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In this issue:

Senate taxwriters unanimously approve bipartisan retirement security legislation

The Senate Finance Committee voted 28-0 on June 22 to approve bipartisan retirement security legislation aimed at making it easier for businesses to offer tax-qualified retirement savings plans to their employees and for individuals to participate in retirement plans and grow their tax-preferred savings.

The Enhancing American Retirement Now (EARN) Act, which won plaudits from Democrats and Republicans alike at the Finance Committee mark-up, would build on bipartisan retirement security legislation that Congress enacted in 2019. The 2019 legislation, known as the Setting Every Community Up for Retirement Enhancement (SECURE) Act, was signed into law as part of the Further Consolidated Appropriations Act, 2020 (P.L. 116-94).
URL: https://www.congress.gov/116/plaws/publ94/PLAW-116publ94.pdf

The retirement plan enhancements and savings incentives in the Finance-approved bill would reduce federal receipts by just over $39.3 billion between 2022 and 2032, according to an estimate by the nonpartisan Joint Committee on Taxation (JCT) staff. (The JCT estimate includes provisions in the proposal as introduced plus modifications made ahead of the mark-up but does not include the effect of an amendment adopted during the mark-up session.) But that revenue loss would be more than offset by roughly $39.4 billion in revenue-raising provisions over the same period—including some that would make certain retirement accounts and retirement account contributions subject to after-tax "Roth" treatment. ("Roth"-style retirement accounts, named for former Senate Finance Committee Chairman William Roth, R-Del., require contributions to be made with after-tax funds rather than on a pre-tax basis, with distributions paid out tax-free during retirement.) Overall, the JCT estimates the legislation would increase federal receipts by $144 million (net) over the 10-year window.
URL: https://www.jct.gov/publications/2022/jcx-12-22/

The EARN Act follows the broad contours of the Securing a Strong Retirement Act of 2021 (H.R. 2954), a bipartisan retirement security measure that cleared the House of Representatives on May 5 by a vote of 414-5. At a high level, both measures include provisions that, among other things, would:
URL: https://waysandmeans.house.gov/sites/democrats.waysandmeans.house.gov/files/documents/SECURE%20-%20as%20Introduced.pdf

- Allow plan participants nearing retirement to contribute more to their retirement accounts—by increasing the limits on catch-up contributions for certain employees, for example—and allow plan participants to take advantage of the benefits of tax-deferred earnings over a longer period of time by raising the age for taking mandatory minimum distributions;
- Expand the universe of workers that participate in employer-sponsored retirement plans—for example, by allowing employers to treat student loan payments made by their employees as elective deferrals for purposes of determining retirement plan matching contributions and reducing the service requirements for part-time employees to participate in an employer plan;
- Modify certain retirement plan design rules to ease administrative burdens for plan sponsors and provide additional flexibility and other relief for plan participants;
- Remove barriers to offering certain types of annuity products within a defined contribution plan; and
- Offset the bulk of their proposed retirement security enhancements through "Rothification."

There are, however, some differences in the two packages. For example, the EARN Act does not include a provision in the House-passed measure that would require employers sponsoring new retirement plans to automatically enroll their employees into the retirement program (subject to an employee opt-out). Moreover, the Finance measure includes several provisions that are not part of the House bill, such as penalty-free access to retirement funds to help accountholders meet certain specified emergency expenses, as well as a revenue offset intended to deny deductions for certain syndicated conservation easements that some congressional lawmakers (and the Internal Revenue Service) consider abusive.

Major provisions in the EARN Act are highlighted below. It is worth noting, though, that in addition to these provisions, the EARN Act includes a number of incentives targeted to individuals with modest incomes, certain public safety officers and members of the military, and small businesses that currently do not offer retirement plans.

Technical explanations of all the provisions in the chairman's mark of the EARN Act as introduced on June 17 and additional modifications to the chairman's mark that were unveiled on June 21 are available from the JCT staff.
URL: https://www.jct.gov/publications/2022/jcx-9-22/
URL: https://www.jct.gov/publications/2022/jcx-11-22/

Notable savings and tax incentives for retirement plan participants

Several provisions in the Finance Committee legislation would allow plan participants nearing retirement to contribute more to their retirement accounts and allow plan participants of any age to take advantage of the benefits of tax-deferred earnings over a longer period of time.

