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Senators Cardin and Portman Reintroduce Retirement Legislation

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May 26, 2021 TO: ICI Members
Bank, Trust and Retirement Advisory Committee
Broker/Dealer Advisory Committee
Operations Committee
Pension Committee
Pension Operations Advisory Committee
Small Funds Committee
Transfer Agent Advisory Committee SUBJECTS: Pension RE: Senators Cardin and Portman Reintroduce Retirement Legislation

Senators Cardin (D-MD) and Portman (R-OH) recently reintroduced the Retirement Security and Savings Act of 2021 (S. 1770).[1] Like the version of the bill introduced last Congress (the "2019 Portman-Cardin bill"), the bill includes more than 50 provisions intended to strengthen Americans' retirement security by expanding access to plans and maximizing security and flexibility in retirement.[2] The bill includes several provisions promoted by the Investment Company Institute and builds on the Setting Every Community Up for Retirement Enhancement (SECURE) Act[3] enacted at the end of 2019.

Although similar to the 2019 Portman-Cardin bill, a number of provisions in the new bill were modified, two sections were removed,[4] and four new provisions were added.[5] Many of the bill's provisions were also included in the recently reintroduced "SECURE 2.0" bill, which was approved by the House Ways and Means Committee.[6] Like the SECURE 2.0 bill, the bill is overwhelmingly bipartisan. We anticipate the provisions of S.1770 being very much in the mix as the Senate Finance Committee considers fashioning its own package of retirement policy reform measures in the coming months.

The specific provisions are described in more detail below.

Description of Cardin-Portman Bill Provisions

The Cardin-Portman Retirement Security and Savings Act of 2021 would do the following:

1. Provisions Intended to Expand Coverage and Increase Retirement Savings

- *Establish a new automatic enrollment safe harbor* (§§101-103). The bill would create a new safe harbor for 401(k) plans (exempting the plan from nondiscrimination and top-heavy testing requirements) as an alternative to the existing automatic enrollment safe harbor plan design. Under the provision—

  - Employees must be automatically enrolled, with the initial default contribution set at six percent of compensation, increasing one percent each year, until the default reaches ten percent of compensation.[7]
  - Employers would be required to provide matching contributions equal to (a) a 100 percent match on the first two percent of pay contributed by the employee; (b) a 50 percent match on the next four percent contributed; and (c) a 20 percent match on the next four percent contributed.
  - Employers with 100 or fewer employees would receive a special tax credit when they adopt this new safe harbor, intended to account for the higher expense of the employer contribution compared to the formula under the existing safe harbor.

- *Expand the Saver's Credit* (§104). The bill would make the Saver's Credit refundable and would require that the credit be paid directly into a retirement plan or Roth IRA (contributions would be treated as Roth contributions, but would not apply toward contribution limits or for any testing requirements). The bill also would modify the eligibility formula to allow more individuals to qualify for a 20 percent credit (instead of a ten percent credit).
- *Modify participation requirements for long-term, part-time workers* (§105). The bill would amend a provision from the SECURE Act that requires 401(k) plans to permit participation by workers who complete at least three consecutive years of service with at least 500 hours of service each year.[8] The bill would reduce the three-year requirement to two years. As under the SECURE Act, such workers do not need to be included in testing for nondiscrimination and coverage requirements or application of the top-heavy rules.[9]
- *Simplify top-heavy rules for defined contribution (DC) plans* (§106). For DC plans that allow employees to participate without having met the statutory minimum age and service requirement (e.g., the long-term part-time workers described in §105 of the bill or employees under age 21), the bill would permit plans to apply the top-heavy testing rules separately for such participants.[10]
- *Allow non-spouse beneficiaries to roll over inherited IRAs* (§107). The bill would allow non-spouse beneficiaries to utilize a 60-day rollover (also referred to as an indirect rollover) to move assets into an inherited IRA. This aligns the rules for spousal and non-spouse beneficiaries.
- *Increase the age for beginning required minimum distributions (RMDs)* (§108). The bill would change the age at which IRA owners and plan participants must begin taking RMDs, from age 72 to age 75, beginning in 2032. The SECURE Act generally increased the beginning age to 72.[11]
- *Increase amount of the start-up credit* (§109). The bill would modify the amount of the existing tax credit for certain small businesses that adopt a new qualified plan. For employers with no more than 25 employees, the credit would equal 75 percent (increased from 50 percent) of startup costs.[12]
- *Establish a credit for re-enrollment* (§110). The bill would create a new $500 credit for small businesses that have employer plans that include an automatic re-enrollment feature. The new credit would be available for the first three years after the employer adds a new provision to re-enroll employees (at least every three years) who previously opted out of automatic enrollment or who opted to contribute a lower amount.
- *Allow employer matching contributions based on student loan payments* (§111). The bill would allow employers to modify their 401(k), 403(b), SIMPLE IRA, or 457(b) plans

