To: Finseca Members
From: Josh Caron & Alex Cisneros
Date: November 11, 2020
RE: New proposal on retirement and savings incentives

House Ways and Means Committee Chairman, Richie Neal (D-MA), and Ranking Member, Kevin Brady (R-TX), introduced the Securing a Strong Retirement Act (SSRA) on October 27th. The legislation would build upon the success of the Setting Every American Up for Retirement Enhancement ("SECURE") Act, to incentivize greater retirement savings. The SSRA consists of three parts, (1) expanding retirement plan coverage and increasing retirement savings, (2) preserving income in retirement, and (3) simplifying and clarifying retirement plan rules. This material will provide an analysis of the most relevant elements of the bill for the financial security profession and your clients.

Automatic Enrollment

Section 101 of the SSRA requires automatic enrollment of employees in retirement plans such as 401(k)s, 403(b)s, and SIMPLE IRA plans. Automatic enrollment has been one of Chairman Neal's long-sought goals. Under current law, employers have the option to implement automatic enrollment. The SSRA would make it a requirement for employers when a new plan is created. Employees may opt out of the plan or, if the employee fails to withdraw and opt out, the opportunity to withdraw funds from the retirement plan within 90 days after the first plan contribution. The SSRA would grandfather retirement plans established prior to the enactment of SSRA from requiring automatic enrollments. This provision would set the initial employee contribution between 3 percent and 10 percent of eligible income (unless the employee decides to opt out or elects a different percentage). The SSRA exempts employers if the business has been operation for less than 3 years or the business employs 10 or fewer employees from these requirements. The legislation also exempts church and government plans from automatic contribution arrangements. If enacted, the effective date is January 1, 2022.

Increases Credits for Small Employers' Start-Up Costs

Under the SSRA, small employers with 50 or fewer employees (the employer is only allowed to consider employees with at least $5,000 in compensation for the preceding year) would be able to receive a tax credit of 100 percent to cover expenses associated with the start-up costs of establishing a SEP, SIMPLE IRA or qualified plan. Present law allows employers with 100 or less employees to receive a tax credit of up to 50 percent to cover start-up costs and up to a maximum of $5,000 for each of the first three years of a plan's existence. The employer can claim the tax credit for each of the first 3 years of the plan and may choose to start claiming the credit in the tax year before the

tax year in which the plan becomes effective.[1] Start-up costs are defined as ordinary and necessary costs to cover the following, (1) set up and administer the plan, and (2) educate employees about the retirement plan. In addition to increasing the tax credit for start-up costs and narrowing the scope of employers eligible for it, section 102 of the SSRA establishes an additional tax credit. The additional tax credit is based on the applicable percentage of the amount contributed by the employer on behalf of the employee. The tax credit is capped at $1,000 per employee. The full tax credit is limited to employers with 50 or less employees and phased out for employers between 51 and 100 employees. The tax credit is phased out by multiplying the applicable percentage by 2 percentage points for each employee in excess of 50 employees for the preceding year. The applicable percentage is 100 percent during the first year of establishing the plan, 75 percent for the second year, 50 percent during the third year, 25 percent for the fourth year and no tax credit thereafter. The effective date for this section would begin after December 31, 2020.

Saver's Credit

The SSRA simplifies and expands the Saver's Credit, which is a tax credit designed to incentivize low- to middle-income families and individuals to allocate more income into retirement savings plans. In current law, the Saver's Credit is provided as a tiered structure based on certain income levels. Below you will find the current tiered structure as of 2020[2]:

Current Tax Credit Rate	Married & Files Joint Return	Head of Household	Individuals
50%	Up to $39,000 in AGI	Up to $29,250 in AGI	Up to $19,500 in AGI
20%	$39,000 - $42,500	$29,250 - $31,975	$19,501 - $21,250
10%	$42,501 - $65,000	$31,876-$48,750	$21,251 - $32,500
0%	More than $65,000 in AGI	More than $48,750 in AGI	More than $32,500

The Neal-Brady legislation would simplify and expand the Saver's Credit by allowing a single tax credit of 50%, while completely phasing it out over certain income levels. Below you will find how the Saver's Credit would change and be phased out under the SSRA.

	Saver's Credit Under SSRA	Cap on Full Tax Credit	Tax Credit Phase Out
Married & Files Joint Return	50%	Up to $80,000 in AGI	At $100,000 or more
Head of Household	50%	Up to $60,000	At $80,000 or more
Individuals	50%	Up to $40,000	At $60,000 or more

101 Constitution Ave N.W. Suite 703 East
Washington, D.C. 20001
Finseca.org

[1] Retirement Plans Startup Costs Tax Credit, IRS (2020) https://www.irs.gov/retirement-plans/retirement-plans-startup-costs-tax-credit
[2] Retirement Savings Contributions Credit (Saver's Credit), IRS (2020) https://www.irs.gov/retirement-plans/plan-participant-employee/retirement-savings-contributions-savers-credit

The legislation would also increase the maximum tax credit available to $1,500 from $1,000. This section would be effective after December 31, 2021.

