

MEMO# 34795

January 12, 2023

SECURE 2.0 Retirement Legislation Enacted

[34795]

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TO: ICI Members

Pension Committee

Pension Operations Advisory Committee SUBJECTS: 529 Plans

Pension

Tax RE: SECURE 2.0 Retirement Legislation Enacted

On December 29, 2022, the President signed the Consolidated Appropriations Act, 2023 (H.R. 2617), which includes the SECURE 2.0 Act of 2022 ("SECURE 2.0 Act" or the "Act").[\[1\]](#) The US Senate approved the year-end spending package by a 68-29 vote on December 22, 2022 and the US House of Representatives approved it by a 225-201 vote on December 23, 2022.

The SECURE 2.0 Act builds on the Setting Every Community Up for Retirement Enhancement (SECURE) Act, enacted at the end of 2019.[\[2\]](#) The package generally is a combination of three bills commonly referred to as "SECURE 2.0":

- the House-passed "Securing a Strong Retirement Act of 2022" (or "House-passed bill");[\[3\]](#)
- the Senate HELP Committee-passed "Retirement Improvement and Savings Enhancement to Supplement Healthy Investments for the Nest Egg Act" (or "RISE & SHINE Act");[\[4\]](#) and
- the Senate Finance Committee-passed "Enhancing American Retirement Now Act" (or "EARN Act").[\[5\]](#)

The bills include many 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 specific provisions included in the legislation as enacted are described in more detail below.

Provisions Intended to Expand Coverage and Increase Retirement

Savings (Title I)

Expanding automatic enrollment in retirement plans (§101). Effective for plan years beginning after December 31, 2024, the Act will require newly established 401(k) and 403(b) plans to automatically enroll participants (subject to exceptions listed below).[\[6\]](#) Such plans will be required to allow permissible withdrawals[\[7\]](#) 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. For participants who do not select an investment, contributions must be invested in accordance with the Department of Labor (DOL) qualified default investment alternative (QDIA) regulation.

The following plans will not be subject to the automatic enrollment requirement:

- SIMPLE 401(k) plans;
- Plans in existence prior to enactment;
- 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 Act specifies that employers that join an existing MEP after enactment 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.

Modification of credit for small employer pension plan startup costs (§102).[\[8\]](#) The Act modifies the existing tax credit for small businesses that adopt a new qualified plan, effective for taxable years beginning after December 31, 2022.[\[9\]](#) For employers with no more than 50 employees, the credit equals 100 percent (increased from 50 percent) of startup costs. For defined contribution (DC) plans, an additional credit is provided, based on the amount contributed by the employer on behalf of employees earning wages of \$100,000 or less (indexed).[\[10\]](#)

Saver's Match (§103). Effective for taxable years beginning after December 31, 2026, the Act modifies the Savers Credit for retirement plan contributions by making the credit refundable and requiring the credit to be deposited as a matching contribution into the retirement account.[\[11\]](#) The match is 50 percent of IRA or retirement plan contributions up to \$2,000 per individual, phasing out at certain income limits.[\[12\]](#) If the amount of the match is less than \$100, an individual may elect to receive the amount in cash. The Saver's Match cannot be withdrawn without incurring penalties, including repayment to the Treasury Department in some cases where the Saver's Match is withdrawn from an individual retirement account before retirement.

Promotion of Saver's Match (§104). The Act directs Treasury to take steps to increase public awareness of the Saver's Match and to provide a report to Congress regarding its anticipated promotion efforts no later than July 1, 2026.[\[13\]](#)

Pooled employer plan modification (§105). The Act modifies 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[\[14\]](#) and (2) such fiduciary implement written

contribution collection procedures that are reasonable, diligent and systematic.[\[15\]](#)

Multiple employer 403(b) plans (§106). Effective for plan years beginning after 2022, the Act allows 403(b) plans to participate in MEPs (including PEPs) under rules similar to the MEP provisions enacted under the SECURE Act.[\[16\]](#)

Increase in age for required beginning date for mandatory distributions (§107). For individuals who attain age 72 after December 31, 2022 and attain age 73 before January 1, 2033, the Act increases the required minimum distribution (RMD) age to 73, effective for distributions required to be made after December 31, 2022.[\[17\]](#) The Act increases the age further to 75 starting on January 1, 2033.[\[18\]](#)

Indexing IRA catch-up limit (§108). The Act requires 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, effective for taxable years beginning after December 31, 2023.[\[19\]](#)

Higher catch-up limit to apply at age 60, 61, 62, and 63 (§109). Effective for taxable years beginning after December 31, 2024, the Act increases the limit on catch-up contributions for participants who are aged 60, 61, 62, and 63[\[20\]](#) to the greater of \$10,000 (\$5,000 in the case of SIMPLE plans) or 50 percent more than the regular catch-up amount in 2025.[\[21\]](#) The Act also instructs IRS to adjust these higher catch-up contribution limits annually for increases in the cost of living.

Treatment of student loan payments as elective deferrals for purposes of matching contributions (§110). Effective for contributions made for plan years beginning after December 31, 2023, the Act allows 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 "qualified student loan payments."[\[22\]](#) For this purpose, a 401(k) plan may treat the qualified student loan payment as an elective deferral or an elective contribution (as applicable). The provision includes special rules for applying nondiscrimination testing, including that the plan may apply the Actual Deferral Percentage (ADP) test separately to the employees who receive matching contributions on student loan repayments. The employees must certify annually that they have made the loan payment.

Application of credit for small employer pension plan startup costs to employers which join an existing plan (§111). Effective retroactively for taxable years beginning after December 31, 2019, the Act allows the existing tax credit for small businesses that start a qualified retirement plan to be available for employers that join an existing MEP (including a PEP).[\[23\]](#) The credit currently is available for the first three years a plan is in existence; the Act applies this provision with respect to each eligible employer.

Military spouse retirement plan eligibility credit for small employers (§112). Effective for taxable years beginning after the date of enactment, the Act creates 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.[\[24\]](#) The employer is eligible for a maximum credit of \$500[\[25\]](#) for three years with respect to each military spouse who is a non-highly compensated employee. The employer is permitted to rely on the employee's certification that the employee's spouse is a member of the uniformed services serving on active duty.

Small immediate financial incentives for contributing to a plan (§113). Effective for plan years beginning after enactment, the Act allows employers to offer small incentives (e.g., a gift card), not paid for with plan assets, to induce employees to enroll in a 401(k) or 403(b) plan.[\[26\]](#)

Deferral of tax for certain sales of employer stock to employee stock ownership plan sponsored by S corporation (§114). Effective for sales made after December 31, 2027, the Act allows individual owners of stock in a non-publicly traded S corporation that sponsors an employee stock ownership plan (ESOP) 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."[\[27\]](#) Currently, this option only applies to C corporation ESOPs. For sales of employer stock to S corporation ESOPs, the Act places a 10 percent limit on the amount of gain that could be deferred under this provision.