to provide that employer matching contributions under the plan will be made on behalf of employees who make payments on their student loans (to apply, for this purpose only, as if the employees had made elective deferrals). The employees must certify that they have made the loan payment.[13]

- *Allow tax exclusion for qualified retirement planning services* (§112). The bill would modify the Internal Revenue Code (IRC) to provide that retirement planning services received in lieu of compensation would not be includible in the employee's income.
- *Allow SIMPLE plan sponsors to make additional nonelective contributions* (§113). The bill would allow employers who sponsor SIMPLE plans to make contributions in addition to the currently required three percent match or two percent nonelective contribution, as additional nonelective contributions of up to ten percent.[14] The bill would impose a new limit on total contributions made to a SIMPLE plan account, at half of the IRC § 415 limit for DC plans (i.e., for 2021, $29,000, half of $58,000).
- *Reform minimum participation rule* (§114). The bill would direct Treasury to amend the regulations under IRC § 401(a)(26) (minimum participation requirements for defined benefit plans) to permit separate testing of certain separate subsidiaries or divisions within a controlled group.
- *Expand EPCRS* (§115). The bill would expand the IRS's Employee Plans Compliance Resolution System (EPCRS), deeming EPCRS amended, to allow plans to self-correct[15] all inadvertent plan violations, except where expressly prohibited by the IRS. Further, the bill directs IRS to expand EPCRS (1) to allow IRA custodians to address certain inadvertent failures for which the IRA owner was not at fault, and (2) to allow plans and IRAs to self-correct any inadvertent RMD failures, where a distribution is made no more than 180 days after it was required.[16]
- *Expand permissible 403(b) investments* (§116). The bill would amend IRC section 403(b) to permit 403(b) custodial accounts to invest in group trusts (which include collective investment trusts) and insurance company separate accounts, in addition to regulated investment company stock. It would also amend the Investment Company Act of 1940 (1940 Act) to provide that 403(b) plans could invest in collective trusts and separate accounts without causing such trusts and accounts to lose their exclusions under the 1940 Act, provided that: (1) the 403(b) plan is subject to ERISA, (2) the employer making the 403(b) arrangement available agrees to serve as a fiduciary for selecting the investments under the plan, or (3) the plan is a governmental plan.[17]
- *Clarify eligibility for participation in 457(b) plans* (§117). The bill provides that a participant's receipt of certain de minimis distributions from a 457 plan will not preclude the participant from participating in the plan.
- *Allow small immediate financial incentives for contributing to a plan* (§118). The bill would allow employers to offer small incentives (e.g., a gift card) to induce employees to enroll in the plan.[18]
- *Index IRA limit for catch-up contributions* (§119). The bill would require IRS to annually adjust the $1,000 limit for IRA catch-up contributions for increases in the cost of living, in the same manner as it adjusts the (non-catch-up) IRA contribution limit.[19]
- *Apply higher catch-up limit at age 60* (§120). The bill would increase the limit for catch-up contributions for participants who have reached age 60[20] (from $6,000 to $10,000 in the case of 401(k) and 403(b) plans; from $3,000 to $5,000 in the case of SIMPLE plans).[21] The bill would also instruct IRS to adjust these higher catch-up contribution limits annually for increases in the cost of living.
- *Defer tax for certain sales of employer stock to employee stock ownership plan sponsored by S corporation* (§121). The bill would allow individual owners of stock in a non-publicly traded S corporation that sponsors an employee stock ownership plan

