

**MEMO# 34096**

April 5, 2022

## **US House of Representatives Approves "SECURE Act 2.0" Legislation**

[34096]

April 5, 2022

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

Tax RE: US House of Representatives Approves "SECURE Act 2.0" Legislation

On March 29, 2022, the US House of Representatives approved, by a vote of 414 to 5, H.R. 2954, the "Securing a Strong Retirement Act of 2022" (or SECURE 2.0).[\[1\]](#) The bill was introduced by House Ways and Means Committee Chairman Richard Neal (D-MA) and ranking member Kevin Brady (R-TX). It combines an earlier version of the same bill approved in 2021 by the Ways and Means Committee[\[2\]](#) with the Retirement Improvement and Savings Enhancement (RISE) Act (H.R. 5891),[\[3\]](#) which passed the House Committee on Education and Labor during a mark-up on November 10, 2021. The Senate is working towards advancing its own package of retirement-policy reform measures.[\[4\]](#)

Like earlier versions, the bill includes provisions long advocated by ICI that are intended to promote increased retirement savings, preserve retirement balances in retirement and reduce administrative burdens associated with plan sponsorship. The bill builds on the Setting Every Community Up for Retirement Enhancement (SECURE) Act,[\[5\]](#) enacted at the end of 2019.

Although similar to the 2021 SECURE 2.0 bill, a number of provisions in the new version were modified, one section was removed,[\[6\]](#) and seven new provisions were added.[\[7\]](#) Like the 2021 bill, many provisions overlap with the Retirement Security and Savings Act of 2021 (S. 1770), introduced last year by Senators Cardin (D-MD) and Portman (R-OH) ("Cardin Portman bill").[\[8\]](#) Other provisions reflect the concerns of particular constituent groups and appear intended to garner bipartisan support for the overall bill.

The specific provisions are described in more detail below.

## Description of Bill Provisions

The Securing a Strong Retirement Act of 2022 would do the following:

### Provisions Intended to Expand Coverage and Increase Retirement Savings

- Require automatic enrollment in retirement plans (§101). The bill would require newly established 401(k) plans and 403(b) annuity contracts to automatically enroll participants. Subject to certain exceptions, plans would also be required to allow permissible withdrawals,[\[9\]](#) and set the default contribution rate between three and ten percent of compensation for the first year of participation—increasing the rate by one percent each year, up to at least ten percent but not higher than fifteen percent. For plans other than safe harbor 401(k) plans, the maximum default contribution rate is ten percent, rather than fifteen percent, for an initial period until 2025. The following plans will not be subject to this requirement:
  - SIMPLE 401(k) plans;
  - Plans in existence prior to enactment of this bill;
  - Governmental and church plans;
  - Plans adopted by businesses in existence for less than 3 years; and
  - Plans adopted by businesses that employ ten or fewer employees.

In the case of a multiple employer plan (MEP), the bill specifies that employers that join an existing MEP after enactment of the bill are not exempt from the requirement to automatically enroll participants. Also, the exceptions for new and small businesses apply separately with respect to each such employer participating in a MEP.

- Modify credit for small employer pension plan startup costs (§102).[\[10\]](#) The bill would modify the existing tax credit for small businesses that adopt a new qualified plan. For employers with no more than 50 employees, the credit would equal 100 percent (increased from 50 percent) of startup costs. For defined contribution (DC) plans, an additional credit would be provided, based on the amount contributed by the employer on behalf of employees.[\[11\]](#)
- Promote Saver's Credit (§103). The bill would direct Treasury to take steps to increase public awareness of the Saver's Credit and to provide a report to Congress regarding its anticipated promotion efforts.
- Enhance Saver's Credit (§104). The bill would amend the Saver's Credit to use a single credit rate of 50 percent (currently, the credit may be 10 percent, 20 percent, or 50 percent of the contribution). The bill would phase out this rate once a taxpayer reaches a certain level of income, indexing the income amounts for inflation.[\[12\]](#)
- Expand permissible 403(b) investments (§105). The bill would amend IRC section 403(b) to permit 403(b) custodial accounts to invest in group trusts (which include collective investment trusts), in addition to regulated investment company stock. The prior 2021 bill included amendments to the Investment Company Act of 1940 (1940 Act), the Securities Act of 1933, and the Securities Exchange Act of 1934 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 those laws.[\[13\]](#) It appears the House Financial Services Committee asserted jurisdiction and refused to sign off on the federal securities law amendments.
- Increase the age for beginning required minimum distributions (RMDs) (§106). The bill would change the age at which IRA owners and plan participants must begin taking RMDs to age 73 in 2023, age 74 in 2030, and age 75 in 2033. The 2020 bill would have changed the age directly to age 75. The SECURE Act generally increased the beginning age to 72.[\[14\]](#)