Withdrawals for certain emergency expenses (§115). Effective for distributions made after December 31, 2023, the Act provides a new exception from the 10 percent early withdrawal penalty for certain distributions from DC plans and IRAs for specified emergency expenses (unforeseeable or immediate financial needs relating to personal or family emergency expenses).[\[28\]](#) Plans generally may rely on certification from the individual that the distribution meets the criteria for emergency expense distributions. Individuals are limited to one distribution per year up to \$1,000, with the option to repay the distribution within three years. No additional emergency expense distributions are permitted from a plan during the three-year period unless the amount of previous distributions is recontributed to such plan.

Allow additional nonelective contributions to SIMPLE plans (§116). Effective for taxable years beginning after December 31, 2023, the Act allows 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 of compensation (or \$5,000 if less).[\[29\]](#)

Contribution limit for SIMPLE plans (§117). Effective for taxable years beginning after December 31, 2023, the Act increases the annual deferral limit to SIMPLE plans, and the catch-up contribution limit that applies at age 50 for SIMPLE plans, to 110 percent of the otherwise applicable limits in 2024 (and indexed thereafter).[\[30\]](#) The increased limits are available only to employers with no more than 25 employees, and, for employers with more than 25 employees and not more than 100 employees, the increased limits are available only to those who make enhanced employer contributions on behalf of employees (either a 4 percent matching contribution or 3 a percent non-elective contribution). The provision also requires Treasury to study and report to Congress on SIMPLE plans.

Tax treatment of certain nontrade or business SEP contributions (§118). Effective for taxable years beginning after the date of enactment, the Act modifies an existing exception to the 10 percent excise tax on nondeductible contributions to a retirement plan, by expanding the exception to non-business contributions to a Simplified Employee Pension (SEP).[\[31\]](#) Currently the exception applies to non-business contributions to SIMPLE plans. The exception enables employers of domestic employees (such as in-home child-care workers) to provide retirement benefits through the specified types of plans.

Application of section 415 limit for certain employees of rural electric cooperatives (§119). Effective for limitation years ending after the date of enactment, the Act eliminates the compensation-based limit under IRC section 415(b) (for defined benefit plans) for

participants in certain rural electric cooperative retirement plans who are non-highly compensated employees.[\[32\]](#)

Exemption for certain automatic portability transactions (§120). Effective for transactions occurring on or after the date which is 12 months after the date of enactment, the Act provides a statutory prohibited transaction exemption under the IRC for service providers offering "auto-portability" services (i.e., transfer of a participant's automatic rollover IRA attributable to participation in a previous employer's plan to a new employer's plan).[\[33\]](#) The exemption includes a number of conditions for relief, including acknowledgement of fiduciary status, reasonable fees, and various required notices and disclosures. The Act requires DOL to issue guidance or regulations to carry out the purposes of the amendments (including several specified items) not later than 12 months after the date of the enactment.

Starter 401(k) plans for employers with no retirement plan (§121). Effective for plan years beginning after December 31, 2023, an employer that offers no qualified retirement plan or 403(b) plan (as applicable) may offer a new type of deferral-only plan, referred to as a "starter 401(k) deferral-only arrangement" or a "safe harbor deferral-only [403(b)] plan" and exempt from certain testing requirements.[\[34\]](#) Under the starter plan (or safe harbor plan), automatic enrollment is required at 3 to 15 percent of compensation (applied uniformly), no employer contributions are allowed, and the annual deferral limit is \$6,000 (indexed) with a \$1,000 catch up contribution (also indexed).

Assist States in locating owners of applicable savings bonds (§122). Effective on the date of enactment, the Act requires Treasury to share information with states about owners of certain savings bonds with a last known or registered address in the state, in order to facilitate recovery of matured and unredeemed savings bonds.[\[35\]](#)

Certain securities treated as publicly traded in case of employee stock ownership plans (§123). Effective for plan years beginning after December 31, 2027, the Act modifies the definition "publicly traded employer security" applicable for ESOPs.[\[36\]](#) 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.

Modification of age requirement for qualified ABLE programs (§124). Effective for taxable years beginning after December 31, 2025, the Act modifies the definition of an eligible individual for purposes of establishing an ABLE account[\[37\]](#) under a state's qualified ABLE program created pursuant to IRC section 529A, by raising the age by which blindness or disability must occur to age 46 (increased from 26).[\[38\]](#)

Improving coverage for part-time workers (§125). The Act amends 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.[\[39\]](#) Effective for plan years beginning after December 31, 2024, the Act reduces 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 Act also clarifies that pre-2021 service is disregarded for vesting purposes (in addition to eligibility purposes) under this provision (effective as if included in the SECURE Act). This provision also extends the long-term part-time coverage rules to 403(b) plans that are subject to ERISA.

Special rules for certain distributions from long-term qualified tuition programs to Roth IRAs (§126). Effective for distributions after December 31, 2023, the Act allows tax free rollovers from 529 college savings accounts to Roth IRAs, under certain conditions. Beneficiaries of 529 accounts will be permitted to roll over up to \$35,000 over the course of their lifetime from a 529 account in their name to their own Roth IRA, as long as the 529 account has existed for at least 15 years. The rollover is subject to Roth IRA annual contribution limits (but not subject to the income limitation for Roth IRA contributions) and is limited to the aggregate amount of contributions to the account (and earnings thereon) before the 5-year period ending on the date of rollover.

Emergency savings accounts linked to individual account plans (§127). Effective for plan years beginning after December 31, 2023, the Act permits employers to offer, as part of a DC plan, a new short term "emergency savings account" to non-highly compensated employees.^[40] The employer may automatically enroll such employees into the account at no more than 3 percent of compensation and there is a cap of \$2,500 (indexed) on the amount of contributions. Contributions to the account are treated as Roth contributions, but there is no holding period or other requirement for qualified (tax free) distributions (plans must permit at least one withdrawal per month). Contributions are treated as elective deferrals for purposes of employer matching contributions, which will be made into the retirement plan account, with an annual cap of \$2,500. No employer contributions are permitted into the emergency savings account. Funds in the emergency savings account must be invested in cash or a principal preservation product. The first four withdrawals from the account each plan year may not be subject to any fees or charges solely on the basis of such withdrawals. At separation from service, employees may take their emergency savings accounts as cash or roll the balance into a Roth account in the same plan or to a Roth IRA. The provision also requires certain notices and disclosures to participants, regulations to be prescribed by DOL and Treasury, and a report to Congress by the agencies.

