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## Senate Finance Approves Retirement Bill

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The Senate Finance Committee June 22 approved by a unanimous 28-0 vote the Enhancing American Retirement Now (EARN) Act, intended to be folded into 'SECURE 2.0' retirement legislation. The Committee voted to incorporate an amendment to limit the tax benefits of conservation easements. Many of the bill's provisions tracked proposals first introduced by Senators Ben Cardin (D-MD) and Rob Portman (R-OH), who crafted the retirement section of EGTRRA more than 20 years ago as House members and were praised by other senators for their many years of bipartisan work on retirement and pension issues.

Like the bill passed by the House March 29, the Earn Act includes provisions on 403(b) multiple employer plans, part-time workers, treating student loan payments as elective deferrals eligible for employer matching payments, and insurance-dedicated exchange-traded funds. While the House bill would increase catch-up contributions to \$10,000 (\$5,000 for SIMPLE plans) between ages 62-64, the Senate Finance bill would permit participants to elect to contribute the additional amount between ages 60-63. Both bills would also increase the age for required minimum distributions from 72 to 75 and remove required minimum distribution barriers for life annuities.

The EARN Act would provide an exception to the additional 10% tax that applies to early distributions from tax-preferred retirement accounts for certain distributions used for emergency expenses and in cases of domestic abuse and terminal illness. It would also provide a \$500 credit if a small employer adopts a reenrollment feature under which employers are required to reenroll employees at least every 3 years.

Similar to the House bill, EARN Act revenue offsets would:

- permit an employee participating in a SIMPLE IRA plan or SEP to elect to treat elective deferrals and employer contributions as after-tax Roth contributions;
- require catch-up contributions within an employer retirement plan to be made as after-tax Roth contributions; and
- permit an employee to elect to treat employer matching and other employer contributions as after-tax Roth contributions.

The revenue provisions in the Senate bill would raise \$39.4 billion over 10 years, compared to about \$36 billion under the House bill, according to JCT estimates.

A modification on the morning of the markup would delay the higher catch-up amounts for those 60-63 to be effective after 2024 and accelerate the effective date for the optional treatment of employer matching and nonelective contributions as Roth contributions to apply to contributions made after 2022.

In opening statements, Chairman Ron Wyden (D-OR) highlighted provisions under which the Savers Tax Credit will be deposited directly into a worker's IRA or 401(k) account, rather than lumped into any tax refund, and the credit will be fully refundable. Wyden flagged the "mega-IRA" issue as "one of my top priorities" that is not included in the bill, saying "the final retirement bill that hits the president's desk ought to crack down on this obvious abuse of the tax code."

Ranking Member Mike Crapo (R-ID) said, "I look forward to working with our colleagues on the HELP Committee and our House colleagues to resolve any differences and get a bill to the President's desk," which many expect may not be until closer to the year's end.

Senator Cardin praised the bill's "particular emphasis on lower wage workers," citing the incentives for small companies to set up plans and the refundability of the Saver's Credit. Senator Portman said the pandemic and inflation have made it more difficult to save for retirement, making reforms under the bill even more important.

The Committee adopted 23-5 an amendment by Senator Steve Daines (R-MT) to accelerate the effective date of the exclusion of changes to certain disability-related first responder payments to taxable years after date of enactment and, regarding the offset that requires that catch-up contributions must be made as after-tax Roth contributions, permit an employee to elect to make pre-tax catch-up contributions if the employee's compensation for the prior year is below a specified dollar limit.

The offset for the amendment would be the Charitable Conservation Easement Program Integrity Act (S. 2256), which would impose a limitation on the tax deduction for qualified conservation contributions made by certain partnerships if the amount of the contribution exceeds 2.5% times the sum of each partner's relevant basis in the partnership. The proposal was modified to apply only to contributions made after the date of enactment, as opposed to the December 2016 effective date in the bill as introduced.

Senator Sheldon Whitehouse (D-RI) offered and withdrew his amendment to require new section 401(k) and 403(b) plans to automatically enroll participants when they become eligible, which is a fixture of the House-passed bill. Chairman Wyden said he is fully committed to adding the provision.

Materials related to the bill are at: <https://www.finance.senate.gov/hearings/open-executive-session-to-consider-the-enhancing-american-retirement-now-earn-act>