The measure also includes provisions that would enhance certain current-law incentives for charitable distributions from retirement plans, provide deferral of tax for certain sales of employer stock to employee stock ownership plans (ESOPs) sponsored by an S corporation, and provide a new incentive for purchasing long-term care insurance with retirement funds.

Increased age for required minimum distributions: The legislation would allow individuals to delay tapping into their retirement account savings by increasing the age for beginning required minimum distributions from a qualified plan or IRA to 75 (from 72 under current law) beginning in 2032. (A similar provision in the House-passed measure would gradually increase the age for taking required minimum distributions until it reaches 75 in 2032.)

The EARN Act provides that an individual who has not reached age 75 in 2032 would not be required to take minimum distributions that year even if the individual had reached the age for mandatory distributions that was in effect in a prior calendar year. For example, an individual who reaches age 73 in 2032 would not be required to take a minimum distribution for that year, even though that individual might have been required to take a minimum distribution for calendar year 2031 on account of having reached age 72 in 2031.

The proposal would be effective for calendar years beginning after the date of enactment.

Higher limits for qualified plan catch-up contributions: Under current law, participants in a section 401(k) plan, section 403(b) plan, or governmental section 457(b) plan who are aged 50 or older generally may make additional annual catch-up contributions of up to $6,500 (the inflation-adjusted amount in effect for 2022). A $3,000 annual catch-up limit (indexed) applies for eligible participants in a Savings Incentive Match Plan for Employees (SIMPLE plan).

This legislation generally would increase the catch-up contribution amount to $10,000 ($5,000 for SIMPLE plans) for participants who reach age 60, 61, 62, or 63 (but who are not older than age 63), by the end of the taxable year. (Both amounts would be indexed annually for inflation beginning in 2025.) The provision would be effective for taxable years beginning after December 31, 2023.

A similar provision in the House-passed legislation would apply to participants who reach age 62, 63, or 64 during a taxable year.

Inflation indexing of IRA catch-up contributions: IRA holders aged 50 and older are permitted under current law to make additional catch-up contributions of up to $1,000 a year, but that limitation is not subject to a cost-of living adjustment. This legislation would adjust the $1,000 cap annually for inflation for taxable years beginning after the date of enactment. (A similar provision is included in the House-approved measure.)

Increase in qualified charitable distribution limitation; one-time election for charitable distribution to split-interest entity: The EARN Act would index the current-law annual IRA charitable distribution limit of $100,000 for inflation for taxable years beginning after 2023.

The legislation also would permit a taxpayer to elect for a taxable year to treat certain distributions from an IRA to a split-interest entity as if the contributions were made directly to a qualifying charity for purposes of the exclusion from gross income for qualified charitable distributions. Such an election may not have been in effect for a preceding taxable year; thus, the election may be made for only one taxable year during the taxpayer's lifetime. The aggregate amount of distributions of the taxpayer with respect to the election may not exceed $50,000 (indexed for inflation for taxable years beginning after 2023).

A similar proposal is included in the House-passed legislation.

Deferral of tax for certain sales of employer stock to employee stock ownership plans sponsored by S corporation: The legislation would amend the definition of qualified securities to remove the requirement that the securities be issued only by a C corporation. In general, the proposal would allow a taxpayer to elect to defer the recognition of long-term capital gain on the sale of qualified securities of an S corporation to an ESOP. However, in the case of a sale of S corporation securities, the election to defer recognition of gain may not be made with respect to more than 10 percent of the amount realized on the sale. The election must take into account the portion of adjusted tax basis that is properly allocable to the portion of the amount realized with respect to which the election is made.

This provision would apply to sales after December 31, 2027.

