Why Retirement Bills are a Bipartisan Slam-Dunk in Congress

By Kerry Pechter *Thu, May 27, 2021*

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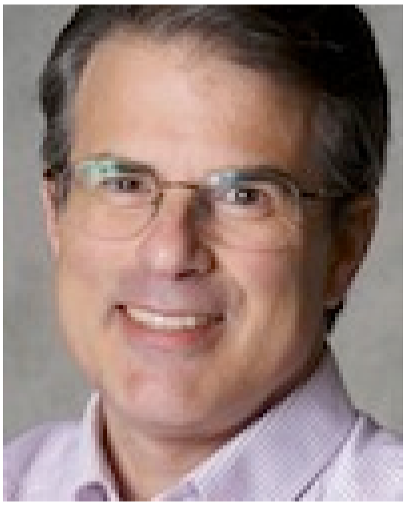

Congressional Republicans and Democrats have agreed on very little for, oh, almost 30 years. But they've recently agreed on changes to the laws governing tax-deferred retirement plans—changes driven more by advocates for the retirement industry rather than by the public.

The latest piece of bipartisan legislation, the **Retirement Security & Savings Act (S. 1770)**, was introduced by Sen. Rob Portman (R-OH) and Sen. Ben Cardin (D-MD) on May 21. It followed by about two weeks the unanimous approval by the House Ways & Means Committee of "Secure 2.0," a bill introduced by Rep. Richard Neal (D-MA) and Rep. Kevin Brady (R-TX) and formally known as the Securing a Strong Retirement Act of 2021 (H.R. 2954).

These bills overlap in several areas. Their principal effects would be to help remove obstructions to the flow of payroll deferrals into the investment options in retirement plans. They would do this by raising some of the limits on payroll contributions and "catch-up" contributions, and giving more tax credits to employers who start plans.

That doesn't help middle-income people much. Savings rates depend mainly on the capacity to save, and saving in tax-deferred plans is most attractive to high-income participants. Raising the contribution limits in order to encourage saving by the under-saved seems as useful as raising the height of a basketball net to encourage the participation of shorter players.

But it should help the retirement industry, which wanted a lift. Low margins have driven consolidation among recordkeepers. Low asset fees have made DCIO (defined contribution investment-only) fund companies increasingly dependent on rising AUM. Low interest rates have hurt annuity issuers. The steady outflow of 401(k) money to rollover IRAs threatens everyone except perhaps Vanguard and Fidelity, which have both markets covered.

Politics is famously the "art of the possible." It is presumably easier—a slam dunk, apparently—for the two parties to respond in concert to a concerted industry-led, top-down initiative than to non-existent grassroots demands from plan participants. Rank-and-file participants don't participate much in the plan design process. If they did, they might file fewer ERISA class action suits against plans.

Congress, in effect, proposes increasing the "tax expenditure" for incentivizing retirement savings. The tax expenditure for defined contribution plans between 2019 and 2023 has been estimated at $776 billion by the Tax Policy Center of the Urban Institute, or about half of the total tax expenditure for retirement savings over that period. The tax expenditure is a subsidy for the retirement industry (it reduces the upfront cost of their product and increases their assets under management by protecting balances from tax erosion) and for savers in the higher tax brackets.

Aside from making the **Saver's Credit** (maximum: $1,000 per person) refundable to the individual's retirement plan account (instead of as tax credit), these bills won't do much to help the real retirement crisis in the US—the fact that a third of people in their 60s or older have less than $100,000 saved in defined contribution plan accounts.

Most Americans depend on Social Security for retirement security, yet only two members of the Ways & Means Committee spoke up to say that Congress' priority should be to assure Americans that they will receive full promised benefits even if the fictional Social Security "trust fund" reaches zero by 2034. (If the trust fund is a fiction, as George W. Bush told us in 2005, then its "crisis" is equally fictional.)

The **Portman-Cardin** bill, according to Sen. Portman's website, includes more than 50 provisions and "addresses four major opportunities in the existing retirement system:

(1) allowing people who have saved too little to set more aside for their retirement;

(2) helping small businesses offer 401(k)s and other retirement plans;

(3) expanding access to retirement savings plans, including for low-income Americans without coverage; and

(4) providing more certainty and flexibility during Americans' retirement years. The measure includes more than 50 provisions to accomplish these objectives.

The Portman Cardin bill

- Establishes a new incentive for employers to offer a more generous automatic enrollment plan and receive a safe harbor from costly retirement plan rules. It provides a tax credit for employers that offer these safe harbor plans starting at six percent of pay in addition to the existing safe harbor at three percent. This gives employers the certainty to offer more generous retirement benefits to their employees.
- Increases the "catch-up" contribution limits from $6,000 to $10,000 for baby boomers (individuals over age 60) with 401(k) plans.
- Helps employees who are struggling to save for retirement and pay off student loan debt. It allows employers to make a matching contribution to the employee's retirement account based on his or her student loan payment.
- Allows employers to make an additional contribution on behalf of employees in a small business SIMPLE retirement plan.
- Increases the allowable catch-up contribution to Individual Retirement Accounts (IRAs) by the inflation rate.

Help Small Businesses Offer 401(k)s & Other Retirement Plans

- Increases the tax credit for the smallest businesses starting a new retirement plan to a larger percentage of their costs.
- Simplifies rules for small businesses, including allowing all businesses to self-correct all inadvertent plan violations under the IRS' Employee Plans Compliance Resolution System (EPCRS) without paying IRS fees or needing formal submissions to the IRS.
- Simplifies "top-heavy" rules for small business plans to reduce the cost of enrolling new employees.
- Establishes a new three-year, $500 per-year tax credit for small businesses that automatically re-enroll plan participants into the employer plan at least once every three years.

Expand Access to Retirement Savings Plans, including for Low-Income Americans Without Coverage

- Expands the existing Saver's Credit income thresholds to give more Americans access to increased credit amounts.
- Creates a new "government match" for low-income savers by making the Saver's Credit directly refundable into a retirement account.
- Expands the eligibility of 401(k)s to include part-time workers that complete between 500 and 1,000 hours of service for two consecutive years.
- Make it easier for employees to find lost retirement accounts by creating a national, online database of lost accounts.
- Make it easier for military spouses who change jobs frequently to save for retirement.

Provide More Certainty & Flexibility During Americans' Retirement Years

- Raising the age for required minimum distributions from age 72 to age 75 by 2032, allowing all individuals choosing to work later in life to keep saving for retirement.
- Creates an exception from required minimum distributions for individuals with $100,000 or less in aggregate retirement savings, allowing them to choose to keep saving for retirement at any age.
- Reduces the current penalty for skipping required minimum distributions to 25% of the underpayment from 50% (in most cases), and as low as 10% for those who correct the error.
- Encourages expanded use of Qualifying Longevity Annuity Contracts (QLACs), for retirement plans that provide annual payments to individuals who outlive their life expectancy. QLACs prevent older Americans from outlasting their savings.
- Protect retirees who received retirement plan overpayments through no fault of their own.