- Index IRA limit for catch-up contributions (§107). The bill would require the Internal Revenue Service (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.[\[15\]](#)
- Apply higher catch-up limit at ages 62, 63, and 64 (§108). The bill would increase the limit for catch-up contributions for participants who are aged 62, 63, and 64[\[16\]](#) (from \$6,500 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). The bill would also instruct IRS to adjust these higher catch-up contribution limits annually for increases in the cost of living.
- Modify pooled employer plans requirements (§109). The bill would modify the requirements applicable to a pooled employer plan (PEP), effective for plan years after 2022, requiring that (1) the plan designate a named fiduciary (other than an employer in the plan) to be responsible for collecting contributions to the plan[\[17\]](#) and (2) such fiduciary implement written contribution collection procedures that are reasonable, diligent and systematic.
- Permit multiple employer 403(b) plans (§110). The bill would allow 403(b) plans to participate in multiple employer plans (MEPs) (including PEPs) under rules similar to the MEP provisions enacted under the SECURE Act.
- 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.[\[18\]](#)
- Allow credit for small employer pension plan startup costs for employers which join an existing plan (§112). The bill would allow the existing tax credit for small businesses that start a qualified retirement plan to be available for employers that join an existing multiple employer plan. The credit currently is available for the first three years a plan is in existence; the bill would apply this provision with respect to each eligible employer.
- Create small employer tax credit for military spouse retirement plan eligibility (§113). The bill would create a new tax credit for small employers with DC 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.
- Allow small immediate financial incentives for contributing to a plan (§114). The bill would allow employers to offer small incentives (e.g., a gift card) to induce employees to enroll in the plan.[\[19\]](#)
- Create safe harbor for corrections of employee elective deferral failures (§115). The bill would create a new safe harbor for reasonable administrative errors in implementing automatic enrollment or automatic escalation features in qualified plans, 403(b) plans, 457(b) plans, and IRAs. Under the safe harbor, the error must be corrected within nine and ½ months after the end of the plan year in which the error occurred, must be corrected "in a manner that is favorable to the participant" (to be defined by the IRS in regulations), and must be corrected similarly for all similarly situated participants in a non-discriminatory manner. The correction may be made

after the participant has terminated employment and even if the error is identified by the IRS.

- Reduce period of service requirement for long-term, part-time workers (§116). 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. 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. The bill would also clarify that pre-2021 service is disregarded for vesting purposes under this provision.
- Allow tax deferral for certain sales of employer stock to ESOPs sponsored by S corporations (§117). 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. For sales of employer stock to S corporation ESOPs, the bill would place a 10 percent limit on the amount of gain that could be deferred under this provision.[\[20\]](#)
- Certain securities treated as publicly traded in case of employee stock ownership plans (§118). The bill would modify the definition "publicly traded employer security" applicable for ESOPs. This change is intended to allow highly regulated companies with liquid securities that are quoted on non-exchange markets to treat their stock as "public" for ESOP purposes, thus making it easier for these companies to offer ESOPs to their US employees.

### **Provisions Intended to Promote Lifetime Income**

- Remove RMD barriers for life annuities (§201). The bill would modify the statutory and regulatory RMD provisions that generally disallow annuities that provide payments that increase over time.[\[21\]](#) Specifically, 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.
- Modify QLAC rules (§202). The bill would direct Treasury to modify its regulations on qualifying longevity annuity contracts (QLACs) to do the following[\[22\]](#):
  - Remove the existing 25 percent limit (current rules limit the amount of QLAC annuity premiums that can be excluded from the RMD rules to the lesser of \$130,000 (across all his or her IRAs or plan accounts) or 25 percent of the individual's IRA plan balance).
  - 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.
- Permit insurance-dedicated ETFs (§203). The bill would direct Treasury to modify its regulations to remove certain barriers that generally preclude ETFs from being available through variable annuities.[\[23\]](#) The deadline for Treasury to issue regulations is seven years after the date of enactment.