(ESOPs) to elect to defer the recognition of gain from the sale of such stock to the ESOP if the seller reinvests the sales proceeds into "qualified replacement property." Currently, this option only applies to C corporation ESOPs.[22]

- *Establish credit for small employers providing retirement plans for military spouses* (§122). The bill would create a new tax credit for small employers with retirement plans that (1) make military spouses immediately eligible for plan participation within two months of hire, (2) upon plan eligibility, make the military spouse eligible for any matching or nonelective contribution that they would have been eligible for otherwise at two years of service, and (3) make the military spouse immediately fully vested in all employer contributions. The employer would be eligible for a maximum credit of $500 for three years with respect to each military spouse who is a non-highly compensated employee. The employer would be permitted to rely on the employee's certification that the employee's spouse is a member of the uniformed services.[23]

2. Provisions Intended to Promote Lifetime Income

- *Modify QLAC rules* (§201). The bill would direct Treasury to modify its regulations on qualifying longevity annuity contracts (QLACs) to do the following:[24]
    - Remove the existing 25 percent limit and raise the current dollar limit from $135,000 to $200,000 and to adjust this dollar limit for inflation (current rules limit the amount of QLAC annuity premiums that can be excluded from the RMD rules to the lesser of $135,000 (across all of an individual's IRAs or plan accounts) or 25 percent of the individual's IRA plan balance).
    - Allow variable and indexed annuities to qualify as QLACs, provided that they include certain guarantees.
    - Clarify that a QLAC may include a free look period of not more than 90 days.
    - Clarify the treatment of a divorce or separation for a joint and survivor annuity QLAC.
- *Review RMD barriers for life annuities* (§202). The bill would modify the statutory and regulatory RMD provisions that generally disallow annuities that provide payments that increase over time.[25]
    - The bill would amend the statute to expressly permit, under the RMD rules, commercial annuities (i) whose payments increase by a constant percentage (less than five percent per year); (ii) which allow lump sum payments as a result of commutation or acceleration of the future payments; (iii) which pays a dividend or similar payments; or (iv) which provides certain lump sum return of premium death benefits.
    - The bill would direct Treasury to make certain changes to the regulations, including providing that a commercial annuity whose initial payment is as much or higher than the RMD amount that would be required under the DC plan RMD rules would be deemed to satisfy the RMD requirements.[26]
- *Enhance RMD rules for partial annuitization* (§203). The bill would direct Treasury to amend its regulations under the RMD rules to modify the treatment of partial annuitization. When a participant annuitizes a portion of his DC plan account, if the annuity payments paid in a calendar year exceed the amount that would be required to be distributed under the DC plan RMD rules based on the value of the annuity, then the excess annuity payment amount for a year could be applied towards the RMD required with respect to the non-annuitized portion of the participant's account.
- *Permit insurance-dedicated ETFs* (§204). The bill would direct Treasury to modify its regulations to remove certain barriers that generally preclude ETFs from being available through variable annuities.[27]