Enhancement of 403(b) plans (§128). Effective after the date of enactment, the Act amends 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.^[41] The prior 2021 SECURE 2.0 House bill included amendments to the Investment Company Act of 1940, 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. The bill as enacted does not include these securities law amendments and our understanding is that Congressional committees with jurisdiction over the securities laws will need to address the issue going forward to effectuate the provision.

Provisions Intended to Promote Lifetime Income (Title II)

Remove required minimum distribution barriers of life annuities (§201). Effective for calendar years ending after the date of enactment, the Act modifies the statutory and regulatory RMD provisions that generally disallow annuities that provide payments that increase over time.^[42] Specifically, the Act amends 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 pay a dividend or similar payments; or (iv) which provide certain lump sum return of premium death benefits.

Qualifying longevity annuity contracts (§202). Effective for contracts purchased or received

in an exchange on the date of enactment, the Act modifies the rules for qualifying longevity annuity contracts (QLACs) to remove the existing 25 percent limit on the amount of QLAC premiums that can be excluded from RMD rules and raise the existing \$145,000 limit on such premiums to \$200,000 (indexed).[\[43\]](#) The Act also clarifies the treatment of a divorce or separation for a joint and survivor annuity QLAC and clarifies that a QLAC may include a free look period of not more than 90 days, with these two clarifications being retroactively effective to July 2, 2014. The Act directs Treasury to amend the QLAC regulations to reflect these changes no later than 18 months after the date of enactment and permits reliance on a reasonable good faith interpretation of the changes prior to the issuance of final amended regulations.

Insurance-dedicated exchange-traded funds (§203). The Act directs Treasury to modify its regulations to remove certain barriers that generally preclude ETFs from being available through variable annuities.[\[44\]](#) The provision is effective for segregated asset account investments made on or after the date which is 7 years after the date of enactment and Treasury must modify its regulations by the same date.

Eliminating a penalty on partial annuitization (§204). The Act directs Treasury to amend the regulations governing RMDs to provide that when an individual account plan participant uses a portion of their account to purchase an annuity, the plan may allow the employee to elect to have the RMD amount for a year calculated as the excess of (i) the total required amount for such year (i.e., treating the account balance as of the last valuation date in the immediately preceding calendar year as including the value on that date of all annuity contracts which were purchased with a portion of the account) over (ii) the total amount distributed in the year from all such annuity contracts.[\[45\]](#) The change is effective on the date of enactment and the Act permits reliance on a reasonable good faith interpretation prior to amended regulations.

Provisions Intended to Simplify and Clarify Retirement Plan Rules (Title III)

Recovery of retirement plan overpayments (§301). Effective as of the date of enactment,[\[46\]](#) the Act permits plans to determine whether or not to seek recoupment of mistaken overpayments; imposes 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 (except in the case of the participant's fraud or misrepresentation); and provides rollover relief with respect to overpayments.[\[47\]](#)

Reduction in excise tax on certain accumulations in qualified retirement plans (§302). Effective for taxable years beginning after the date of enactment, the Act reduces the penalty for failure to take an RMD from a plan or IRA from 50 percent to 25 percent and further reduces the penalty to 10 percent where the taxpayer corrects the failure during a specified correction window by receiving a distribution from the same plan or IRA to which the tax relates.[\[48\]](#)

Retirement savings lost and found (§303). The Act directs DOL, within two years of enactment, to create a national online, searchable database to be managed by DOL, containing information on tax-qualified retirement plans to enable retirement savers to search for the contact information of their plan administrator and locate the benefits they

have earned.[\[49\]](#) While the Act closely follows the language of the House-passed bill, it includes some changes, including: allowing individuals to opt out of the database, requiring a report on the audit of the database to be provided to the relevant Congressional committees, and placing certain restrictions on DOL's use of data and ability to collect data from plans and other federal agencies. The Act also requires plans to report certain information to DOL (in a manner and form prescribed by regulations), effective with respect to plan years beginning after the second December 31 occurring after the date of enactment.

Updating dollar limit for mandatory distributions (§304). Effective for distributions made after December 31, 2023, the Act modifies the rules on involuntary cash-outs, by raising the current cash-out limit from \$5,000 to \$7,000.[\[50\]](#)

Expansion of Employee Plans Compliance Resolution System (§305). The Act expands the IRS Employee Plans Compliance Resolution System (EPCRS) 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 the self-correction is not completed within a reasonable period after such failure is identified.[\[51\]](#) In the case of self-correction of inadvertent plan loan errors, the Act provides that DOL should treat the correction as meeting the requirements of its Voluntary Fiduciary Correction Program (VFCP); however, DOL may impose reporting or procedural requirements.[\[52\]](#) Further, the Act directs IRS to expand EPCRS to allow IRA custodians to address certain inadvertent failures. As described earlier, section 302 of the Act includes another correction mechanism for IRA RMD failures. The Act directs Treasury to update EPCRS within two years of enactment.

Eliminate the "first day of the month" requirement for governmental section 457(b) plans (§306). Effective for taxable years beginning after the date of enactment, the Act removes the rule that governmental 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.[\[53\]](#)

One-time election for qualified charitable distribution to split-interest entity; increase in qualified charitable distribution limitation (§307). The Act indexes the annual \$100,000 cap on IRA qualified charitable distributions for inflation for taxable years beginning after 2023.[\[54\]](#) For distributions made in taxable years beginning after the date of enactment, the Act also permits a new one-time election to make a qualified charitable distribution (up to \$50,000, indexed) to a "split-interest entity," including a charitable remainder trust or a charitable gift annuity, if certain conditions are met.

Distribution to firefighters (§308). Effective for distributions made after the date of enactment, the Act modifies the exceptions to the ten percent early withdrawal penalty by expanding 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.[\[55\]](#)

Exclusion of certain disability-related first responder treatment payments (§309). The Act allows 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, 2026.[\[56\]](#)

Application of top-heavy rules to defined contribution plans covering excludable employees (§310). Effective for plan years beginning after 2023, for purposes of determining a DC plan's top-heavy status, the Act permits otherwise excludable employees (e.g., those who

are under age 21 and have less than one year of service) to be excluded from testing.[\[57\]](#) This eliminates a disincentive for employers to allow such employees to participate in the plan.

Repayment of qualified birth or adoption distribution limited to 3 years (§311). The Act requires any repayments of qualified birth or adoption distributions (penalty-free early withdrawals added under section 113 of the SECURE Act)[\[58\]](#) to be made within three years of the date of distribution.[\[59\]](#) The SECURE Act did not specify a deadline for repayments. The provision is effective as of the date of enactment and is also applied retroactively.[\[60\]](#)

Employer may rely on employee certifying that deemed hardship distribution conditions are met (§312). Effective for plan years beginning after the date of enactment, the Act allows 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 an immediate and heavy financial need (as described in applicable Treasury regulations).[\[61\]](#) It also codifies 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 and that the employee has no alternative means reasonably available to satisfy the financial need. The Act allows Treasury to create, by regulation, exceptions to this rule for cases where the plan administrator has actual knowledge to the contrary of the participant's certification and procedures for addressing cases of participant misrepresentation. The Act provides analogous rules for unforeseeable emergency distributions from governmental 457(b) plans.

