith?

(Conservative Republican from MO)

Priorities: TBD

Ranking: Richie Neal

House Education (Workforce) & Labor

Chair:

Virginia Foxx (Current Ranking)

Priorities: Mixed Bag

Ranking:

Bobby Scott (Current Chair)

Priorities: Defense

Senate Leadership

**Majority: Senate Democrats
with 51 Senators**

Majority Leader:

Chuck Schumer

**Minority: Senate
Republicans with 49
Senators**

Minority Leader:

Mitch McConnell

Senate Finance Committee

Chair: Senator Wyden

**Priorities: Recession; Dem
Caucus Priorities**

Ranking: Senator Crapo

**Priorities: Defense;
Republican Caucus
Priorities**

Senate HELP Committee

Chair: Bernie Sanders (I-VT)

**Ranking Member: Bill
Cassidy (R-LA)**

Priorities: Healthcare

Priorities: Healthcare

2023 LEGISLATION

Democrats:

ESG (Senator Smith)

- Codifies Plan Sponsor MAY consider ESG factors in their investment decisions
- Codifies the Tie-Breaker Rule that allows an ESG factor to be a tie-breaker in selection of investment fund.

Republicans:

ESG (Republican Ways & Means)

- Only Pecuniary Factors may be utilized in determining investment fund lineup
- “Pecuniary factor” is defined as a factor that a fiduciary prudently determines will have a material effect on the risk or return of an investment based on appropriate investment horizons.

2023 LEGISLATION

TSP 4 ALL

- Provides TSP as a Plan Option for Small Businesses and Independent Workers
- Bipartisan

Crypto in 401(k) Plans

- The bill specifically names the following asset classes: commodities, public and private debt, digital assets, hedge funds, infrastructure, insured products and annuities, private equity, real assets, real estate or real estate related securities, and venture capital.

Regulatory Outlook

**DOL: Prudence and Loyalty
in Selecting Plan
Investments and Exercising
Shareholder Rights**

Effective: late January 2023

Takeaways:

**1) Plan Sponsors MAY
consider ESG factors in**

**2) Do not violate Duty of
Loyalty by taking into account
Participant Preferences**

3) ESG may be a QDIA

**4) Bottom line, Opens the
Door for Additional ESG type
Investment Options to be
added to 401(k) menus.**

STATE OUTLOOK

- R's will have a trifecta control both legislative bodies and the Governor's office in 21 states (NH, SC, GA, FL, AL, MS, TN, WV, OH, IN, AR, TX, OK, MO, IA, UT, SD, ND, WY, MT, ID)
- D's will have a trifecta control both legislative bodies and the Governor's office in 17 states (RI, CT, DE, MD, NJ, MA, ME, NY, MI, IL, NM, CO, MN, CA, OR, WA, HI)
- Nebraska is unicameral and non-partisan but really the R's control and have the Governorship
- The following states do not have a trifecta: NC, VA, PA, VT, KY, LA, KS, AZ, WI, NV
- Alaska is undetermined based on R's in the legislature caucusing with D's in the past and a coalition such as that may emerge.
- VA and PA only two states with one party in control of one chamber & one party in control of the other chamber.
- Between 2000 and 2018, splits averaged 7.7 in the legislatures.

QUESTIONS

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PSCA National

SAVE THE DATE

May 3-5 | Orlando, FL

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