3. Provisions Intended to Simplify and Clarify Retirement Plan Rules

- *Require a report to Congress on reporting and disclosure requirements* (§301). The bill would direct the Department of Labor (DOL), Treasury and the Pension Benefit Guaranty Corporation (PBGC) to review the reporting and disclosure requirements in ERISA and the IRC applicable to qualified plans and, within 18 months, to provide a joint report to Congress with recommendations to "consolidate, simplify, standardize, and improve" the requirements. A new requirement would require the agencies to consult "with a balanced group of participant and employer representatives" prior to providing the report.[28]
- *Consolidate DC plan notices* (§302). The bill would direct DOL and Treasury to adopt, within 18 months of the date the bill is enacted, regulations providing that a plan sponsor may consolidate two or more of the following notices:
    - The notice a plan must provide to a participant when it defaults the participant into a qualified default investment alternative (QDIA), in order for plan to receive fiduciary liability relief for the investment selected [ERISA §404(c)(5)(B)];
    - The notice required by ERISA when participants are automatically enrolled into a QDIA, in order for the plan to ensure that any state laws that may restrict automatic enrollment (e.g., wage laws) are preempted [ERISA §514(e)(3)];
    - The notice that safe harbor plans must provide to participants regarding the arrangement [IRC §401(k)(12)(D)];
    - The notice that automatic enrollment safe harbor plans must provide to participants [IRC §401(k)(13)(E)]; and
    - A notice that explains a participant's right to stop automatic enrollment and to withdraw contributions, without penalty, within 90 days of the first contribution [IRC §414(w)(4)].
- *Modify the performance benchmarks for asset allocation funds* (§303). The bill would direct DOL to modify its participant-level fee disclosure regulation—specifically, the requirement to compare each designated investment alternative against an appropriate broad-based securities market index. The change would allow investments such as target date funds, that include a mix of asset classes, to be benchmarked against a blend of broad-based securities market indices, provided certain conditions are met.[29]
- *Permit non-spousal beneficiaries to roll assets to plans* (§304). The bill would permit non-spousal beneficiaries to roll inherited assets into a 457, 401(k) or 403(b) plan, in addition to the option to roll them into an IRA, which is currently permitted.
- *Harmonize 457(b) deferral election rules with other DC plans* (§305). The bill would remove the rule that 457(b) plan participants must request changes in their deferral rate prior to the beginning of the month in which the deferral will be made.[30]
- *Simplify 402(f) notices* (§306). The bill would direct Treasury (in consultation with DOL and PBGC) to simplify the model 402(f) notice[31] to make it more understandable to participants. The model notice must explain how the different elections would affect spousal rights.
- *Permit safe harbor plans to use base pay or rate of pay calculations* (§307). The bill would direct Treasury to modify the rules for 401(k) safe harbor plans to provide that the use of base pay or rate of pay (i.e., without overtime or bonuses) to calculate contributions would not disqualify the employer from using the safe harbor, except for plans for which, on a consistent basis, overtime is a major component of the pay for non-highly compensated employees.
- *Allow Roth in SIMPLE IRAs* (§308). The bill would allow SIMPLE IRAs to be offered as Roth IRA accounts.[32]

- *Reduce excise tax for failure to take an RMD* (§309). The bill would reduce the penalty for failure to take an RMD distribution from 50 percent to 25 percent.[33]
- *Clarify rules for catch-up contributions with respect to separate lines of business* (§310). The bill would amend the rules for catch-up contributions, providing that a plan can permit catch-up contributions even if an affiliated plan in a separate line of business does not allow catch-up contributions.
- *Clarify substantially equal periodic payment rule* (§311). The bill would make the following clarifications regarding the application of the exception to the 10 percent early distribution penalty for a series of substantially equal periodic payments:
  - A rollover to another qualified plan or IRA would not constitute a "subsequent modification" that disqualifies the payment series from the exception to the 10 percent penalty.
  - Annuity payments can qualify for the substantially equal periodic payment exception and will be deemed to qualify for the exception to the ten percent penalty if they would satisfy the RMD requirement for qualified plans.
- *Clarify treatment of distributions of annuity contracts* (§312). The bill would clarify that the inclusion of an annuity contract within a lump sum distribution would not preclude the distributee from receiving the favorable tax treatment afforded distributions of company stock from a plan.
- *Clarify rule for post-termination elective deferrals* (§313). The bill would direct Treasury to amend its regulations to provide that employees who terminate employment can make post-termination contributions to a 401(k), 403(b) or 457 plan from severance pay and back pay.
- *Encourage non-business contributions to a simplified employee pension (SEP)* (§314). The bill would extend the exception from the 10 percent excise tax on nondeductible contributions to a retirement plan to also include SEPs (the exception currently covers contributions to a SIMPLE plan or a 401(k) plan).
- *Allow certain plan transfers and mergers* (§315). The bill would allow an employer to merge its 403(b) plan and its 401(a) plan.
- *Create exception from RMD rule when aggregate retirement savings do not exceed $100,000* (§316). The bill would provide that a participant whose combined balance in his or her IRAs and retirement plans does not exceed $100,000 (indexed for inflation and subject to a $10,000 phase-out range), as of the December 31 of the year before attaining age 72 (or other applicable required beginning date) would not be required to take RMDs. DB plans would be disregarded for this purpose. As long as the participant does not make additional contributions, the initial determination will continue to apply for all subsequent years, even if the account value appreciates. Plan providers could rely on a certification from the participant as to the total value of his or her accounts. This exclusion applies only the original account owner or plan participant, and not to beneficiaries.[34]
- *Harmonize hardship rules for 403(b) plans* (§317). The bill would conform the hardship rules for 403(b) plans to the 401(k) hardship rules, aligning the changes made to the 401(k) plan hardship rules by the Bipartisan Budget Act of 2018.[35]
- *Encourage IRA preservation* (§318). The bill would make the following changes to the IRA rules, to reduce the impact of punitive provisions:
  - Directs Treasury to make certain information available to the public, including an overview of the IRA rules, examples of common errors, and how to avoid such errors.
  - Reduces the excise tax on excess contributions from six percent to three percent, if the IRA owner corrects the excess contribution within the "correction window" (by the end of the second taxable year after the taxable year in which