Individual retirement plan statute of limitations for excise tax on excess contributions and certain accumulations (§313). Effective as of the date of enactment, the Act modifies 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.[\[62\]](#) In the case of excess contributions, the period of limitations runs six years from the date Form 1040 is filed. The new provisions do not apply in the case of excess contributions attributable to property acquired for less than fair market value.

Penalty-free withdrawal from retirement plans for individual case of domestic abuse (§314). Effective for distributions made after December 31, 2023, the Act provides for a new type of penalty-free in-service withdrawal from DC plans and IRAs for victims of domestic abuse meeting certain eligibility criteria.[\[63\]](#) Plans adopting the provision are permitted to rely on a participant's self-certification of eligibility. The Act limits eligible distributions by an individual to the lesser of \$10,000 (to be adjusted for inflation) or 50 percent of the account balance. Participants generally are permitted to repay such distributions into an eligible retirement plan within three years.

Reform of family attribution rule (§315). Effective for plan years beginning after December 31, 2023, the Act reforms 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.[\[64\]](#) For example, the provision disregards community property laws for purposes of determining ownership. It also clarifies 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 (§316). Effective for plan years beginning after December 31,

2023, the Act allows 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).[\[65\]](#) The extended deadline does not apply for amendments that increase matching contributions.

Retroactive first year elective deferrals for sole proprietors (§317). Effective for plan years beginning after the date of enactment, the Act permits 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.[\[66\]](#) The retroactive contributions must be made by the individual's tax return due date for that year.

Performance benchmarks for asset allocation funds (§318). No later than two years after enactment, the Act directs 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.[\[67\]](#) The change allows 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 Act requires DOL to report to Congress on the utilization and participants' understanding of the new benchmarking requirements no later than three years after the applicability date of updated regulations required by this provision.

Review and report to Congress relating to reporting and disclosure requirements (§319). The Act directs DOL, Treasury, and the Pension Benefit Guaranty Corporation (PBGC) to review the reporting and disclosure requirements in ERISA and the IRC applicable to pension and retirement plans and, within three years, to provide a joint report to Congress with recommendations to "consolidate, simplify, standardize, and improve" the requirements.[\[68\]](#) The agencies are to consult with a balanced group of participant and employer representatives and to collect data, as needed, to assess the effectiveness of disclosure requirements.

Eliminating unnecessary plan requirements related to unenrolled participants (§320). The Act modifies the notice requirements under ERISA and the IRC, effective for plan years beginning after December 31, 2022, to provide that individual account plans are not required to provide certain notices to employees who are eligible to participate but have not enrolled in the plan.[\[69\]](#) The plan must 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 reminding the employee that he or she is eligible to participate in the plan and any applicable election deadlines, and other documents upon the participant's request.

Review of pension risk transfer interpretive bulletin (§321). The Act directs DOL, no later than one year after enactment, 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, to consult with the ERISA Advisory Council,[\[70\]](#) and to determine whether amendments to the IB are warranted.[\[71\]](#) The Act also directs DOL to report to Congress on the findings of its review, including an assessment of any risk to participants.

Tax treatment of IRA involved in a prohibited transaction (§322). Effective for taxable years beginning after enactment, the Act changes current rules for disqualification of an IRA when an IRA owner or beneficiary has multiple IRAs and engages in a prohibited transaction, so

that only the IRA involved in the prohibited transaction is disqualified and treated as distributed.[\[72\]](#)

Clarification of substantially equal periodic payment rule (§323). The Act expands the exception from the 10 percent early distribution penalty that currently applies to substantially equal periodic payments that are made over the account owner's life expectancy.[\[73\]](#) Effective for transfers, rollovers, and exchanges after December 31, 2023, the Act provides that in the case of a transfer or rollover of the account from one qualified plan to another, or in the case of an exchange of a nonqualified annuity contract providing the payments, the exception will continue to apply—and such transfer, rollover, or exchange will not be treated as a "modification"—provided that the resulting distributions continue to satisfy the requirements for substantially equal periodic payments. The provision also provides reporting relief by allowing reliance on a taxpayer's certification that the rollover or exchange meets the requirements needed for the exception, absent knowledge to the contrary. The Act also provides a safe harbor for annuity payments satisfying the RMD rules, effective for distributions commencing on or after the date of the enactment.

Treasury guidance on rollovers (§324). The Act requires Treasury, not later than January 1, 2025, "to simplify, standardize, facilitate, and expedite" the process for rollovers to eligible retirement plans and trustee-to-trustee transfers from IRAs and to develop sample forms (including procedures and protocols) for direct rollovers and trustee-to-trustee transfers that may be used by both the distributing and receiving retirement plan or IRA.[\[74\]](#) The Act directs Treasury to obtain information from participants and plan sponsor representatives in developing the sample forms.

Roth plan distribution rules (§325). The Act harmonizes the RMD rules for Roth amounts in plans and IRAs by exempting Roth amounts in plans from RMD requirements during the life of the participant, effective for taxable years beginning after December 31, 2023.[\[75\]](#) The Act includes a transition rule, providing that the change shall not apply to distributions which are required with respect to years beginning before January 1, 2024, but are permitted to be paid on or after such date.

Exception to penalty on early distributions from qualified plans for individuals with a terminal illness (§326). The Act provides an exemption from the 10 percent early distribution penalty in the case of a distribution to a terminally ill individual,[\[76\]](#) effective for distributions made after the date of enactment.[\[77\]](#) Participants generally are permitted to repay such distributions into an eligible retirement plan within three years.

Surviving spouse election to be treated as employee (§327). The Act harmonizes the RMD rules applicable to surviving spouses under plans and IRAs by allowing a surviving spouse beneficiary under a plan to elect to be treated as the deceased employee for purposes of the RMD rules, effective for calendar years beginning after 2023.[\[78\]](#) As a result, the spouse is able to receive a similar distribution period for lifetime distributions under an employer-sponsored retirement plan as is currently permitted in an IRA.