Long-term care contracts purchased with retirement account distributions: The Finance Committee legislation would permit retirement plans to distribute up to $2,500 per year for the payment of premiums for certain specified long-term care insurance contracts. Distributions from plans and IRAs to pay such premiums would be includable in income but exempt from the additional 10 percent tax on early distributions (which generally applies to distributions taken before a retirement plan participant reaches age 59-1/2). Only a policy that provides for high-quality coverage would be eligible for early distribution and waiver of the 10 percent tax. High quality in this context describes a policy that would provide meaningful financial assistance in the event that an insured needs home-based assistance or nursing home care. The proposal, which is not included in the House-passed legislation, would be effective three years after date of enactment.

Enhanced Saver's Credit: The bill would enhance the current-law Saver's Credit available to certain lower- and middle-income taxpayers who make contributions to employer retirement plans and IRAs by:

1. Replacing the current tiered rate structure with a single rate,
2. Making the credit refundable, and
3. Changing it from a credit paid in cash as part of a tax refund to a government matching contribution that must be deposited into a taxpayer's IRA or retirement plan.

The credit would be 50 percent of IRA or retirement plan contributions up to $2,000 per individual, and the credit rate would phase out between $41,000 and $71,000 for joint filers, $20,500 to $35,500 for single taxpayers and married filing separate, and $30,750 to $53,250 for head-of-household filers. The provision would be effective for years after 2026.

The House-approved measure likewise proposes a single 50 percent credit rate on contributions of up to $2,000 per individual; however, the credit would remain cash-based and nonrefundable and different eligibility and phase-out thresholds would apply.

Expanding retirement plan coverage

In addition to enhancing incentives to save for retirement, the EARN Act, like the House-passed legislation, includes some significant provisions intended to increase employee participation in employer-sponsored retirement plans.

Student loan payments treated as elective deferrals: To assist younger workers who may lack the disposable income to save for retirement while they are paying down student loan debt, the legislation would allow employers to treat student loan payments as elective deferrals for purposes of determining employer matching contributions to an employer-sponsored retirement plan. This proposal is effective for contributions made for plan years beginning after December 31, 2023.

A similar provision is included in the House-passed legislation.

Reduced service requirement for part-time workers: To bring more long-term part-time workers into the retirement system, the legislation would require an employer to allow part-time employees to participate in the employer's defined contribution plan if an employee has worked for the employer at least 500 hours a year for at least two continuous years and has reached the age of 21 by the end of the two-consecutive-year period. (As enacted in the SECURE Act, the length-of-service requirement for part-time employees is three years.) This provision would be effective for plan years beginning after December 31, 2022. A separate provision intended to clarify vesting rules for these employees would be effective as if included in section 112 of the SECURE Act.

A similar provision is included in the House legislation.

Some support for automatic enrollment requirement, but no provision: Unlike the House-passed measure, the EARN Act as approved by the Finance Committee does *not* include a provision that generally would require sponsors of new 401(k), 403(b), and SIMPLE IRA plans to automatically enroll employees in those plans as soon as they become eligible to participate (with employees retaining the right to opt out of coverage).

At the Finance Committee mark-up, taxwriter Sheldon Whitehouse, D-R.I., offered and then withdrew an amendment that would have mandated automatic enrollment in new retirement plans. (The amendment mirrored the provision in the House legislation.) In withdrawing his amendment, Whitehouse urged that an auto-enrollment feature be included in the final retirement security package negotiated by the House and Senate. Finance Committee Chairman Ron Wyden, D-Ore., for his part, expressed support for the amendment and stated his commitment to ensuring that auto-enrollment is incorporated into the legislation that Congress eventually sends to President Biden's desk.

The EARN Act does provide certain incentives for those plans that adopt an auto-enrollment feature, however. The measure would provide an alternative method for satisfying nondiscrimination testing rules for auto-enrollment plans that, among other conditions, meet certain minimum requirements for employee elective deferral percentages and employer matching percentages. It also includes a credit for small employers that periodically re-enroll employees at the default contribution rate in effect at the time (to reflect the fact that default contribution rates increase periodically under many plans). Employees would be permitted to affirmatively select a contribution rate that is lower than the default.