    the tax is first imposed; or earlier, in the event IRS discovers the error during audit).
  - Reduces the excise tax for failing to take an RMD to ten percent, if the IRA owner corrects the failure within the correction window.
  - Removes the penalty of disqualification for a prohibited transaction; however, a prohibited transaction excise tax would still apply.[36]
  - Modifies the statute of limitation rules to ensure that the three-year statute of limitations begins running when a when an income tax return is filed (or would have been filed, if the individual is not required to file), for purposes of prohibited transactions, excess contributions, or RMD failures.[37]
- *Eliminate early distribution penalty on certain distributions* (§319). The bill would modify the rules regarding the ten percent early withdrawal penalty to provide that the penalty would not apply to distribution of earnings on excess IRA contributions.
- *Allow distributions to firefighters* (§320). The bill would modify the rules regarding the ten percent early withdrawal penalty. The change would expand the existing exception for "distributions to qualified public safety employees in governmental plans" to include private sector firefighters who terminate after age 50 and take a distribution from a retirement plan.[38]
- *Eliminate unnecessary plan notices to unenrolled participants* (§321). The bill would modify the notice requirements under ERISA and the IRC to provide that plans would not be required to provide certain notices to employees who are eligible to participate but have not been enrolled in the plan. The plan would have to provide such employees with notices required in connection with the employee's initial eligibility under the plan (including the summary plan description), and an annual notice reminding the employee that he or she is eligible to participate in the plan.[39]
- *Allow recovery of retirement plan overpayments* (§322). The bill would permit plans to determine whether or not to seek recoupment of mistaken overpayments; would impose protective conditions on any recoupment of overpayments, such as prohibiting plans from seeking interest on the overpayments, limiting the annual amount that could be recouped through reduction of future payments, prohibiting the recoupment from beneficiaries of overpayments made to participants, and prohibiting recoupment where the first overpayment occurred more than three years before the participant is notified of the error; and would provide rollover relief with respect to overpayments.[40]
- *Create retirement savings lost and found* (§323). The bill would create a national online, searchable database to be managed by the PBGC, containing information on plans and information related to the location of certain unclaimed benefits of missing, lost and non-responsive participants in such plans. The bill would require non-terminated plans to transfer non-responsive participants' benefits to the PBGC if the benefit is $1,000 or less. The bill would also make changes to the rules on involuntary cash-outs and automatic rollovers. For accounts with a value of $1,000 to $6,000 (raised from the current cash-out limit of $5,000), involuntary cash-outs would have to be transferred to an IRA[41] on behalf of the participant or beneficiary, with the possibility of investing the account in a target date or life cycle fund if provided for in future DOL guidance.[42] The bill also directs DOL, in consultation with Treasury, to issue regulations on what plan fiduciaries need to do to satisfy their fiduciary duties in trying to find missing participants.[43]

4. Defined Benefit Plan Reforms

- *Enhance defined benefit system* (§§401-405). The bill would make reforms relating to cash balance plans, valuing lump sum distributions, mortality assumptions, PBGC premiums, and use of surplus pension assets to provide retiree health and welfare benefits.