Repeal of direct payment requirement on exclusion from gross income of distributions from governmental plans for health and long-term care insurance (§328). The Act expands the current law's exclusion from gross income (up to \$3,000 annually) for a distribution from a governmental retirement plan to pay for health insurance premiums of an eligible retired public safety officer. Effective for distributions made after the date of enactment, the exclusion no longer requires that the plan pay the insurance premiums directly to the

provider; instead, the exclusion also will apply if the premiums are paid by the individual and reimbursed with pension distributions.[\[79\]](#)

Modification of eligible age for exemption from early withdrawal penalty (§329). The Act expands the exception from the 10 percent early distribution penalty that currently applies to distributions from a governmental plan made to a qualified public safety employee after separation from service after age 50, to also apply if the employee separates after 25 years of service under the plan (whichever is earlier), effective for distributions made after the date of enactment.[\[80\]](#)

Exemption from early withdrawal penalty for certain State and local government corrections employees (§330). The Act expands the exception from the 10 percent early distribution penalty that currently applies to distributions from a governmental plan made to a qualified public safety employee after separation from service after age 50 (or separation after 25 years of service if earlier, as added by section 329 above) by expanding the definition of "Qualified Public Safety Employee" to also include state and local corrections officers and forensic security employees, effective for distributions made after the date of enactment.[\[81\]](#)

Special rules for use of retirement funds in connection with qualified federally declared disasters (§331). The Act provides permanent special rules for plan distributions and loans (similar to those provided under the CARES Act and in response to other large-scale disasters)[\[82\]](#) in cases of qualified federally declared disasters, effective for disasters occurring on or after January 26, 2021.[\[83\]](#)

- Tax-favored withdrawals from retirement plans. The Act allows up to \$22,000 to be distributed from employer retirement plans or IRAs for affected individuals.[\[84\]](#) These distributions are not subject to the 10 percent early distribution penalty. Any portion of the distribution can be repaid to an eligible retirement plan at any time over the three-year period beginning on the day after the distribution was received. To the extent that the amounts are not repaid, the income with respect to the distribution will be included ratably over three taxable years, unless the individual elects not to have the ratable inclusion apply.
- Recontributions of withdrawals for home purchases. If an individual received a distribution during a specified period to purchase a home, qualifying for the exception from the 10 percent early distribution penalty for a qualified first-time homebuyer distribution, and the funds were not used for that purpose because the home was located in a disaster area, then the individual may recontribute the amount of the distribution into an eligible retirement plan. The recontribution may consist of one or more contributions made during the period beginning on the first day of incident period and ending on the date which is 180 days after the applicable date.
- Loans from qualified plans. The Act increases the maximum loan amount that an affected individual may borrow, from the lesser of 50 percent of the participant's account balance or \$50,000, to the lesser of 100 percent of the participant's account balance or \$100,000. The Act also extends the repayment period, for an affected individual who has a loan outstanding on or after the applicability date of a disaster, by one year, for any repayment due date that would fall during the period beginning on the first day of the incident period and ending 180 days after the last day of the incident period.
- GAO Report. The Act directs a GAO report to be provided to the relevant Congressional committees, on taxpayer utilization of the retirement disaster relief provided by the Act or permitted by prior legislation, including a comparison of

utilization by higher and lower income taxpayers and whether the \$22,000 threshold on distributions provides adequate relief.

Employers allowed to replace SIMPLE retirement accounts with safe harbor 401(k) plans during a year (§332). Effective for plan years beginning after December 31, 2023, the Act permits employers to terminate a SIMPLE IRA plan mid-year and replace it immediately with a safe harbor plan (i.e., a SIMPLE 401(k) plan, a plan using one of the 401(k) safe harbor formulas under IRC section 401(k)(12) or (13), or a starter 401(k) plan).[\[85\]](#) The Act also waives the limitation on distributions from a SIMPLE IRA during the first two years, in the case of a conversion to a 401(k) or 403(b) plan.

Elimination of additional tax on corrective distributions of excess contributions (§333). The Act provides an exception from the early distribution penalty tax for distributions of excess contributions to an IRA (and any earnings on such contributions).[\[86\]](#) The provision is effective for determinations of tax liability made on or after the date of enactment (regardless of when the act, or failure to act, giving rise to the liability occurred).

Long-term care contracts purchased with retirement plan distributions (§334). Effective three years after the date of enactment, the Act allows DC plans to make distributions (up to \$2,500 per year, indexed) used to pay premiums for certain specified long-term care insurance contracts.[\[87\]](#) Distributions from plans and IRAs that meet the Act's requirements for "qualified long-term care distributions" are exempt from the 10 percent early distribution penalty.

Corrections of mortality tables (§335). The Act directs Treasury to modify its regulation on mortality tables for determining present value under defined benefit plans to apply a cap on mortality improvement rates.[\[88\]](#)

Report to Congress on section 402(f) notices (§336). Within 18 months after the date of enactment, the US Comptroller General (head of the Government Accountability Office) must report to Congress on the tax notice required by IRC section 402(f) to be provided to retirement plan participants.[\[89\]](#) The report must analyze the notice's effectiveness and make recommendations to facilitate better understanding by recipients of different distribution options and corresponding tax consequences.

Modification of required minimum distribution rules for special needs trust (§337). Effective for calendar years beginning after the date of enactment, the Act clarifies the RMD rules for a special needs trust established for a disabled beneficiary to permit the trust to name a charitable organization as the remainder beneficiary.[\[90\]](#)

Requirement to provide paper statements in certain cases (§338). Effective for plan years beginning after December 31, 2025, for DC plans, the Act requires that each year, one participant benefit statement must be provided in paper (one every three years, for defined benefit plans).[\[91\]](#) The other three quarterly statements (the other annual statements, for defined benefit plans) could continue to take advantage of the current safe harbors for using electronic forms of communication. There are two exceptions to this requirement: (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 their duties as employees). For these exceptions to apply, with respect to participants who first become eligible to participate and beneficiaries who first become eligible for benefits after December 31, 2025,[\[92\]](#) a plan must first send the participant a one-time

notice on paper explaining the participant's right to request all documents in paper.

The Act also directs DOL to impose new requirements for plans using electronic delivery under a method other than the 2002 safe harbor—this appears intended to modify DOL's more recent e-delivery safe harbor finalized in May 2020.[\[93\]](#) Under the new requirements, for example, each paper statement required under this new provision and each ERISA-required document that is delivered electronically must include an explanation of how to opt to receive all documents in paper.[\[94\]](#) The Act directs DOL to update its regulations, no later than December 31, 2024, to implement the new requirements.

Recognition of tribal government domestic relations orders (§339). Effective for domestic relations orders received (including those that are resubmitted) after December 31, 2022, the Act provides that domestic relations orders issued by tribal governments may be treated as qualified domestic relations orders.

Defined contribution plan fee disclosure improvements (§340). Within three years of enactment, DOL must review its fee disclosure regulation for participant-directed individual account plans (see 29 CFR 2550.404a-5) and explore how the disclosures could be improved to enhance participants' understanding of fees.[\[95\]](#) The Act requires DOL to report to Congress on the findings and recommendations for legislative changes to address the findings.