### **Provisions Intended to Simplify and Clarify Retirement Plan Rules**

- Allow recovery of retirement plan overpayments (§301). 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.[\[24\]](#)

- Reduce excise tax on certain accumulations in qualified retirement plans (§302). The bill would reduce the penalty for failure to take an RMD from a plan or IRA from 50 percent to 25 percent and would further reduce the penalty to 10 percent in the case of an IRA where the taxpayer corrects the failure during a specified correction window.[\[25\]](#)
- Modify performance benchmarks for asset allocation funds (§303). The bill would direct the Department of Labor (DOL) to update its participant-level fee disclosure regulation—specifically, the requirement to compare each designated investment alternative against an appropriate broad-based securities market index.[\[26\]](#) 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. The bill would require DOL to report to Congress on the effectiveness of its benchmarking requirements no later than three years after enactment of the bill.
- Review and report to the Congress relating to reporting and disclosure requirements (§304). The bill would direct 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 two years, to provide a joint report to Congress with recommendations to "consolidate, simplify, standardize, and improve" the requirements.[\[27\]](#) The agencies would be required to consult with a balanced group of participant and employer representatives and to collect plan data, as needed, to assess the effectiveness of disclosure requirements.
- Eliminate unnecessary plan requirements related to unenrolled participants (§305). 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 enrolled in the plan.[\[28\]](#) 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), an annual notice[\[29\]](#) reminding the employee that he or she is eligible to participate in the plan, and other documents upon the participant's request.
- Create retirement savings lost and found (§306). The bill would create a national online, searchable database to be managed by the DOL, containing information on plans to enable retirement savers to search for the contact information of their plan administrator and locate the benefits they have earned.[\[30\]](#)
- Raise Dollar Limit for Mandatory Distributions (§307). The bill would modify the rules on involuntary cash-outs, by raising the current cash-out limit from \$5,000 to \$7,000.[\[31\]](#)
- Expand Employee Plans Compliance Resolution System (§308). The bill would expand the IRS Employee Plans Compliance Resolution System (EPCRS), deeming EPCRS amended to allow plans to self-correct inadvertent plan violations, except where the error is identified by IRS prior to the plan initiating self-correction or in egregious or abusive situations.[\[32\]](#) Further, the bill directs IRS to expand EPCRS to allow IRA custodians to address certain inadvertent failures. As described earlier, section 302 of



the bill includes another correction mechanism for IRA RMD failures.

- Eliminate the "first day of the month" requirement for governmental section 457(b) plans (§309). 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.[\[33\]](#)
- Permit one-time election for qualified charitable distribution to split-interest entity; increase qualified charitable distribution limitation (§310). The bill would index the annual cap on IRA qualified charitable distributions for inflation for taxable years beginning after 2022. The bill also would permit a one-time election to make a qualified charitable distribution to a "split-interest entity," including a charitable remainder trust or a charitable gift annuity, if certain conditions are met.
- Remove penalty for distributions to private-sector firefighters (§311). 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.[\[34\]](#)
- Permit exclusion of certain disability-related first responder retirement payments (§312). The bill would allow certain first responders to exclude from gross income service-connected disability payments from a retirement plan after reaching retirement age, effective for taxable years beginning after December 31, 2027.
- Address IRA statute of limitations for excise tax on excess contributions and certain accumulations (§313). The bill would modify the statute of limitation rules for IRAs to ensure that the three-year statute of limitations begins running when an income tax return is filed (or would have been filed, if the individual is not required to file) for the year in which the violation occurred, for purposes of excess contributions or RMD failures.[\[35\]](#)
- Require paper statements in certain cases (§314). For DC plans, the bill would require that each year, one participant benefit statement must be provided in paper (unless a participant opts out to electronic delivery). The other three quarterly statements could continue to take advantage of the current safe harbors for using electronic forms of communication. There are two exceptions to this rule: (1) where a participant has affirmatively opted into electronic delivery and (2) where the plan is providing electronic delivery under the 2002 safe harbor (i.e., participants for whom access to the employer's or plan sponsor's electronic information system is an integral part of those duties). For these exceptions to apply, a plan must first send the participant a one-time notice on paper explaining the participant's right to request all documents in paper. For defined benefit plans, the paper statement would be required once every three years unless the participant opts for electronic delivery. These exceptions appear intended to modify DOL's recent e-delivery efforts.[\[36\]](#) The bill directs DOL to update its regulations, no later than December 31, 2022, to implement this requirement, and the bill details several additional requirements to be included in the regulation.
- Separate application of top-heavy rules to defined contribution plans covering excludible employees (§315). For purposes of determining a defined contribution plan's top heavy status, the bill would permit separate testing of otherwise excludable employees (e.g., those who are under age 21 and have less than one year of service). This would eliminate a disincentive for employers to allow such employees to participate in the plan.[\[37\]](#)
- Repayment of qualified birth or adoption distribution limited to 3 years (§316). The bill would require any repayments of qualified birth or adoption distributions (penalty-free early withdrawals added under section 113 of the SECURE Act)[\[38\]](#) to be made within

three years of the date of distribution. The SECURE Act did not specify a deadline for repayments.