5. Provisions Intended to Reform Plan Rules to Harmonize with IRA Rules

- *Harmonize Roth plan distribution rules* (§501). The bill would amend the RMD rules to exempt Roth amounts in plans from lifetime RMDs, aligning the treatment of designated Roth accounts in plans with Roth IRAs. RMD rules would continue to apply to designated Roth accounts after the plan participant's death.
- *Extend charitable distributions to plans* (§502). The bill would extend the qualified charitable distributions under existing IRA rules to apply to employer plans as well. Like IRA owners, plan participants over age 70 ½ could direct up to $100,000 per year from the plan to be paid directly to a qualified charity, and such amounts would be excludable from income and satisfy all or part of the amount of RMD required from the plan.[44]
- *Allow surviving spouse to elect to be treated as employee* (§503). The bill would allow surviving spouse beneficiaries to elect to be treated as the plan participant for RMD purposes, if the plan permits it.
- *Allow rollovers from Roth IRAs to plans* (§504). The bill would amend the rollover rules to permit rollovers from Roth IRAs to Roth accounts in employer plans.

6. Provision Related to Plan Amendments

- *Provide time for plan amendments* (§601). The bill would give plan sponsors until the end of 2023 (2025 in the case of governmental plans) to amend the plan document for changes made by the bill. Like the 2021 SECURE 2.0 bill, the bill also would conform the plan amendment deadlines under the SECURE Act, the CARES Act, and the Taxpayer Certainty and Disaster Tax Relief Act of 2020 to these new dates (instead of 2022 and 2024).

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endnotes

[1] The bill text is available here. See Senator Portman's press release describing the bill, available here, and Senator Cardin's press release, available here.

[2] Senators Portman and Cardin first introduced the bill in December 2018 as the Retirement Security and Savings Act of 2018 (S. 3781). For a summary of the 2019 Portman-Cardin bill (S. 1431), *see* ICI Memorandum No. 31827, dated June 27, 2019, *available at* https://www.ici.org/memo31827.

[3] For a summary of the SECURE Act, *see* ICI Memorandum No. 32118, dated December 20, 2019, *available at* https://www.ici.org/my_ici/memorandum/memo32118. The 2019 Portman-Cardin bill, introduced prior to the passage of the SECURE Act, was drafted with the assumption that a version of the SECURE Act would be passed. Some of the changes in the 2021 bill reflect changes made by the SECURE Act.

[4] The following sections from the 2019 Portman-Cardin bill were eliminated: section 109 (updating of mortality tables for minimum required distributions) [Treasury recently issued final regulations to update the tables, in response to a 2018 Executive Order. See ICI Memorandum No. 32909, dated November 11, 2020, available at https://www.ici.org/memo32909] and section 307 (treatment of custodial accounts on termination of section 403(b) plans) [a version of this provision was enacted in section 110 of the SECURE Act].

[5] The new provisions appear in sections 121, 122, 322, and 323.

[6] For a summary of the “Securing a Strong Retirement Act of 2021,” see ICI Memorandum No. 33523, dated May 7, 2021, available at https://www.ici.org/memo33523.

[7] Note that these percentages are the minimum defaults that must be used. Plans are permitted to apply a higher default percentage, but for the first year, the default percentage cannot be higher than 10 percent.

[8] The 2019 Portman-Cardin bill included this provision of the SECURE Act as §105 but required only two years of service instead of three.

[9] The SECURE 2.0 bill includes a similar provision (§114); that bill added language to also clarify that pre-2021 service is disregarded for vesting purposes under this provision.

[10] This provision was included in the 2021 SECURE 2.0 bill (§314).

[11] The 2019 Portman-Cardin bill would have changed the age from 70 ½ to age 72, beginning in 2023, and then to age 75 beginning in 2030. The 2021 SECURE 2.0 bill includes a similar provision, but makes the increase in multiple steps, to age 73 in 2022, age 74 in 2029, and age 75 in 2032 (§105).

[12] The 2019 Portman-Cardin bill also included language to extend a more generous tax credit applicable to all small business who are eligible for the credit (employers with no more than 100 employees and that adopt a new qualified plan are eligible). This improvement was enacted as section 104 of the SECURE Act.

[13] This provision was also included in the 2021 SECURE 2.0 bill (§109). Minor changes were made to the 2021 bill that align with changes made to the 2021 SECURE 2.0 bill.