Consolidation of defined contribution plan notices (§341). Not later than two years after enactment, DOL and Treasury must adopt regulations permitting a DC plan to consolidate two or more of the following notices required under ERISA and the IRC: qualified default investment alternative (QDIA) notice, automatic contribution arrangement notice, 401(k) safe harbor plan notice, qualified automatic contribution arrangement notice, and permissive withdrawal notice.[\[96\]](#)

Information needed for financial options risk mitigation act (§342). The Act directs DOL to issue regulations requiring defined benefit plans to provide participants with more information on lump-sum buyout windows to enable better comparisons between the lump sum offer and benefits offered under the plan.[\[97\]](#) DOL must issue the regulations not earlier than one year after enactment and such regulations shall be applicable not earlier than the issuance of a final rule and not later than one year after issuance of a final rule.

Defined benefit annual funding notices (§343). Effective for plan years beginning after December 31, 2023, the Act makes several changes to defined benefit plan annual funding notices to require more detailed information on a plan's funding status.[\[98\]](#)

Report on pooled employer plans (§344). The Act requires DOL to conduct a study on PEPs, including their impact on coverage, and provide a report to Congress within 5 years of enactment and every 5 years thereafter.[\[99\]](#) The report should make recommendations on how PEPs can be improved to serve and protect participants.

Annual audits for group of plans (§345). Effective on the date of enactment, the Act amends section 202 of the SECURE Act, relating to consolidated filing of Form 5500 for groups of similar DC plans, to provide that any independent audit required by section 103(a)(3) of ERISA shall relate only to each individual plan that is otherwise subject to the audit requirement.[\[100\]](#) This will allow small plans (fewer than 100 participants) within the consolidated filing group to continue to be exempted from the independent audit requirement.

Worker Ownership, Readiness, and Knowledge Act (§346). The Act establishes an Employee Ownership Initiative within DOL, which may make grants to promote employee ownership through existing and new programs in the states. Funds are authorized to be appropriated for the purpose of making grants for fiscal years 2025 to 2029.[\[101\]](#)

Report by the Secretary of Labor on the impact of inflation on retirement savings (§347). The Act directs DOL, in consultation with Treasury, to study the impact of inflation on retirement savings and submit a report to Congress within 90 days after enactment.

Cash balance (§348). Effective for plan years beginning after the date of enactment, the Act modifies cash balance plan rules to effectively permit larger pay credits for older, longer-service workers.[\[102\]](#)

Termination of variable rate premium indexing (§349). Effective on the date of enactment, the Act eliminates indexing of the variable rate premium for defined benefit plans and replaces it with a flat rate of \$52 per \$1,000 of unfunded vested benefits.[\[103\]](#)

Safe harbor for corrections of employee elective deferral failures (§350). The Act creates 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.[\[104\]](#) Under the safe harbor, the error must be corrected by the first pay date on or after the last day of the nine and ½ month period after the end of the plan year in which the error occurred (or, if earlier, the first pay date on or after the last day of the month following the month in which the employee notifies the plan sponsor of the error), the employer must make a corrective allocation of any missed matching contributions and satisfy certain notice requirements, and the error 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. The provision is effective for errors with respect to which the correction deadline falls after December 31, 2023.

Technical Amendments (Title IV)

Amendments relating to Setting Every Community Up for Retirement Enhancement Act of 2019 (§401). The Act makes technical and clerical amendments to certain provisions of the SECURE Act, which are effective retroactively as if included in the SECURE Act. The technical amendments involve the notice requirements applicable to a plan using the automatic enrollment safe harbor under IRC section 401(m) (section 103 of the SECURE Act); the rules relating to long-term part time worker eligibility (section 112 of the SECURE Act); and IRA contributions based on "difficulty of care" payments (section 116 of the SECURE Act).[\[105\]](#)

Administrative Provisions (Title V)

Provisions relating to plan amendments (§501). The Act requires adoption of plan amendments on or before the last day of the first plan year beginning on or after January 1, 2025 (2027 in the case of governmental plans), as long as the plan operates in accordance with such amendments as of the effective date of the legislative requirement or amendment.[\[106\]](#) The Act also conforms 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.

Revenue Provisions (Title VI)

SIMPLE and SEP Roth IRAs (§601). Effective for taxable years beginning after December 31, 2022, the Act permits 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)).[\[107\]](#)

Hardship withdrawal rules for 403(b) plans (§602). Effective for plan years beginning after December 31, 2023, the Act conforms 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).[\[108\]](#) The Act also clarifies that 403(b) plans do not need to require an employee to first take an available loan before taking a hardship distribution.

Elective deferrals generally limited to regular contribution limit (§603). Effective for taxable years beginning after December 31, 2023, the Act requires 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, unless the employee earned \$145,000 (indexed) or less in the prior year from the employer sponsoring the plan.[\[109\]](#) Plans generally must offer Roth catch-up contributions in order to permit any catch-up contributions.

Optional treatment of employer matching or nonelective contributions as Roth contributions (§604). Effective on the date of enactment, the Act allows sponsors of 401(k), 403(b), or governmental 457(b) plans to offer employer matching contributions and nonelective contributions on a Roth basis, at the election of the employee.[\[110\]](#)

Charitable conservation easements (§605). Effective for contributions made after the date of enactment, the Act makes changes to the rules for deducting charitable contributions of conservation easements.[\[111\]](#)

Enhancing retiree health benefits in pension plans (§606). Effective for transfers made after the date of enactment, the Act extends to the end of 2032 the date of sunset (otherwise set for the end of 2025) for rules permitting the use of assets from an over-funded pension plan to pay retiree health and life insurance benefits.[\[112\]](#) The Act also adds a special rule for de minimis transfers.

Tax Court Retirement Provisions (Title VII)

Provisions relating to judges of the Tax Court (§701). Effective on the date of enactment, the Act adjusts certain retirement benefits of Tax Court judges to be more comparable to those of other federal judges.[\[113\]](#)

Provisions relating to special trial judges of the Tax Court (§702). The Act establishes a retirement program for special trial judges of the Tax Court.[\[114\]](#)

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Notes

[1] H.R. 2617 is available at <https://www.congress.gov/117/bills/hr2617/BILLS-117hr2617eas2.pdf>. The SECURE 2.0 Act is Division T of the legislation, which begins on page 2000 of the document linked here. The Senate Finance Committee's section-by-section summary of the Act is available at https://www.finance.senate.gov/imo/media/doc/Secure%202.0_Section%20by%20Section%20Summary%2012-19-22%20FINAL.pdf.

[2] For a summary of the SECURE Act, see ICI Memorandum No. 32118, dated December 20, 2019, available at <https://www.ici.org/memo32118>.