Plan design and administration

The Finance Committee legislation includes a number of changes to the retirement plan design rules, many of which are similar to those in the House-passed bill, that are intended to ease administrative burdens for plan sponsors (especially small businesses), provide additional flexibility and other relief for plan participants, and facilitate the inclusion of certain types of annuity and insurance products within a retirement plan.

Plan administration: Proposed changes intended to simplify plan administration would, among other things:

- Provide that, in the case of certain overpayments from defined benefit and defined contribution plans, a plan will not lose its qualified status (or be deemed in violation of the requirements of sections 401 and 403) merely because it fails to obtain repayment on account of any inadvertent benefit overpayment made by the plan, or the plan sponsor amends the plan in a certain manner to adjust for prior inadvertent benefit overpayments. This provision would be effective on the date of enactment.
- Relax the "top-heavy" rules for certain defined contribution plans in instances where the plan satisfies the top-heavy minimum contribution requirement with respect to employees who do not meet other requirements related to minimum age and service (effective for plan years beginning after the date of enactment).

- Extend through 2032 a provision otherwise scheduled to expire at the end of 2025 that permits an employer to transfer certain excess pension assets of a defined benefit plan to a retiree medical account or life insurance account within the plan to fund retiree health benefits and group term life insurance benefits (effective for transfers after the date of enactment).
- Modify the family attribution rules that apply in determining whether two or more employers are to be aggregated for purposes of applying the qualification rules, by providing that the family attribution rules will be applied without regard to any community property laws (effective for plan years beginning on or after December 31, 2023).
- Reduce the excise tax—from 50 percent to 25 percent—that generally applies to the shortfall when an individual's distributions during the year from a qualified retirement plan are less than the amount determined under the required minimum distribution rules. The excise tax would be reduced further, to 10 percent, for individuals who correct the shortfall within a specified correction period and submit a return reflecting the excise tax. This provision would be effective for taxable years beginning after the date of enactment.
- Eliminate the 10 percent additional tax on early withdrawals in the case of corrective distributions that occur when an individual's contribution to an IRA exceeds applicable limits (effective for distributions after the date of enactment).
- Permit a surviving spouse of a deceased employee to elect to be treated as the employee for purposes of the required minimum distribution rules under an employer plan (effective for calendar years beginning after December 31, 2023).
- Eliminate the pre-death minimum distribution requirement for Roth accounts in employer plans to make the distribution rules under those plans consistent with those in effect for Roth IRAs (effective for taxable years beginning after December 31, 2023).
- Modify the Employee Plans Compliance Resolution System (EPCRS) rules to permit plan sponsors to self-correct non-egregious failures, authorize the IRS to issue guidance on correction methods that must be used for self-correction, and expand EPCRS to cover certain failures with respect to IRAs (effective on the date of enactment).
- Require the Treasury Department to simplify and standardize the rollover process by issuing sample forms for direct rollovers that may be used by both the incoming and outgoing retirement plan or IRA. Treasury would be required to issue the sample forms by January 1, 2025.

Insurance and annuity provisions: To help ensure that retirees have access to a life-long income stream, the EARN Act, like the House-approved measure, proposes to simplify certain current rules related to annuity and insurance products offered within a qualified retirement plan.

- **Life annuities:** The bill would amend the required minimum distribution regulations to permit commercial annuities within a defined contribution plan to offer features such as guaranteed annual payment increases of up to 5 percent per year, lump-sum return of premium death benefits, lump-sum payments that reduce the annuity period, and dividends or similar distributions determined in an actuarially reasonable manner. This provision would be effective as of the date of enactment.
- **QLACs:** A qualified longevity annuity product (QLAC) is a fixed annuity provided under a defined contribution plan that commences at an advanced age (but no later than age 85) and meets certain

other requirements—including that premiums cannot exceed a certain dollar amount ($135,000 in 2022) or 25 percent of the participant's account balance. The EARN Act would modify current rules governing QLACs to:

  - Eliminate the requirement that premiums for QLACs be limited to 25 percent (or any other percentage) of an individual's account balance,
  - Increase the $135,000 limitation to $200,000 and index it, generally in the same manner as the limits are adjusted under section 415(d),
  - Clarify the treatment of QLACs purchased with joint survivor and annuity benefits for an individual and his or her spouse, and
  - Ensure that the regulation does not preclude a contract from offering a provision that allows an employee to rescind the purchase of a contract within up to 90 days from the date of purchase (the "short free look period").