[14] Under current law, SIMPLE plan sponsors are not permitted to make employer contributions in excess of the matching or nonelective employer contributions that are required.

[15] Corrections made under the self-correction portion of EPCRS do not require payment of a fee to the IRS nor a formal IRS submission.

[16] A similar provision was included in the 2021 SECURE 2.0 bill (§307).

[17] This provision was also included in the 2021 SECURE 2.0 bill (§104).

[18] This provision was also included in the 2021 SECURE 2.0 bill (§112).

[19] This provision was also included in the 2021 SECURE 2.0 bill (§106).

[20] Individuals become eligible to make catch-up contributions in the year in which they attain age 50.

[21] A similar provision was included in the 2021 SECURE 2.0 bill, to apply only at ages 62, 63, and 64 (§107).

[22] This provision was included in the 2020 version of the SECURE 2.0 bill (§106), but in the 2021 version of SECURE 2.0, the provision was replaced with findings that memorialize Congress' view on the benefits of employee ownership of S corporations through employee stock ownership plans (ESOPs) and its ongoing goal of preserving and fostering employee ownership of S corporations through ESOPs.

[23] The 2021 SECURE 2.0 bill includes a very similar provision (§111), which only applies to DC plans.

[24] This provision was also included in the 2021 SECURE 2.0 bill (§202); however, that bill would not raise the dollar limit to $200,000, nor would it allow variable and indexed annuities to qualify as QLACs.

[25] This provision was also included in the 2021 SECURE 2.0 bill (§201).

[26] Annuity payments paid from DC plans are tested under the RMD rules for defined benefit plans.

[27] A modified version of this provision also appeared in the 2021 SECURE 2.0 bill (§203). The Cardin-Portman bill provision is nearly identical to the 2020 SECURE 2.0 bill; certain changes were made in the 2021 SECURE 2.0 bill, including extending the deadline for Treasury to issue regulations from one year in the 2020 bill to seven years.

[28] A similar provision was included in the 2021 SECURE 2.0 bill (§304).

[29] This provision was included in the 2021 SECURE 2.0 bill (§303).

[30] This provision was included in the 2021 SECURE 2.0 bill (§308).

[31] The 402(f) notice provides an explanation of tax consequences when making distributions that are eligible for rollover.

[32] A similar provision was included in the 2021 SECURE 2.0 bill (§601), which would permit SIMPLE IRA and SEP IRA contributions to be made as Roth contributions.

[33] A similar provision was included in the 2021 SECURE 2.0 bill (§302).

[34] A similar provision was included in the 2020 SECURE 2.0 bill (§307) but was removed in the 2021 SECURE 2.0 bill.

[35] This provision was included in the 2021 SECURE 2.0 bill (§602).

[36] A similar provision was included in the 2021 SECURE 2.0 bill (§321), providing that only the portion of the IRA involved in the prohibited transaction is disqualified and treated as distributed.

[37] A similar provision relating to the statute of limitations was included in the 2021 SECURE 2.0 bill (§312).

[38] A similar provision was included in the 2021 SECURE 2.0 bill (§310).

[39] A similar provision was included in the 2021 SECURE 2.0 bill (§305).

[40] This provision was also included in the 2021 SECURE 2.0 bill (§301).

[41] The provision explicitly prohibits plans from sending PBGC involuntary cash-outs of accounts greater than $1,000. Involuntary cash-outs of amounts less than $1,000 would be prohibited from being transferred to an IRA; rather, such accounts of participants who do not otherwise make an election or cash a distribution check must be transferred to PBGC. It appears that terminating DC plans would continue to be able to transfer to PBGC benefits of missing participants. *See* summary of DOL's Field Assistance Bulletin 2021-01 summarized in ICI Memorandum No. 33043, dated January 14, 2021, *available at* https://www.ici.org/memo33043.

[42] Currently, involuntary cash-outs transferred to an IRA must be invested in a product designed to preserve principal and provide a reasonable rate of return, whether or not such return is guaranteed, consistent with liquidity.

[43] This provision also appears in the 2021 SECURE 2.0 bill (§306).

[44] A similar provision was included in the 2020 SECURE 2.0 bill (§311) but was removed in the 2021 SECURE 2.0 bill.