[3] For a summary of the Securing a Strong Retirement Act as approved by the House on March 29, 2022, see ICI Memorandum No. 34096, dated April 5, 2022, available at <https://www.ici.org/memo34096>. The text of the most recent version of the bill is available at <https://www.congress.gov/117/bills/hr2954/BILLS-117hr2954rfs.pdf>.

[4] For a summary of the RISE & SHINE Act, unanimously approved by the HELP Committee on June 14, 2022, see ICI Memorandum No. 34205, dated June 29, 2022, available at <https://www.ici.org/memo34205>.

[5] For a summary of the EARN Act, unanimously approved by the Finance Committee on June 22, 2022, see ICI Memorandum No. 34205, dated June 29, 2022, available at <https://www.ici.org/memo34205>. The Finance Committee approved a conceptual bill without actual legislative text. The legislative text that the Committee later released is available at <https://www.congress.gov/117/bills/s4808/BILLS-117s4808rs.pdf>.

[6] Provision from section 101 of House-passed bill.

[7] 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.

[8] 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.

[9] Provision modified from section 102 of House-passed bill. Note that section 603 of the EARN Act would have increased the tax credit using a different formula.

[10] The additional credit will 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 will be phased out for employers with between 51 and 100 employees. The applicable percentage will 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.

[11] Provision similar to section 102 of Senate Finance-passed EARN Act. Currently the credit is paid in cash in conjunction with the individual's income tax filing.

[12] Under the formula for the current Saver's Credit, the credit may be 10 percent, 20 percent, or 50 percent of the contribution. Note that section 104 of the House-passed bill

would have simplified the Saver's Credit by applying a single credit rate of 50 percent.

[\[13\]](#) Provision from section 103 of House-passed bill.

[\[14\]](#) Current law requires the PEP to designate a trustee to be responsible for collecting contributions.

[\[15\]](#) Provision from section 109 of House-passed bill and section 104 of RISE & SHINE Act.

[\[16\]](#) Provision similar to section 110 of House-passed bill, section 102 of RISE & SHINE Act, and section 403 of EARN Act.

[\[17\]](#) The SECURE Act generally increased the RMD age to 72.

[\[18\]](#) The Act contains a drafting error impacting individuals born in 1959, who will turn 73 in 2032 and 74 in 2033. In this case, it is unclear whether the individual's RMD age is 73 or 75. We anticipate a technical correction in the future, possibly clarifying that age 75 will be the required beginning age for individuals turning 73 after 2032.

Section 106 of the House-passed bill would have changed 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. Section 201 of the EARN Act would have changed the age directly from 72 to age 75, for calendar years after 2031.

[\[19\]](#) Provision from section 107 of House-passed bill and section 108 of EARN Act, with updated effective date.

[\[20\]](#) Individuals become eligible to make catch-up contributions in the year in which they attain age 50. The limit on catch-up contributions for 2022 is \$6,500 (\$3,000 for SIMPLE plans); the limit for 2023 is \$7,500 (\$3,500 for SIMPLE plans).

[\[21\]](#) Provision modified from section 108 of House-passed bill and section 109 of EARN Act.

[\[22\]](#) Provision slightly modified from section 111 of House-passed bill and section 104 of EARN Act.

[\[23\]](#) Provision from section 112 of House-passed bill and section 605 of EARN Act.

[\[24\]](#) Provision modified from section 113 of House-passed bill and section 301 of EARN Act.

[\[25\]](#) The tax credit equals the sum of (1) \$200 per military spouse, and (2) 100 percent of all employer contributions (up to \$300) made on behalf of the military spouse.

[\[26\]](#) Provision modified from section 114 of House-passed bill and section 107 of EARN Act.

[\[27\]](#) Provision from section 117 of House-passed bill and section 615 of EARN Act.

[\[28\]](#) Provision from section 105 of EARN Act. Plans may allow participants to take such emergency expense distributions even if the participant is not otherwise eligible for a distribution.

[\[29\]](#) Provision from section 106 of EARN Act.

[\[30\]](#) Provision modified from section 608 of the EARN Act. The EARN Act would have

required the trustee of a SIMPLE IRA plan to file plan documents with the IRS, but this requirement was not included in the legislation as enacted.

[31] Provision from section 111 of EARN Act.

[32] Provision from section 119 of EARN Act.

[33] Provision modified from section 118 of EARN Act.

[34] Provision from section 610 of EARN Act.

[35] Provision modified from section 122 of the EARN Act.

[36] Provision from section 118 of House-passed bill.

[37] ABLE accounts were created by the Stephen Beck, Jr., Achieving a Better Life Experience Act of 2014 (the ABLE Act) and were designed to mirror 529 plans and to be used by individuals with disabilities to pay for expenses related to living with a disability. See ICI Memorandum No. 28594, dated December 18, 2014, available at <https://www.ici.org/memo28594>.

[38] Provision from section 121 of EARN Act.

[39] Provision modified from section 116 of House-passed bill, section 109 of RISE & SHINE Act, and section 103 of EARN Act.

[40] Provision modified from section 202 of RISE & SHINE Act.

[41] Provision from section 105 of House-passed bill and section 401 of EARN Act.

[42] Provision from section 201 of House-passed bill and section 203 of EARN Act.

[43] Provision modified from section 202 of House-passed bill and section 202 of EARN Act. Current regulations limit the amount of QLAC annuity premiums that can be excluded from the RMD rules to the lesser of \$145,000 (across all of an individual's IRAs or plan accounts) or 25 percent of the individual's IRA or plan balance.

[44] Provision from section 203 of House-passed bill and section 120 of EARN Act.

[45] Provision from section 204 of EARN Act.

[46] The Act provides certain relief for actions taken before enactment, under a good faith interpretation of the then existing rules before enactment. The Act also allows certain installment payments and benefit reductions that started before enactment to continue after enactment.

[47] Provision from section 301 of House-passed bill, section 108 of RISE & SHINE Act, and section 207 of EARN Act.

[48] Provision from section 302 of House-passed bill and section 205 of EARN Act.

[49] Provision from section 306 of House-passed bill. Note that section 208 of the EARN Act included a significantly different lost found provision. It would have directed Treasury to create and maintain the database and would have required Treasury to hold (in an IRA)

automatic cash-out distributions of less than \$1,000 from a plan until the participant claims the benefits.

[50] Provision from section 307 of House-passed bill and section 101 of RISE & SHINE Act. Section 208 of the EARN Act would have raised the cap to \$6,000 as part of the Retirement Savings Lost of Found provisions.

[51] Provision from section 308 of House-passed bill and section 604 of EARN Act.

