

# Insider

## IRS finalizes updated life expectancy tables for RMDs

By Stephen Douglas and Maria Sarli

The IRS has **finalized regulations** that update the life expectancy tables used to calculate required minimum distributions (RMDs) from retirement plans and individual retirement accounts (IRAs). The tables generally reflect longer life expectancies and therefore will reduce the RMD amount that must be taken each year. These changes will also increase the portion of a lump sum distribution that is eligible to be rolled over when a participant in a qualified plan who has terminated employment (or is a 5% owner) will be beyond age 72 by the end of the distribution year. As a result, retirement plan participants will be able to retain slightly larger amounts in their plans and IRAs.

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The updated RMD mortality tables apply for distribution calendar years beginning on or after January 1, 2022. For example, if an IRA owner reaches age 70½ in February of 2020 (reaching age 72 in August of 2021 with a required beginning date of April 1, 2022), the updated regulations do not apply for the RMD for the 2021 distribution calendar year (due April 1, 2022) but will apply to the RMD for the 2022 distribution calendar year (due December 31, 2022). For a qualified plan participant who terminates employment in 2021 and reaches age 72 by the end of 2021, a lump sum paid in 2022 will exclude from rollover 1) an RMD for 2021 (using the old tables), and 2) an RMD for 2022 (using the new tables).

## News in Brief

### COVID-19 vaccine added to preventive care guidelines

By Maureen Gammon and Kathleen Rosenow

On December 11, 2020, the Food and Drug Administration issued an Emergency Use Authorization for the Pfizer-BioNTech COVID-19 vaccine. The following day, the Advisory Committee on Immunization Practices (ACIP) of the Centers for Disease Control and Prevention voted to recommend the use of the Pfizer-BioNTech COVID-19 vaccine in persons aged 16 years or older for the prevention of COVID-19.

In accordance with **interim final regulations** issued in October<sup>1</sup> by the Departments of Labor, Health and Human Services, and Treasury, non-grandfathered group health plans must cover qualifying COVID-19 preventive services, including any vaccine and its administration,

without cost sharing, within 15 business days of a recommendation from the United States Preventive Services Task Force or the ACIP.

The ACIP's recommendation started the 15-business-day period, meaning that non-grandfathered group health plans must begin to cover the Pfizer-BioNTech COVID-19 vaccine with no cost sharing by January 5, 2021.

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<sup>1</sup> See "**Regulations on COVID-19 vaccine and testing requirements issued**," *Insider*, November 2020.

The tables in the final regulations were developed based on mortality rates with mortality improvement to 2022 and thus are not exactly the same as those in the proposed regulations.<sup>1</sup> In addition, the final regulations do not provide for automatic updates to the tables; instead, the preamble in the final regulations states that the tables will be reviewed either in 10 years or when a new study of individual annuity mortality experience is published, whichever comes first.

The final regulations generally retain the same transition rules from the proposed regulations but update them to reflect the 2019 Setting Every Community Up for Retirement Enhancement Act change in the required beginning date: April 1 of the year following the year the employee reaches age 72 (or, if later, terminates employment). (For 5% owners, the required beginning date is April 1 of the calendar year following the calendar year in which the employee reaches age 72, even if the employee has not yet terminated employment, and the same rule applies to all IRA owners.)

In certain circumstances where an employee dies before 2022 and RMDs are based on a life expectancy that is not allowed to be recalculated, to determine RMDs after 2021 the regulations permit a one-time reset to the relevant life expectancy using the updated Single Life Table (based on age at the time life expectancy was *originally determined* rather than current age). That reset life expectancy would then be reduced by one for each year after the year of the original determination.

<sup>1</sup> See "IRS proposes updated life expectancy tables for RMDs," *Insider*, December 2019.



**[T]he tables will be reviewed either in 10 years or when a new study of individual annuity mortality experience is published, whichever comes first.**

### Going forward

Plan sponsors and their plan administrators should start preparing to implement the final regulations once they are applicable.

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## New bipartisan retirement bill builds on SECURE Act

By Ann Marie Breheny and Bill Kalten

House Ways and Means Committee Chair Richard Neal (D-MA) and Ranking Member Kevin Brady (R-TX) recently introduced the Securing a Strong Retirement Act of 2020 – broad, bipartisan legislation aimed at encouraging more retirement savings, addressing plan investments, encouraging plan sponsorship, easing plan compliance and administration, and more.

Because the Securing a Strong Retirement Act builds on changes enacted late last year in the Setting Every Community Up for Retirement Enhancement (SECURE) Act, it is sometimes referred to as "SECURE 2.0."