- Employer may rely on employee certifying that deemed hardship distribution conditions are met (§317). The bill would allow 401(k) and 403(b) plans to rely on an employee's self-certification that an intended hardship distribution is on account of a financial need of a type that is a deemed immediate and heavy financial need (as described in applicable Treasury regulations).[\[39\]](#) It also would codify existing rules that allow plans to rely on an employee's certification that the distribution is not in excess of the amount required to satisfy the financial need. The bill would provide analogous rules for unforeseeable emergency distributions from governmental 457(b) plans.
- Penalty-free withdrawals from retirement plans for individuals in case of domestic abuse (§318). The bill would provide for a new type of penalty-free in-service withdrawal from defined contribution plans and IRAs for victims of domestic abuse meeting certain eligibility criteria. Plans adopting the provision would be permitted to rely on a participant's self-certification of eligibility. The bill would limit eligible distributions by an individual to the lesser of \$10,000 or 50 percent of the account balance. Participants generally would be permitted to repay such distributions into an eligible retirement plan within three years.
- Reform of family attribution rule (§319). The bill would reform certain family attribution rules that apply in the context of determining common ownership of two or more companies for purposes of minimum coverage and nondiscrimination testing of qualified retirement plans. For example, the provision would disregard community property laws for purposes of determining ownership. It also would clarify certain attribution rules relating to spouses who share minor children.
- Amendments to increase benefit accruals under plan for previous plan year allowed until employer tax return due date (§320). The bill would allow plans to adopt discretionary plan amendments that increase participants' benefits for the preceding plan year, by the due date of the employer's tax return for that year, instead of the current plan amendment deadline (i.e., the last day of the plan year in which the amendment is effective). The extended deadline would not apply for amendments that increase matching contributions.
- Retroactive first year elective deferrals for sole proprietors (§321). The bill would permit sole proprietors to make elective deferrals attributable to the prior (initial) plan year, to a 401(k) plan that was retroactively adopted pursuant to section 201 of the SECURE Act.[\[40\]](#) The retroactive contributions must be made by the individual's tax return due date for that year.
- Limit cessation of IRA treatment to portion of account involved in a prohibited transaction (§322). The bill would change current rules for disqualification of an IRA when an IRA owner or beneficiary engages in a prohibited transaction, so that only the portion of the IRA involved in the prohibited transaction is disqualified and treated as distributed.[\[41\]](#)
- Review of pension risk transfer interpretive bulletin (§323). The bill would direct DOL to review its interpretive bulletin (IB) 95-1 ("Interpretive bulletin relating to the fiduciary standards under ERISA when selecting an annuity provider for a defined benefit pension plan"), considering its application to pension risk transfer transactions,[\[42\]](#) and to determine whether amendments to the IB are warranted. The bill would also direct DOL to report to Congress on the findings of its review, including an assessment of any risk to participants.

## Technical Amendments

- Make technical corrections to SECURE Act of 2019 (§401). The bill would make certain technical amendments to the SECURE Act, including changes to SECURE Act sections 103 (ease rules for safe harbor 401(k) plans) and 112 (allow 401(k) plan participation by long-term part-time workers). In addition, with respect to section 114 of the SECURE Act (increase in RMD age to 72), it would clarify that participants in defined benefit plans who retire after age 70 ½ (except for 5 percent owners) would receive an actuarial adjustment for the period after age 70 ½ during which they receive no benefits. Also, with respect to section 116 of the SECURE Act (treating difficulty of care payments as compensation for IRA contribution purposes), the bill would (1) make a corresponding amendment to IRC section 4973 (excise tax on excess IRA contributions) to reflect the treatment of such payments as compensation, and (2) correct an incorrect statutory cross reference in IRC section 408(o)(5). Finally, with respect to section 113 of the SECURE Act (qualified birth or adoption distributions), the bill would correct an incorrect statutory cross reference in IRC section 72(t).

## Administrative Provisions

- Provide plan amendment relief (§501). The bill would require adoption of plan amendments on or before the last day of the first plan year beginning on or after January 1, 2024 (2026 in the case of governmental plans), as long as the plan operates in accordance with such amendments as of the effective date of a bill requirement or amendment. 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).

