

Congress of the United States
U.S. House of Representatives
Committee on Small Business
2561 Rayburn House Office Building
Washington, DC 20515-6515

To: Members, Subcommittee on Economic Growth, Tax, and Capital Access
From: Committee Staff
Date: April 16, 2018
Re: Hearing: "Small Business Retirement Plans and the IRS' Employee Plans Fee Change."

On Tuesday, April 17, 2018 at 10:00 a.m., the Subcommittee on Economic Growth, Tax, and Capital Access of the Committee on Small Business will meet in Room 2360 of the Rayburn House Office Building for the purpose of examining the importance of retirement plans for small businesses and the recent employee plans fee change by the Internal Revenue Service (IRS). The hearing will allow Members of the Committee the opportunity to hear directly from the IRS regarding retirement plans and this fee change.

I. Introduction

With 29 million small businesses¹ populating cities and towns across America, the nation's smallest firms are a major driver of the economy. Additionally, nearly half of all private sector workers in the country are employed by a small business.² Despite the growth and optimism³ shared by this sector, small businesses continue to operate on the margins. Due to resources being limited when it comes to salaries, small businesses often utilize benefits to supplement wages and earnings for employees. Benefits important to all employees, not just small business employees, are often those geared toward retirement savings. Unfortunately, saving money for retirement frequently proves challenging for many Americans. According to a recently published Federal Reserve survey, 28 percent of all working adult respondents indicated that they do not have any form of retirement savings.⁴ Moreover, the United States Government Accountability Office found that approximately half of all Americans that have retired or are near retirement have zero dollars in savings.⁵ Employer retirement savings plans can offer a multitude of options and benefits to both employers and employees.

¹ SBA OFFICE OF ADVOCACY, SMALL BUSINESS PROFILE (2017), *available at* https://www.sba.gov/sites/default/files/advocacy/United_States_1.pdf.

² *Id.*

³ NATIONAL FEDERATION OF INDEPENDENT BUSINESS: MARCH 2018 REPORT: SMALL BUSINESS OPTIMISM INDEX (2018), *available at* <https://www.nfib.com/surveys/small-business-economic-trends/>.

⁴ BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM, REPORT ON THE ECONOMIC WELL-BEING OF U.S. HOUSEHOLDS IN 2016 (2017), *available at* <https://www.federalreserve.gov/publications/2017-economic-well-being-of-us-households-in-2016-retirement.htm>.

⁵ GAO, RETIREMENT SECURITY: MOST HOUSEHOLDS APPROACHING RETIREMENT HAVE LOW SAVINGS 1 (GAO-15-419) (2015).

II. Retirement Plans

Retirement savings plans for private sector workers come in many shapes and forms, and include many tax advantages to encourage saving. Created in the 1974 Employee Retirement Income Security Act,⁶ Individual Retirement Accounts (IRAs)⁷ and their various employer/employee versions are a popular savings option for many people. Employee IRAs can be categorized into the following buckets: a payroll deduction IRA, a simplified employee pensions (SEPs), a simple IRA Plan, or a Profit Sharing Plan.⁸

Another category of retirement savings plans are defined contribution plans. This option is more commonly known as 401(k) plans, as they are eponymously named after the section it appears in the Internal Revenue Code.⁹ These business established plans allow employees to set aside a certain amount of money for retirement from each paycheck. Employers can provide employees with the following 401k plan options: Safe Harbor 401(k), Automatic Enrollment 401(k), and Traditional 401(k).

The last major retirement savings plan that employers offer falls under the category of defined benefit plans. As its name implies, a defined benefit plan delivers a certain dollar amount after retirement. Tenure with the company, combined with a few additional factors, usually calculate the final amount a given worker would receive upon retirement.

Despite approximately \$19.7 trillion¹⁰ being held by Americans, as of December 31, 2017, in the retirement plans described above, not all small businesses can afford to offer employees with retirement savings options. According to research by the PEW Charitable Trusts, more than 40 percent of workers are not provided any retirement options to utilize from their employer.¹¹ Further statistical data by PEW indicates, that there are numerous factors that often prevent employers from offering retirement savings plans. However, the top two issues listed for not offering plans can be categorized as resource issues. The top factor was “too expensive to set up,” while the second most cited reason was “Organization does not have the resources to administer such a plan.”¹²

⁶ Pub. L No. 93–406.

⁷ 26 U.S.C. §408.