### Background

The Securing a Strong Retirement Act, along with the Retirement Security and Savings Act introduced last year by Sens. Rob Portman (R-OH) and Ben Cardin (D-MD), is expected to be a basis for bipartisan retirement discussions during the 2021 – 2022 legislative term. While not identical, the two pieces of legislation share many similarities.

### Bill provisions

The Securing a Strong Retirement Act encompasses the following legislative priorities from employers and other stakeholders.

**Insider is a monthly newsletter developed and produced by Willis Towers Watson Research and Innovation Center.**

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### Retirement savings

Provisions intended to expand or increase retirement savings include:

- **Mandatory automatic enrollment:** Newly established 401(k), 403(b) and SIMPLE plans would be required to automatically enroll employees in a defined contribution (DC) plan, with a contribution level between 3% and 10% of compensation. The contribution percentage would increase one percentage point each year until it reached 10% of compensation. Employees would be able to opt out or elect a different contribution percentage. The requirement would not apply to employers with 10 or fewer employees, businesses that have been in business fewer than three years, church plans or governmental plans.
- **Catch-up contributions:** The current limit on catch-up contributions for 2020 is \$6,500, except in the case of SIMPLE plans for which the limit is \$3,000. The current limit applies for those age 50 and older at the end of the plan year. The catch-up contribution limit would be increased to \$10,000 (and \$5,000 for SIMPLE plans) for participants age 60 or older at the end of the plan year. Both the age-50 and age-60 limits would be adjusted annually for inflation. In addition, the \$1,000 IRA catch-up contribution limit would be indexed for inflation.
- **Retirement matching contributions for student loan payments:** Employers would be permitted to treat employees' qualified student loan payments as elective deferrals for the purpose of making matching contributions to the plan.
- **Reduced tenure for part-time employee eligibility:** Employees who complete at least 500 hours of service for at least *two* consecutive years would be permitted to contribute to a DC plan sponsored by the employer. Under the SECURE Act, employees become eligible after completing 500 hours of service for *three* consecutive years.
- **Retirement savings lost and found:** The Treasury Department would be directed to establish a national online retirement savings lost and found database.
- **Increase and simplify the saver's tax credit:** The saver's tax credit would be modified to provide a 50% credit on savings up to \$3,000 and to adjust the \$3,000 amount annually for inflation (currently there is a tiered structure of a 10%, 20% and 50% credit on savings up to \$2,000, not indexed). The income limits would also increase, and Treasury would be directed to promote public awareness about the credit.



### Employers could offer small, immediate financial incentives, such as gift cards, to encourage plan participation.

- **Small employer tax credit for military spouse participation:** Small employers would be eligible for a tax credit if they allow military spouses to become eligible for participation in a DC plan within two months of hire, make matching or nonelective contributions for the military spouse, and provide 100% immediate vesting of the employer contributions.
- **Small, immediate financial incentives for plan participation:** Employers could offer small, immediate financial incentives, such as gift cards, to encourage plan participation. Currently, only matching contributions can be used as an incentive to make elective contributions.

### Plan sponsorship

Provisions intended to expand plan sponsorship include:

- **Multiple employer 403(b) plans:** The legislation would allow 403(b) pooled employer plans, generally under the same SECURE Act rules that apply to qualified plans.
- **Small employer "start-up" tax credits extended to employers joining multiple employer plans (MEPs):** The small employer tax credit would be made available to employers that join existing MEPS or pooled employer plans, regardless of how long the MEP has been in existence. The credit would also be increased for employers with fewer than 50 employees. An additional tax credit would apply for small employer contributions on behalf of employees in DC plans.

### Plan investments

Provisions addressing plan investments include:

- **403(b) investment in collective trusts:** Currently, 403(b) plan investments are generally limited to annuity contracts and mutual funds. The legislation generally would allow 403(b) custodial accounts to invest in collective investment trusts, which typically have lower fees.
- **Insurance-dedicated exchange-traded funds (ETFs):** The legislation would facilitate the creation of insurance-dedicated ETFs, thus allowing individual variable annuities to invest in them, by directing Treasury to update current rules so that such ETFs could retain look-through treatment. In addition, the legislation would clarify that

similarities between an insurance-dedicated ETF and another ETF would not cause the insurance-dedicated fund to be treated as “publicly available” under current rules.

- **Performance benchmarks for asset allocation funds:** The Department of Labor (DOL) would be directed to modify its participant disclosure rule so that an investment that uses a mix of asset classes could be benchmarked against a blend of broad-based securities market indices if the index blend meets specified requirements.