  This provision generally would be effective with respect to contracts purchased or received in an exchange on or after the date of enactment. The changes with respect to joint and survivor annuities and the "short free look period" would be effective with respect to contracts purchased or received in an exchange on or after July 2, 2014.
- **Eliminating penalty on partial annuitization:** Under current law, if a tax-preferred retirement account also holds an annuity, the account must be bifurcated between the portion of the account holding the annuity and the rest of the account for purposes of applying the required minimum distribution rules. This treatment may result in higher minimum distributions than would have been required if the account did not hold an annuity. The EARN Act would permit the account owner to elect to aggregate distributions from both portions of the account for purposes of determining minimum distributions. This provision would be effective after date of enactment.
- **Insurance-dedicated exchange-traded funds:** The bill would direct the Treasury Department to revise the regulations on diversification requirements for variable annuity contracts under section 817(h) to allow exchange-traded funds (generally defined as a regulated investment company, partnership, or trust that is registered with the SEC) to be held in the segregated account of a variable insurance contract. The provisions would be effective for segregated asset account investments made on or after the date that is seven years after the date of enactment.

Section 403(b) plan provisions

The EARN Act includes enhancements to the rules governing section 403(b) plans that would:

1. Permit 403(b) custodial accounts to participate in group trusts with other tax-preferred savings plans and IRAs, effective for amounts invested after the date of enactment and
2. Conform the hardship withdrawal rules for 403(b) plans with those in place for section 401(k) plans, effective for plan years beginning after the date of enactment.

The legislation also would broaden the availability of section 403(b) defined contribution plans—particularly among smaller employers—by permitting 403(b) sponsors to participate in a multiple employer plan (MEP) arrangement. These MEP 403(b) arrangements generally would follow the provisions governing other MEP defined contribution plans laid out in the SECURE Act—including relief from the “one bad apple” rule, so that violations by one plan sponsor participating in a MEP would not affect the tax-qualified status of other plans participating in the arrangement. The provision would be effective for plan years beginning after the date of enactment.

Emergency and hardship access to retirement plan funds

The EARN Act includes several provisions that would provide penalty-free access to retirement funds for individuals facing certain specified emergencies.

- **Federally declared disasters:** Affected individuals would be permitted to withdraw up to $22,000 from an employer retirement plan or IRA to cover expenses related to federally declared disasters. Distributions would be exempt from the 10 percent tax penalty for early withdrawals, would be includable in income over three years, and could be recontributed to a tax-preferred retirement account. Additional relief would apply to certain distributions for home purchases and to certain retirement plan loans. The provision would be effective for disasters occurring on or after January 1, 2026.
- **Domestic abuse:** Domestic abuse victims would be permitted to withdraw the lesser of $10,000 or 50 percent of their account balance without imposition of the 10 percent early withdrawal penalty, although the distribution amount would be includable in income. Distributions could be recontributed to a tax-preferred retirement account within three years. The provision would be effective for distributions after the date of enactment.
- **Terminal illness:** The legislation would waive the 10 percent early withdrawal penalty for distributions made to an individual who has been certified by a physician as having a terminal illness or condition that can reasonably be expected to result in death in 84 months or less after the date of the certification. (Treasury would be required to prescribe rules for certifying an individual’s condition.) The distribution would be includable in income. The provision would be effective for distributions after the date of enactment.
- **Unforeseen emergency expenses:** The EARN Act also would waive the 10 percent early withdrawal penalty for distributions to cover certain unforeseeable or immediate personal or family emergency expenses, with the distribution amount includable in income. An individual would be eligible for one distribution per year of up to $1,000 and would have an option to recontribute the distribution amount over three years. No additional distributions would be permitted during that three-year period unless the original distribution is repaid, however. The provision would be effective for distributions made after December 31, 2023.