Age Increase for Required Minimum Distributions (RMD)
The Neal-Brady legislation proposes to increase the age to begin RMDs to 75 from 72. The SECURE Act increased the age to 72 from 70 ½. The change will apply to individuals who attain age 72 after December 31, 2020.

Expand Tax Deferral of Sale of Employee Stock to Employee Stock Ownership Plans
Under section 1042 of the tax code, an owner of stock in a non-publicly traded C corporation that sponsors an ESOP may elect to defer capital gains taxes from the sale of such stock to the ESOP. The effective section 1042 'rollover' can take place as long as the parties involved meet certain criteria[3], (1) the seller reinvests the proceeds from the sale in stock or other U.S. securities issued by a corporation (U.S. bonds are excluded) within a 12-month period from the time of the sale, (2) the seller must have held the stock for at least three years prior to the sale, (3) the ESOP must own at least 30 percent or more of the total stock bought immediately after the sale, (4) the ESOP can only acquire common stock issued by the employer/plan sponsor of the ESOP, (5) the securities sold by the individual cannot be publicly traded, and (6) the stock may not have been acquired by the seller as a result of a distribution from a retirement plan. The Neal-Brady legislation would extend the section 1042 rollover treatment to S corporation ESOPs.

Indexing IRA Catchup Limits and Increasing Catchup Contributions.
Individuals aged 50 or older are allowed to make catchup contributions to their IRA on top of the contribution limit. The current catchup contribution limit is $1,000 but is not indexed to reflect cost-of-living adjustments (COLA). The SSRA would amend the law to allow IRA catchup contribution to be indexed to COLA starting in 2022. For other qualified plans the catchup contributions limits for 2020 is $6,500, except for SIMPLE plans which limit is $3,000. The SSRA would increase the limits and index the amounts respectively to $10,000 and $5,000 for individuals 60 or older. This section will be applicable after December 31, 2021.

101 Constitution Ave N.W. Suite 703 East
Washington, D.C. 20001
Finseca.org

Changes to Multiple Employer Plans (MEPs)
The Neal-Brady legislation extends MEP eligibility for employers that sponsor 403(b) plans. In essence, they transferred the concept of MEPs from SECURE Act to adopt it for 403(b)s. It is important to note that, the concept of allowing 403(b) plans to band together under MEPs is not included in the Portman-Cardin retirement legislation and Neal's Simplification bill and thus should be considered a brand-new, serious legislative proposal. The SSRA would allow small employers who join a MEP to be eligible for the start-up tax credit, even if the MEP has been in existence by more than three years. Under current law, the start-up tax credit is provided for the first three years the retirement plan is established. So, for example if a small employer joins a MEP after

[3] Internal Revenue Code Section 1042, UBS (2015) https://www.longpointcapital.com/site/assets/files/1250/1042-exchange-basics.pdf

The three years of being established, it may no longer be eligible for the start-up tax credit. The legislation would allow small employers to receive the start-up tax credit for all three years regardless of when it joins the MEP. If enacted into law, this section would be effective after December 31, 2021.

Matching Contributions for Student Loan Repayments
On August 17, 2018, the IRS publicly released a private letter ruling regarding an Abbott Labs' proposal to treat its employees' student loan repayments as if those payments were elective deferrals being distributed into a retirement plan, while retaining eligibility for matching contributions. The private letter ruling gave Abbot Labs the green light to move forward with its proposal. Since the private letter ruling only impacts Abbot Labs, many plan sponsors have advocated for legislative changes to allow them to provide their employees with the same benefits currently enjoyed by employees at Abbott Labs. The SSRA essentially codifies the ruling made by the IRS in the private letter ruling to Abbot Labs. It would allow employers to make matching contributions for qualified student loan payments. Qualified student loan payments are defined as payments made by an employee in repayment of a higher education loan. In order for a matching contribution to be treated as an employer contribution on account of a qualified student loan payment, the plan must follow the following: (1) the plan sponsor provides matching contributions for a student repayment at the same rate as it does for an elective contribution by the employee, (2) the plan provides matching contributions of qualified student loan payments only to employees that would also be eligible for the same matching contributions of elective contributions, (3) all employees eligible for matching contributions of elective contribution shall also be eligible for matching contributions of qualified student loan payments, and (4) matching contributions of qualified student loan payments vest in the same manner as regular matching contributions of an elective contribution. The Neal-Brady legislation conforms the qualified student loan payments with the same matching contribution and nondiscrimination rules of 401(k)s, 403(b)s and SIMPLE Plans.