### **Lifetime income and preservation of income**

Provisions addressing lifetime income and preservation of income include:

- **Increased age for required minimum distributions (RMDs):** The age for RMDs would increase to age 75 (from age 72).
- **Exemption from RMD requirements for small retirement balances:** Participants would not be required to comply with RMD requirements (except with respect to defined benefit [DB] plans) if the total balance in their retirement plans and IRAs is \$100,000 or less at the end of the calendar year before reaching age 75. Plan sponsors could rely on certifications from participants that their total balance does not exceed \$100,000.
- **Reduced excise tax for RMD failures:** The excise tax for failure to take RMDs would be reduced from 50% to 25%. In addition, the 25% tax would be reduced to 10% if a failure to take an RMD from an IRA is corrected in a timely manner.
- **Eliminate RMD barriers for life annuities:** The legislation would update certain rules that generally create barriers to making life annuities available in DC plans and IRAs.
- **Qualifying longevity annuity contracts (QLACs):** QLAC premiums are currently limited to the lesser of 1) \$135,000 and 2) 25% of the account balance. The legislation would repeal the 25% limitation and increase the \$135,000 on such contracts to \$200,000. It would also clarify that free-look periods of up to 90 days are permitted and facilitate the sale of QLACs that include spousal survival rights.

### **Plan administration and compliance**

Provisions addressing plan administration and compliance include:

- **Recovery of retirement plan overpayments:** Retirement plan fiduciaries would not be required to recoup overpayments that were mistakenly paid to retirees. When fiduciaries choose to recoup overpayments, the legislation would establish limitations to protect retirees. Also, rollovers of overpayments would remain valid.



## **The excise tax for failure to take RMDs would be reduced from 50% to 25%. In addition, the 25% tax would be reduced to 10% if a failure to take an RMD from an IRA is corrected in a timely manner.**

- **Review and report to Congress about reporting and disclosure:** Treasury, DOL and the Pension Benefit Guaranty Corporation would be directed to review current reporting and disclosure requirements and recommend to Congress how to consolidate, simplify, standardize and improve the requirements.
- **Eliminating unnecessary plan requirements for unenrolled participants:** DC plans would not be required to provide certain notices to employees who have elected not to participate in the plan (unenrolled participants). The plan would be required to remind unenrolled participants annually of their participation eligibility and applicable election deadlines and to provide any otherwise required document requested by the unenrolled participant.
- **Safe harbor for correction of elective deferral failures:** The legislation would provide a grace period to correct some errors in administering automatic enrollment and automatic escalation features within 9.5 months after the end of the plan year if certain conditions are met.
- **Expand Employee Plans Compliance Resolution System (EPCRS):** EPCRS would be expanded to 1) allow more errors to be corrected through self-correction, such as correction of plan loan errors; 2) apply to inadvertent IRA errors; and 3) exempt certain RMD errors from excise taxes if the failure is corrected within 180 days.
- **Requirements regarding paper statements:** Unless a participant requests otherwise, DC plans would be permitted to issue one paper quarterly statement each year, and the other three quarterly statements could be provided in electronic form. For DB plans, paper statements could be provided once every three years unless a participant requests otherwise.
- **First-day-of-the-month rule for governmental 457(b) plans:** The requirement that participants’ election changes must be made before the first day of the month would be eliminated, allowing election changes to be made any time before the date the compensation being deferred is available.
- **Technical corrections and plan amendments:** Technical corrections would be made to the SECURE Act. Plan amendments relating to the Securing a Strong Retirement

Act would also be made by the end of 2022 (2024 in the case of governmental plans) as long as the plan operates in accordance with the amendments as of the effective date of relevant provisions.

**Other provisions**

Other provisions in the Securing a Strong Retirement Act include:

- **S corporation employee stock ownership plans (ESOPs):** The legislation would permit the deferral of tax on gain from the sale of employer stock to S corporation ESOPs. Currently this treatment is only available for C corporation ESOPs.
- **Charitable distributions:** The rules for individual retirement account (IRA) charitable distributions would be amended to increase the annual limit on qualified charitable distributions from \$100,000 to \$130,000 and to allow qualified charitable distributions to split-interest entities. Also, the same IRA charitable distribution rule described above, as amended, would apply to plans.
- **Distributions to firefighters:** The rule that allows qualified public safety employees to take penalty-free distributions at age 50 would be extended to apply to private-sector firefighters.
- **Exclusion of certain disability-related first responder payments:** First responders would be permitted to exclude service-connected disability pension payments from their taxable income after reaching retirement age.

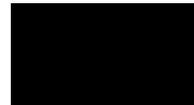


**The legislation...could serve as a vehicle for bipartisan retirement discussions during the 2021 – 2022 legislative term.**

- **First responders may join governmental pension plans:** Professional firefighters and emergency medical services personnel who work for a public safety agency and perform services for a local government under contract would be permitted to join the government's pension plan.

The legislation is not expected to be under discussion this year but could serve as a vehicle for bipartisan retirement discussions during the 2021 – 2022 legislative term.

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