## Revenue Provisions

- Simple and SEP Roth IRAs (§601). The bill would permit SIMPLE IRA and SEP IRA contributions to be made as Roth contributions (including employee deferrals to a SEP, to the extent permitted in a grandfathered salary reduction SEP (known as a SARSEP)).[\[43\]](#)
- Hardship withdrawal rules for 403(b) plans (§602). The bill would conform the hardship distribution rules for 403(b) plans to the rules for 401(k) plans so that, for example, all sources of contributions are available for hardship withdrawal, including qualified nonelective contributions, qualified matching contributions, and earnings on any of these contributions (including earnings on elective deferrals).[\[44\]](#)
- Elective deferrals generally limited to regular contribution limit (§603). The bill would require all future catch-up contributions (by employees aged 50 or older) to a 401(k), 403(b), or governmental 457(b) plan to be made as Roth contributions.
- Optional treatment of employer matching contributions as Roth contributions (§604). The bill would allow sponsors of 401(k), 403(b), or governmental 457(b) plans to offer employer matching contributions on a Roth basis, at the election of the employee.

## Budgetary Effects

- Determination of budgetary effects (§701). This provision provides for compliance with "pay-as-you-go" rules for legislation.



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**endnotes**

[1] The bill text is available at: <https://www.congress.gov/117/bills/hr2954/BILLS-117hr2954rh.pdf>. The Committee's section-by-section summary of the bill is available at: [https://waysandmeans.house.gov/sites/democrats.waysandmeans.house.gov/files/documents/SECURE2.0\\_SxS\\_032822.pdf](https://waysandmeans.house.gov/sites/democrats.waysandmeans.house.gov/files/documents/SECURE2.0_SxS_032822.pdf). ICI sent a letter of support, urging passage of the bill, to leadership of the House Ways and Means and Education and Labor Committees, available at <https://gop-waysandmeans.house.gov/wp-content/uploads/2022/03/ICI-Letter-Supporting-SECURE-Act-2.0-3.28.22.pdf>.

[2] 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>. For a summary of the "Securing a Strong Retirement Act of 2020," introduced in October 2020, see ICI Memorandum No. 32885, dated November 2, 2020, available at <https://www.ici.org/memo32885>.

[3] The RISE Act is available at <https://www.congress.gov/117/bills/hr5891/BILLS-117hr5891ih.pdf> and a section-by-section summary is available at <https://edlabor.house.gov/imo/media/doc/2021-11-05%20RISE%20Act%20Section%20by%20Section.pdf>.

[4] On March 29, 2022 (the same day as the House vote), the Senate Committee on Health, Education, Labor and Pensions held a hearing entitled: "Rise and Shine: Improving Retirement and Enhancing Savings." Witnesses at the hearing discussed topics such as emergency savings, expanding retirement plan coverage, lifetime income options, expanding availability of pooled employer plans to 403(b) plan sponsors, and special challenges faced by women in saving for retirement. Committee Chair Patty Murray (D-WA) indicated that the Senate would likely act on a bipartisan retirement package in the spring of 2022.

[5] 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](https://www.ici.org/my_ici/memorandum/memo32118).

[6] Section 115 of the 2021 bill (findings relating to S corporation ESOPs) would have memorialized 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. In the new bill, it was replaced with two other ESOP provisions (sections 117 and 118).

[7] The new provisions appear in sections 104, 109, 117, 118, 307, 323, and 701.

[8] For a summary of the 2021 Cardin Portman bill, see ICI Memorandum No. 33550, dated May 26, 2021, available at <https://www.ici.org/memo33550>. For a summary of an earlier version of the Retirement Security and Savings Act introduced in 2019 (the 2019 Portman

Cardin bill), see ICI Memorandum No. 31827, dated June 27, 2019, available at [https://www.ici.org/my\\_ici/memorandum/memo31827](https://www.ici.org/my_ici/memorandum/memo31827).

[9] Under Internal Revenue Code (IRC) § 414(w), qualified plans, 403(b) plans, and governmental 457(b) plans may provide participants with the opportunity to withdraw contributions made under an "eligible automatic contribution arrangement," or EACA, no later than 90 days after the first elective contribution is made under the EACA.

[10] Note that the SECURE Act increased the maximum credit amount from \$500 to \$5,000 per year, available for the first three years a plan is in existence.

[11] The additional credit would equal the "applicable percentage" of the amount contributed by the employer on behalf of employees, up to a per-employee cap of \$1,000. This credit would be phased out for employers with between 51 and 100 employees. The applicable percentage would be 100 percent in the first and second years, 75 percent in the third year, 50 percent in the fourth year, and 25 percent in the fifth year.