101 Constitution Ave N.W. Suite 703 East
Washington, D.C. 20001
Finseca.org

It is important to note that the employee must certify to the employer making the matching contribution that qualified student loan payment was made. If employees only make student loan repayments and stop contributing to their retirement plans, one problem that might arise from this section is that employers might find it difficult to meet the annual deferral percentage (ADP) test. Sen. Wyden introduced a similar legislation and the Portman- Cardin retirement bill also included provisions similar to the SSRA, with technical variations. If enacted into law, this change would be effective after December 31, 2020.

Preservation of Income

Remove Barriers for Life Annuities

The Neal-Brady legislation modifies the RMD rules to allow life annuities that provide lump sum payments on certain years or only annual increases of only 1 or 2 percent, to be available within qualified plans and IRAs. Current law requires annuity payment to be non-increasing. The test is intended to prevent deferral of taxes for later dates, thus limiting commercial annuities from providing payments that start out small increase excessively over time. Under the present RMD rules, the withdrawal is calculated by the account balance divided by a distribution period from the IRS's "Uniform Lifetime Table." The calculation provides a steady RMD that decreases payments over time. This section would take effect immediately after being enacted into law.

Streamlining the Purchase of Qualifying Longevity Annuity Contracts (QLACs)

QLACs are a type of deferred annuity that provides individuals with the ability to hedge the longevity risk. Because required payments start at age 85, QLACs are a very expensive way for retirees of outliving their savings in defined contribution (DC) plans or IRAs. It is important to highlight that QLAC are one of the few financial instruments, if not the only one, that allows an individual to postpone RMDs past age 72. It is rare for a DC plan to offer a QLAC option directly. Given this dynamic, the only way that a plan participant can get purchase a QLAC is by rolling money out of the DC plan into an IRA. QLACs are prevalent in the IRA market. In current regulations, individuals are limited to contributions into a QLAC by the lesser of (1) $130,000 and (2) 25 percent of the individual's retirement account balance. For example, the percentage limitation poses a problem for someone who intends to rollover $50,000 from their DC plan to an IRA account to purchase a QLAC. Unfortunately, that individual would be precluded from utilizing the entire $50,000 towards the purchase of the QLAC because of the limitation of 25 percent for that particular IRA account. To further compound the issue, the account balances are based on proceeding year which means the account would have a zero balance.

In order to address some of the issues described above, the SSRA borrowed legislative text from the Portman-Cardin legislation to make it easier for an individual to purchase a QLAC. The SSRA eliminates the 25 percent limit and increases the premium limit to $200,000. It would take effect after enactment into law.

Simplification and Clarification of Retirement Plan Rules

Reduction of RMD Tax Penalty

Under current statute, individuals who fail to withdraw the RMD from a qualified retirement plan are subject to a 50 percent tax penalty equal to the amount not distributed. The Neal-Brady legislation amend the tax code to decrease the RMD tax penalty from 50 to 25 percent. If the individual corrects the failure to take an RMD within the correction window, the legislation further decreases the RMD tax penalty from 25 to 10 percent. The correction window is defined as a correction on the earlier of two dates, (1) when the IRS demands payments or issues audits, with respect to the excess contribution or failure to take RMDs, (2) or on the last day of the second year that begins after the year when the tax penalty was imposed. It would apply for taxable years after December 31, 2020.

Changes to Charitable Giving

The Neal-Brady legislation increases the amount that can be excluded from gross income when making an IRA qualified charitable distribution to $130,000 from $100,000. Under current law, the qualified charitable distribution shall be made any time on or after the IRA owner attains the age of 70 ½. The legislation also allows a one-time IRA qualified charitable distribution through the use of charitable gift annuities, charitable remainder unitrusts, and charitable remainder trusts. In order to qualify as qualified charitable distribution from an IRA, the split-interest shall only benefit the IRA owner, the spouse of such owner, or both, and the split-interest entity cannot be assigned to someone else at any time. Under current law, a split-interest entity can only receive distributions from an IRA as an inheritance. Additionally, the legislation would modify the tax code to allow qualified charitable distributions from qualified retirement plans through the same proposed IRA rules described above. The effective date for this section would apply to distributions made in taxable years after enactment into law.

Paper Statements
The Neal-Brady bill also clarifies that, unless a participant elects otherwise, the plan is required to provide a paper benefit statement at least once a year. The legislation summary notes that the other three quarterly statements required under ERISA are not subject to this rule and can be provided electronically. This section goes the opposite way from the DOL's recently finalized rule to provide notices electronically. If enacted into law, this section would be effective after December 31, 2021.

Looking Ahead

Some are hopeful that SSRA could be enacted as part of a year-end package during the lame duck in 2020. More likely the bipartisan and bicameral interest in tackling these issues make it a ripe possibility for action in the new Congress.

For More Information

If you have questions or feedback about SSRA, please contact Alex Cisneros at acisneros@finseca.org.

- Finseca's press release on the bill here.
- Ways and Means Committee Chairman and Ranking Member's joint press release on the bill can be found here.
- A section-by-section of the bill can be found here.
- A summary of the bill can be found here.