The House-approved bill includes relief for domestic abuse victims but does not address the other hardship provisions in the Finance Committee package.

Revenue offsets

As already noted, the revenue package in the EARN Act would more than offset the cost of the proposed retirement security enhancements and relies chiefly on provisions that would expand "Roth treatment of certain retirement account contributions.

Expanded "Rothification': The Roth provisions in the Finance Committee bill, which are similar to those in the House-passed retirement security measure, would:

- Require a section 401(a) qualified plan, section 403(b) plan, or governmental section 457(b) plan that permits an eligible participant to make catch-up contributions to treat those contributions as after-tax Roth contributions. The proposal would not apply to a SIMPLE IRA or Simplified Employee Pension (SEP) plan. This provision would be effective for taxable years beginning after December 31, 2023.
- Permit SEPs and SIMPLE IRAs to be designated as Roth IRAs, with contributions made with after-tax income and distributions excludable from gross income. Roth treatment of a SEP or SIMPLE IRA would be subject to an employee's election. The contribution limit for Roth IRAs generally would be increased by the contributions made on the individual's behalf to the SIMPLE IRA or SEP for the taxable year, subject to certain limits. This provision would be effective for taxable years beginning after December 31, 2023.
- Allow participants in a section 401(a) qualified plan, a section 403(b) plan, or a governmental 457(b) plan to designate employer matching contributions and non-elective contributions as Roth contributions. An employer matching contribution that is a designated Roth contribution would not be excludable from gross income. In order for this rule to apply, the employee would have to be fully vested in the matching or non-elective contribution under the plan. This provision would be effective for contributions made after December 31, 2023.

According to the JCT staff, these provisions would increase receipts by an estimated $39.44 billion over 10 years.

Conservation easement restrictions: Unlike the House-approved bill, the EARN Act's revenue package also includes a modified version of the Charitable Conservation Easement Program Integrity Act (S. 2256), a bill sponsored by Finance Committee members Steve Daines, R-Mont., Debbie Stabenow, D-Mich., and Charles Grassley, R-Iowa, that is intended to curb certain conservation easement arrangements that some regard as abusive by denying a tax deduction for conservation contributions made by certain passthrough entities if the amount of the contribution is more than 2.5 times the sum of each owner's relevant basis in the passthrough entity.

The provision was included in an amendment that was offered at the mark-up by Daines, Stabenow, and Grassley and approved by a vote of 23-5. It's worth noting that as proposed in the amendment, the limitation on the deduction would be effective for contributions made after the date of enactment. (The limitation in S. 2256 as introduced would apply to contributions made after December 23, 2016.)

The revenue generated by the deduction limitation is intended to offset another provision in the amendment that would accelerate the effective date of proposed changes to the tax treatment of disability payments to first responders. The JCT has not released a revenue score for the amendment.

Some of Finance Committee members who opposed the amendment, such as Republican Sen. Rob Portman of Ohio, indicated that they supported the underlying policy goal of curbing abusive conservation easements but were concerned that the provision as drafted might be detrimental to certain legitimate arrangements, such as those involving the preservation of historic buildings. It is unclear if taxwriters intend to tweak the provision to address those concerns as the legislative process advances.

No provision to limit 'mega IRAs': The Finance Committee bill does not include a provision to limit the accumulation of multi-million-dollar balances in so-called "mega IRAs"—an issue that Finance Chairman Ron Wyden and House Ways and Means Committee Chairman Richard Neal, D-Mass., identified as a priority last year. (For prior coverage, see *Tax News & Views*, Vol. 22, No. 35, July 30, 2021.)
URL: https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2021/TNV/210730_2.html

Wyden noted in his opening statement at the mark-up that he supports proposals to require accountholders to take distributions when a 401(k) or IRA balance reaches $10 million, but he acknowledged that there was "no agreement" to include such a provision in the EARN Act. (In the House, a provision to prohibit new contributions and to require distributions when a retirement account balance reaches $10 million was included in the Build Back Better legislation that cleared that chamber last November, but there is not a similar provision in the retirement security measure that House lawmakers approved this past March.)

