



Prospects for Passage of the SECURE Act Have Dimmed

The SECURE Act recently passed in the House by a substantial margin. However, prospects for passage in the Senate are less likely.

July 31, 2019

HIGHLIGHTS

- On May 23, 2019, the SECURE (Setting Every Community Up for Retirement Enhancement) Act passed the House by a substantial margin.
- The easiest path for passage in the Senate was thought to be a procedure that requires unanimous consent of senators, but that path has proven difficult.
- If provisions of the SECURE Act are to become law, the likeliest path forward is passage as part of “must pass” legislation, such as appropriations bills, before year-end.

In April 2019, we published an article¹ about the pending House passage of the SECURE Act. In the weeks that followed, retirement legislation in this session of Congress seemed almost certain. The House had taken ideas that enjoyed wide bipartisan support from Senate bills that had been introduced in two prior Congresses and packaged them into the SECURE Act, along with a few other ideas anticipated to generate support from important constituencies, including influential senators from both parties as well as the administration.

After removing a controversial provision allowing the use of 529 plan assets for non-tuition expenses related to K-12 education, including home schooling expenses, and adding a new provision (the so-called Gold Star Family provision) to correct some unforeseen outcomes of tax reform on payments to minor survivors of armed forces service members killed in combat, the House passed the SECURE Act by a 417-3 vote on May 23, 2019. The chart below details the provisions included in the SECURE Act as passed by the House.



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Highlight of Select SECURE Act Provisions

- Open Multiple Employer Plans (MEPs) and Pooled Employer Plans (PEPs)
- Fiduciary Safe Harbor for Annuity Selection
- Special Portability for Participants With Annuities
- Mandatory Lifetime Income Disclosure
- Increasing Automatic Contribution Safe Harbor Escalation Limit
- 403(b) Termination Clarity
- Closed Defined Benefit Plan Relief
- Increased Startup Credit for Small Employers
- Automatic Enrollment Credit for Small Employers
- Flexibility on Timing of Safe Harbor Amendment
- Common Form 5500 for Similarly Serviced Plans
- Post-Age 70½ Contributions to IRA
- Limits on “Stretch IRA”
- Increased Penalties for Filing Failures
- Coverage of Long-Term Part-Time Employees
- Penalty-Free Birth/Adoption Withdrawal
- Required Minimum Distribution (RMD) Beginning Age Increase to 72
- Expanded 529 Account Uses
- Community Newspaper Defined Benefit Plan Relief
- Gold Star Family “Fix”
(newest noteworthy addition)

¹ Will Congress Finally Enact Comprehensive Retirement Legislation?

SECURE Act Stalls in the Senate

Senate leadership sought to address the SECURE Act through a unanimous consent process and vowed to avoid a floor debate, but that path has proved difficult. Under the unanimous consent process, any senator can place a hold on the bill, and there have been a handful of problematic holds, including some unrelated to retirement issues. Opponents have objected to a provision that would eliminate the so-called stretch IRA, which is valued as an estate planning tool. They have also pushed back on provisions that provide relief for ailing defined benefit plans of community newspapers, on grounds that they represent an unwise bailout for a failing industry.

What to Expect From Here

With little chance for floor debate and an ever-dimming chance for unanimous consent, the SECURE Act may remain stalled. Washington observers note that the likeliest path for passage lies in attaching the provisions in the SECURE Act to other “must pass” legislation. As Congress resumes work in September, those occasions will arise in early October with the appropriations deadline, and perhaps again in late December. If the SECURE Act is no longer a standalone bill, there is some chance that additional retirement provisions, such as some of those found in the Retirement Security and Savings Act proposed by Senators Rob Portman (R-OH) and Ben Cardin (D-MD), will be included in must-pass legislation before year-end.

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