⁸ DEPARTMENT OF LABOR and INTERNAL REVENUE SERVICE, Choosing a Retirement Solution for Your Small Business, available at <https://www.dol.gov/sites/default/files/ebsa/about-ebsa/our-activities/resource-center/publications/choosing-a-retirement-solution-for-your-small-business.pdf>.

⁹ 26 U.S.C. §401.

¹⁰ \$19.7 trillion is calculated through Investment Company Institute research including \$3.7 trillion held in defined benefit plans, \$7.7 trillion held in defined contributions plans, and \$8.9 trillion held in IRAs, available at https://www.ici.org/research/stats/retirement/ret_17_q4.

¹¹ THE PEW CHARITABLE TRUSTS, SMALL BUSINESS VIEWS ON RETIREMENT SAVINGS PLANS (2017), available at <http://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2017/01/small-business-views-on-retirement-savings-plans>.

¹² *Id.*

III. Pension Protection Act of 2006

To evaluate and reform economic security for all Americans, the United States Congress authored and President George W. Bush signed the 2006 Pension Protection Act (PPA).¹³ With the goal of encouraging the act of saving for retirement, the PPA implemented a number of compliance provisions including the Employee Plans Compliance Resolution System (EPCRS).¹⁴ Due to the complexity of the reporting requirements of retirement savings plans, Congress established EPCRS to ease many of the filing burdens. The intent was to provide businesses with the ability to make corrections to erroneously filed documents.

Specifically, EPCRS offers plan sponsors three different correction options based on where the plan sponsor is in the filing process. A Self-Correction Program allows errors to be corrected by a plan sponsor without involving the IRS or paying a fee.¹⁵ Additionally, EPCRS offers the Voluntary Correction Program (VCP) that allows plan sponsors to pay a fee before an IRS audit is performed.¹⁶ Lastly, EPCRS offers the Audit Closing Agreement Program that allows plan sponsors that are currently going through an audit the ability to pay a penalty.¹⁷

It is important to note that Congress recognized the unique nature of small businesses by including the following language in PPA: “taking into account special concerns and circumstances that small employers face with respect to compliance and correction of compliance failures.”¹⁸ Similar to the regulatory burdens placed on small businesses because they do not have an army of compliance officers navigating federal rules and regulations, compliance with IRS rules and regulations on employer retirement plans often produces burdens for small businesses.

IV. IRS Revenue Procedure 2018-04

With the authority¹⁹ provided to the Secretary of the Treasury in PPA to continually update and improve EPCRS, and authority to set user fees outlined in the Internal Revenue Code,²⁰ the IRS published Revenue Procedure 2018-04²¹ at the beginning of 2018. Among the many changes included in the IRS policy document were changes to the user fees for VCP. Instead of a six bracket user fee structure based on how many participants are in the plan, the new user fee schedule utilizes three brackets that are defined by plan asset size. As an example, the lowest fee before the change captured a plan size that ranged from 0-20 participants. In this bracket, the user fee was \$500. The lowest fee in the new schedule are for plan sizes with assets of \$500,000 or less. The fee in this lowest bracket is \$1,500.

¹³ Pub. L. No. 109-280.

¹⁴ *Id.* at Title XI, § 1101.

¹⁵ <https://www.irs.gov/retirement-plans/epcrs-overview>.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Supra* note 12, at (b) (2).

¹⁹ *Id.* at (1).

²⁰ 26 U. S. C. § 7528.

²¹ <https://www.irs.gov/pub/irs-irbs/irb18-01.pdf>.

Additionally, the IRS notice also altered the ability of plan sponsors to pay a reduced fee for a number of common errors, such as minimum required distribution mistakes.

V. Conclusion

With the unemployment rate continuing to decline,²² the American economy is making great strides in recovering from the financial crisis that erupted in the late 2000s.²³ One key factor for individual economic soundness and certainty is determined by the level of retirement security an individual has. Moreover, saving for retirement is important for not only individual retirees, but also current workers who strive to be prepared for the future. With low levels of savings reported by Americans, combined with underutilization of retirement plans by small businesses, changes by the IRS to compliance tools should take into account the impact on small businesses. This hearing will provide Members with the opportunity to interact directly with the IRS on these important matters.

²² <https://data.bls.gov/timeseries/LNS14000000>.

²³ ROBERT RICH, FEDERAL RESERVE BANK OF NEW YORK, THE GREAT RECESSION, FEDERAL RESERVE HISTORY (2013), available at https://www.federalreservehistory.org/essays/great_recession_of_200709.