Wyden told his colleagues he intends to keep "bird-dogging" the issue in hopes of addressing it in the eventual House-Senate agreement on retirement security legislation.

"The final retirement bill that hits the president's desk ought to crack down on this obvious abuse of the tax code," Wyden said.

Next steps

The provisions in the EARN Act will need to be merged with those in the Retirement Improvement and Savings Enhancement to Supplement Healthy Investments for the Nest Egg (RISE & SHINE) Act—a nontax retirement security measure that was approved by the Senate's Health, Education, Labor, and Pensions Committee by voice vote on June 14.

It is not yet clear whether Democratic leaders will bring a combined retirement package to the Senate floor for consideration or will instead negotiate a compromise agreement with the House that might be inserted into a year-end tax bill along with other priorities such as extensions of expiring tax provisions.

— Michael DeHoff
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House appropriators approve $1 billion FY 2023 budget bump for IRS

The House Appropriations Committee on June 24 approved a Financial Services and General Government budget package for fiscal year 2023 that would increase topline funding for the Internal Revenue Service by roughly $1 billion over the level enacted for FY 2022. Final passage came on a vote of 31-22.
URL: https://docs.house.gov/meetings/AP/AP00/20220624/114951/BILLS-117-FC-AP-FY2023-AP00-FSGG-U1.pdf

The spending measure cleared the Financial Services and General Government Subcommittee on June 16.

Program allocations

The proposal as approved would allocate a total of $13.6 billion to the Service for the coming fiscal year, up from the $12.6 billion that was enacted for FY 2022 this past March. (For details on the final FY 2022 spending agreement, see *Tax News & Views*, Vol. 23, No. 8, Mar. 11, 2022.) But the measure falls short of the $14.1 billion that the Biden administration requested for the agency in its FY 2023 budget blueprint. (For details on the White House budget blueprint for FY 2023, see *Tax News & Views*, Vol. 22, No. 28, May 29, 2021.)
URL: https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2022/TNV/220311_1.html
URL: https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2021/TNV/210529_1.html

Here's how the proposed $13.6 billion in IRS funding in the subcommittee-approved package would be allocated across the agency's four program areas:

- Enforcement: $6.1 billion (FY 2022 enacted: $5.4 billion; FY 2023 White House request: $6.3 billion);
- Taxpayer Services: $3.4 billion (FY 2022 enacted: $2.8 billion; FY 2023 White House request: $3.7 billion);
- Operations Support: $3.8 billion (FY 2022 enacted: $4.1 billion; FY 2023 White House request: $3.8 billion); and
- Business Systems Modernization: $310 million (FY 2022 enacted: $275 million; FY 2023 White House request: $310 million).

The appropriations package does not include a policy rider sought by a few House Democrats that would have prohibited the IRS from using its funds to block efforts by states and localities to implement workarounds to the $10,000 annual cap on the deduction for state and local taxes (SALT) that was enacted in the Tax Cuts and Jobs Act of 2017 (P.L. 115-97). Many Democratic lawmakers whose constituents face high state and local income and property taxes have sought to ease the current-law cap or repeal it outright. But House Ways and Means Committee Chairman Richard Neal, D-Mass., recently told reporters that he would prefer that Congress address issues related to the cap through tax legislation rather than through the appropriations process. (The

Build Back Better Act, which cleared the House last November, would temporarily raise the cap on the deduction to $80,000, but that measure remains stalled in the Senate.)

What's next?

House appropriators have stated that they plan to complete work by June 30 on all 12 of the spending bills that are necessary to fund federal government operations in FY 2023. It is currently unclear when those measures will be considered by the full House.

Appropriators in the Senate, meanwhile, have not yet announced their timeline for moving government spending bills for the coming fiscal year.

