Ivins Phillips Barker
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Employee Benefits Changes in Ways and Means Amendment for 2022 Budget Reconciliation

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On September 15, 2021, the House Ways and Means Committee proposed an amendment to the $3.5 trillion budget reconciliation bill for 2022, including several employee benefits changes. The following summarizes the proposed changes and their effective dates.

Executive Summary

The tax portion of the bill (see Committee summary) would:

- Restrict Roth conversions and rollovers of after-tax contributions for all taxpayers,
- Introduce additional retirement plan restrictions for high-income taxpayers,
- Create plan reporting obligations for high account balances, and
- Accelerate unrelated changes in paid leave and executive compensation.

The portion of the bill promoting alternative vehicles (see Committee summary) would:

- Reinstate and expand the bicycle commuter benefit that had been suspended in 2018.

Retirement Plan Changes

Definition of High-Income Taxpayers

Most retirement plan changes in the proposed amendment affect "high-income taxpayers," defined as: (a) single taxpayers with more than $400,000 of taxable income, (b) married taxpayers filing jointly with more than $450,000 of taxable income, and (c) heads of household with more than $425,000 of taxable income. Income thresholds are indexed for inflation.

Contribution Limits for High-Income Taxpayers and Related Plan Reporting

Effective tax years beginning after 2021, employee contributions and employer contributions may not be made to defined contribution plans (including 401(k), 403(b), and governmental 457(b) plans) or traditional or Roth individual retirement accounts (IRAs) by or on behalf of high-income taxpayers if a high-income taxpayer's combined defined contribution and IRA assets exceed $10 million at the end of the previous taxable year, or if the sum of such assets and such contributions would exceed $10 million.

Also effective tax years beginning after 2021, plan administrators must annually report to the IRS the names, identifying numbers, and account balances of participants with vested account balances of at least $2.5 million. Both the $10 million and the $2.5 million thresholds are indexed for inflation.

Required Distributions for High-Income Taxpayers

Effective tax years beginning after 2021, defined contribution plans and IRAs must make minimum distributions to high-income taxpayers if a high-income taxpayer's combined defined contribution and IRA assets exceed $10 million at the end of the previous taxable year. The minimum distribution, which cannot be rolled over, contains two components:

(a) If the combined defined contribution and IRA balance exceeds $20 million, the amount, to the extent available in Roth IRAs or Roth accounts, needed to reduce such balance to $20 million; plus

(b) 50% of the amount needed to reduce the combined defined contribution and IRA balance to $10 million, reduced by any amount distributed for the year under component (a).

There are also ordering rules about where the distributions would come from. Both the $20 million and the $10 million thresholds are indexed for inflation.

Restrictions on Roth Rollovers and Conversions of After-Tax Contributions for All Taxpayers and Other Restrictions on High-Income Taxpayers

Effective January 1, 2022, for all individuals regardless of income level, after-tax contributions cannot be rolled over or converted into Roth. (Note that this change has been reported as prohibiting after-tax contributions altogether. However, the Ways and Means Committee's proposed amendment as currently drafted would prohibit the Roth rollover or conversion of after-tax contributions, not the making of after-tax contributions.)

Roth rollovers and conversions by high-income taxpayers are further restricted. Effective tax years beginning after 2021, high-income taxpayers may not convert or rollover any non-Roth amount, whether pre-tax or after-tax, into Roth IRAs or Roth designated plan accounts.

Executive Compensation, Paid Leave, and Fringe Benefits

Accelerated Expansion of Covered Employees Subject to Limitation on Deductibility of Compensation

Effective tax years beginning after 2021, covered employees under section 162(m) of the Internal Revenue Code are expanded to include at least ten (rather than five) employees. This change was introduced by the American Rescue Plan Act of 2021 and was scheduled to take effect after 2026, but the legislation would accelerate the change. Section 162(m) limits the deductibility of compensation greater than $1 million paid to a covered employee by a publicly held corporation.

Accelerated Expiration of Paid Family and Medical Leave Credit

The employer credit for wages paid to employees during family and medical leave will be terminated effective taxable years beginning after 2023. This would accelerate the expiration of the credit by two years.

Reinstated Income Exclusion for Bicycle Commuting Benefits

Effective tax years beginning after 2021, income exclusion for employer-provided qualified bicycle commuting benefits is reinstated and expanded from $20/month to $52.50/month. Qualified bicycle commuting benefits include provision or reimbursement of purchase, financing, lease, rental (including bikeshare), improvement, or storage of qualified commuting property used for travel between an employee's residence, place of employment, or a mass transit facility that connects the employee to their residence or place of employment. Qualified commuting property includes bicycles, certain electric bicycles, motorless scooters, and certain motored scooters.

Summary Chart of Proposed Benefits Changes in the Ways and Means Amendment

Section	Proposed Change	Affected Parties	Effective Date
138301	Contribution Limits	High-income taxpayers with at least $10 million in defined contribution and IRA assets	Tax years beginning after 2021
138301	Plan Reporting of High Account Balances	Plans with at least one participant with a vested account balance of at least $2.5 million	Tax years beginning after 2021
138302	Required Distributions	High-income taxpayers with at least $10 million in defined contribution and IRA assets	Tax years beginning after 2021
138311	Restrictions on Roth Rollovers and Conversions of After-Tax Contributions	Individuals with after-tax plan assets	January 1, 2022
138311	Other Restrictions on Roth Rollovers and Conversions	High-income taxpayers	Tax years beginning after 2021
138501	Accelerated Expansion of Covered Employees Subject to Limitation on Deductibility of Compensation	Publicly held corporations	Tax years beginning after 2021
138506	Accelerated Expiration of Paid Family and Medical Leave Credit	Employers who provide paid family and medical leave	Tax years beginning after 2023
136406	Reinstated Income Exclusion for Bicycle Commuting Benefits	Employers who provide bicycle commuting benefits	Tax years beginning after 2021

If you have questions about the information in this alert, please contact a member of our Benefits & Compensation Team.