[12] The 2020 version of the bill included a similar provision, which would have simplified and increased the Saver's Credit by (1) amending the Saver's Credit to use a single credit rate of 50 percent; (2) increasing the maximum credit amount from \$1,000 to \$1,500; and (3) raising the income eligibility thresholds and adjusting them for inflation after 2021. This provision was removed in the 2021 version of the bill. The Cardin Portman bill included different changes to the Saver's Credit in section 104.

[13] This provision was included in the Cardin Portman bill (section 116).

[14] 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](https://www.ici.org/my_ici/memorandum/memo32118). A similar provision was included in the Cardin Portman bill (section 108).

[15] This provision was included in the Cardin Portman bill (section 119).

[16] Individuals become eligible to make catch-up contributions in the year in which they attain age 50. A similar provision was included in the Cardin Portman bill (section 120), but would apply the higher catch-up limit beginning at age 60.

[17] Current law requires the pooled employer plan to designate a trustee to be responsible for collecting contributions.

[18] This provision was included in the Cardin Portman bill (section 111).

[19] This provision was included in the Cardin Portman bill (section 118).

[20] The 2021 version of the SECURE 2.0 bill replaced this provision with findings that memorialize Congress' view on the benefits of employee ownership of S corporations through ESOPs and its ongoing goal of preserving and fostering employee ownership of S corporations through ESOPs.

[21] This provision was included in the Cardin Portman bill (section 202).

[22] This provision was included in the Cardin Portman bill (section 201).

[23] This provision was included in the Cardin Portman bill (section 204).

[24] A similar provision was included in the Cardin Portman bill (section 322).

[25] A similar provision was included in the Cardin Portman bill (section 309).

[26] A similar provision was included in the Cardin Portman bill (section 303).

[27] A similar provision was included in the Cardin Portman bill (section 301).

[28] A similar provision was included in the Cardin Portman bill (section 321).

[29] The 2021 version of the bill would have required that an annual reminder be provided "in paper format, or in any electronic format consented to by the participant." The current version does not include this phrase.

[30] The 2021 version of this bill would have designated PBGC to manage the database, and would have made additional changes to rules on involuntary cash outs and automatic rollovers. A provision similar to this 2021 version was included in the Cardin Portman bill (section 323).

[31] The 2021 version of this bill and the Cardin Portman bill (section 323) would have raised this limit from \$5,000 to \$6,000.

[32] A similar provision was included in the Cardin Portman bill (section 115).

[33] This provision was included in the Cardin Portman bill (section 305).

[34] A similar provision was included in the Cardin Portman bill (section 320).

[35] A similar provision was included in the Cardin Portman bill (within section 318).

[36] For a description of the safe harbor for electronic delivery of ERISA disclosures that DOL adopted in 2020, see ICI Memorandum No. 32478, dated May 21, 2020, available at [https://www.ici.org/my\\_ici/memorandum/memo32478](https://www.ici.org/my_ici/memorandum/memo32478).

[37] This provision was included in the Cardin Portman bill (section 106).

[38] 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](https://www.ici.org/my_ici/memorandum/memo32118).

[39] See Treas. Reg. §§ 1.401(k)-1(d)(3); 1.403(b)-6(d)(2).

[40] 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](https://www.ici.org/my_ici/memorandum/memo32118).

[41] A similar provision was included in the Cardin Portman bill (section 318), which would remove the penalty of disqualification for a prohibited transaction in an IRA (however, a prohibited transaction excise tax would still apply).

[42] Pension risk transfer (or "de-risking") has been a topic of study of the ERISA Advisory Council. See the Council's 2013 report, "Private Sector Pension De-risking and Participant Protections," available at <https://www.dol.gov/sites/dolgov/files/EBSA/about-ebsa/about-us/erisa-advisory-council/2013-private-sector-pension-derisking-and-participant-protections.pdf>, and the Council's 2015 report, "Model Notices and Disclosures for Pension Risk Transfers," available at

<https://www.dol.gov/sites/dolgov/files/EBSA/about-ebbsa/about-us/erisa-advisory-council/2015-model-notices-and-disclosures-for-pension-risk-transfers.pdf>.

[43] A similar provision was included in the Cardin Portman bill (section 308), which would allow SIMPLE IRA contributions to be made on a Roth basis.

[44] This provision was included in the Cardin Portman bill (section 317).

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