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Despite Democratic resistance, Biden pitches federal gas tax suspension

Though many lawmakers from his own party offered only lukewarm support for—or even outright opposition to—the policy, President Biden this week called for a three-month suspension of federal excise taxes on gasoline and diesel fuel.

'Breathing room'

In a fact sheet released June 22, the White House acknowledged that the proposal—which would suspend the 18.4 cents-per-gallon tax on gasoline and the 24.4 cents-per-gallon tax on diesel fuel through September 30—would not be a cure-all; nonetheless, President Biden has indicated that he still sees virtue in providing even modest relief to consumers facing historically high fuel prices.
URL: https://www.whitehouse.gov/briefing-room/statements-releases/2022/06/22/fact-sheet-president-biden-calls-for-a-three-month-federal-gas-tax-holiday/

The administration also made clear that any gas tax holiday would have to be passed by Congress and could not be executed by the White House alone.

"President Biden understands that a gas tax holiday alone will not, on its own, relieve the run up in costs that we've seen," the fact sheet states. "But the president believes that at this unique moment when the war in Ukraine is imposing costs on American families, Congress should do what it can to provide working families breathing room."

Make the Highway Trust Fund whole: The White House fact sheet also calls on Congress to ensure that the full cost of the three-month gas tax moratorium "has no negative effect" on the financial status of the Highway

Trust Fund, but is instead backfilled by a commensurate transfer from the government's general fund—a practical necessity coming in the wake of enactment last year of the nearly $1 trillion, bipartisan Infrastructure Investment and Jobs Act (P.L. 117-58).
URL: https://www.congress.gov/bill/117th-congress/house-bill/3684/text

"With our deficit already down by a historic $1.6 trillion this year, the president believes that we can afford to suspend the gas tax to help consumers while using other revenues to make the Highway Trust Fund whole for the roughly $10 billion cost," the fact sheet states.

This emphasis on ensuring the Highway Trust Fund is made whole also features in recent congressional proposals to suspend the gas tax, such as the Gas Prices Relief Act of 2022 (S.3609), which was introduced earlier this year by a handful of Democrats who face tight re-election races in November, including Sens. Mark Kelly of Arizona, Maggie Hassan of New Hampshire, and Raphael Warnock of Georgia.

The Biden administration's proposal this week also calls on state lawmakers to complement the proposed federal holiday by enacting their own moratoriums on state-level gas taxes.

Unlikely to gain traction

Despite high gas prices and general consumer price inflation running at roughly four-decade highs, however, the prospects for any near-term action on a federal gas tax holiday appear very dim, with some congressional Democrats—ranging from party leaders to the chairs of committees overseeing tax and infrastructure policy—panning the idea in fairly blunt terms.

"I have not been a proponent of the gas tax [holiday]," House Majority Leader Steny Hoyer, D-Md., said June 21. "There's no guarantee that the sellers, either wholesale or retail, will reduce their prices. And then, of course, we've got to backfill [the Highway Trust Fund]. I just don't know that it gives much relief."

House Transportation and Infrastructure Committee Chairman Peter DeFazio, D-Ore., also expressed concern that any gas tax reprieve would not be fully reflected in the price at the pump.

"As discussions on possibly suspending the federal gas tax continue, I urge my colleagues to see this for what it is: a short-sighted proposal that relies on the co-operation of oil companies to pass on miniscule savings to consumers."

House Ways and Means Committee Chairman Richard Neal, D-Mass., made the same point to reporters—at least with respect to the manner in which recent proposals to suspend the gas tax have been structured.

"I'm not committed to it," Neal said. "I want to talk to the speaker about it, and we're going back and forth. I want some assurance that the money is going to go to the consumer."

And across the Capitol, even Democratic Sen. Maggie Hassan of New Hampshire, who backed a moratorium in recent months, came out against the White House proposal from the opposite angle, arguing it did not go far enough—demonstrating that the policy would likely face long odds in the evenly divided upper chamber where near-unanimous GOP opposition seems likely.

“I think that we should be suspending the gas tax for at least the next year,” Hassan told reporters on June 22. “So no, I don’t think 90 days is enough.”

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