[52] DOL recently proposed updates to the VFCP. See ICI Memorandum No. 34401, dated November 23, 2022, available at <https://www.ici.org/memo34401>. In the preamble to the proposed updates, DOL requests comments regarding how the VFCP could be integrated with corrections under EPCRS, and notes that the VFCP does not have a corollary self-correction component for participant loan transactions and requires that applicants correct participant loan transactions under the normal EPCRS procedures to be eligible for VFC Program correction under Title I of ERISA. See 87 Fed. Reg. 71164, at page 71170 (November 21, 2022).

[53] Provision from section 309 of House-passed bill and section 110 of EARN Act.

[54] Provision from section 310 of House-passed bill and section 210 of EARN Act.

[55] Provision from section 311 of House-passed bill and section 302 of EARN Act.

[56] Provision from section 312 of House-passed bill and section 303 of EARN Act.

[57] Provision from section 602 of EARN Act and modified from section 315 of House-passed bill.

[58] For a summary of the SECURE Act, see ICI Memorandum No. 32118, dated December 20, 2019, available at <https://www.ici.org/memo32118>.

[59] Provision from section 316 of House-passed bill and section 801 of EARN Act.

[60] In the case of a qualified birth or adoption distribution made on or before the date of enactment, any repayments must be made before January 1, 2026.

[61] See Treas. Reg. §§ 1.401(k)-1(d)(3); 1.403(b)-6(d)(2). Provision from section 317 of House-passed bill and section 113 of EARN Act.

[62] Provision from section 313 of House-passed bill.

[63] Provision from section 318 of House-passed bill and section 114 of EARN Act.

[64] Provision from section 319 of House-passed bill and section 607 of EARN Act.

[65] Provision from section 320 of House-passed bill and section 115 of EARN Act.

[66] Provision from section 321 of House-passed bill and section 116 of EARN Act. For a summary of the SECURE Act, see ICI Memorandum No. 32118, dated December 20, 2019, available at <https://www.ici.org/memo32118>.

[67] Provision from section 303 of House-passed bill and section 103 of RISE & SHINE Act.

[68] Provision from section 304 of House-passed bill, section 106 of RISE & SHINE Act, and section 116 of EARN Act.

[69] Provision from section 305 of House-passed bill, section 107 of RISE & SHINE Act, and section 703 of EARN Act.

[70] 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-ebsa/about-us/erisa-advisory-council/2015-model-notices-and-disclosures-for-pension-risk-transfers.pdf>.

[71] Provision from section 323 of House-passed bill and section 105 of RISE & SHINE Act.

[72] Section 322 of the House-passed bill would have provided that when an IRA owner engages in a prohibited transaction, only the portion of the IRA involved in the prohibited transaction is disqualified and treated as distributed.

[73] Provision from section 206 of EARN Act.

[74] Provision from section 117 of EARN Act.

[75] Provision from section 209 of EARN Act.

[76] A terminally ill individual means an individual who has been certified by a physician as having an illness or physical condition that can reasonably be expected to result in death in 84 months or less after the date of the certification.

[77] Provision from section 211 of EARN Act.

[78] Provision from section 212 of EARN Act.

[79] Provision from section 304 of EARN Act.

[80] Provision from section 305 of EARN Act.

[81] Provision from section 306 of EARN Act.

[82] The Coronavirus Aid, Relief, and Economic Security Act (the CARES Act) consists of several different provisions aimed at providing emergency assistance and health care response for individuals, families and businesses affected by the coronavirus disease 2019 (COVID-19). For an overview of the CARES Act, see ICI Memorandum No. 32328, dated March 27, 2020, available at <https://www.ici.org/memo32328>.

[83] Provision from section 501 of EARN Act.

[84] The total amount of distributions to an individual from all eligible retirement plans that may be treated as qualified disaster recovery distributions with respect to each qualified disaster is \$22,000. However, a plan will not be treated as violating any IRC requirement merely because an individual receives total distributions in excess of \$22,000, provided

that the aggregate amount of such distributions from plans maintained by the employer (and members of the employer's controlled group or affiliated service group) does not exceed \$22,000 with respect to each qualified disaster.

[85] Provision from section 609 of EARN Act.

[86] Provision from section 112 of EARN Act.

[87] Provision from section 213 of EARN Act.

[88] Provision from section 613 of EARN Act.

[89] Provision from section 702 of EARN Act.

[90] Provision from section 803 of EARN Act.

[91] Provision modified from section 314 of House-passed bill.

[92] This limitation that the one-time notice is only required for newly eligible individuals is an improvement added to this version and was not included in the version of the language in the House-passed bill. In another improvement from the House-passed version, the Act does not include the special rule that would have applied to participants who separated from service. Under the prior version the exception for plans using the 2002 safe harbor could not be used in the case of separated employees (i.e., they must receive one paper statement per year unless they affirmatively opted into electronic delivery).

[93] 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.

[94] The 2020 safe harbor requires that this information be provided on a notice of internet availability (NOIA), rather than on each individual document provided. In the case of the required paper statement, the Act requires that contact information for the plan sponsor (including a phone number) be included. The safe harbor's NOIA must include a phone number to contact the plan administrator or other designated representative (rather than the plan sponsor). Some of the new requirements are already required under the 2020 safe harbor (e.g., participants must be given the opportunity to request paper disclosures, free of charge). The most burdensome of the list from the House-passed bill (that each paper pension benefit statement must identify each plan document required to be disclosed and must include information about how a participant or beneficiary may access each such document) is not included in the version that was enacted.

[95] Provision from section 301 of RISE & SHINE Act.

[96] Provision modified from section 302 of RISE & SHINE Act.

[97] Provision modified from section 303 of RISE & SHINE Act.

[98] Provision modified from section 304 of RISE & SHINE Act.

[99] Provision from section 501 of RISE & SHINE Act.

[100] Provision from section 502 of RISE & SHINE Act.

[101] Provision modified from section 702 of RISE & SHINE Act.

[102] Provision slightly modified from section 601 of RISE & SHINE Act.

[103] Provision slightly modified from section 602 of RISE & SHINE Act.

[104] Provision modified from section 115 of House-passed bill and section 606 of EARN Act.

[105] Provision modified from section 401 of House-passed bill and section and section 802 of EARN Act.

[106] Provision from section 501 of House-passed bill and section 901 of EARN Act (and modified from section 701 of RISE & SHINE Act), with deadlines adjusted to reflect recent IRS guidance in Notices 2022-33 and 2022-45. See ICI Memorandum No. 34256, dated August 17, 2022, available at <https://www.ici.org/memo34256>; and ICI Memorandum No. 34300, dated September 30, 2022, available at <https://www.ici.org/memo34300>.

[107] Provision modified from section 601 of House-passed bill and section 1101 of EARN Act.

[108] Provision from section 602 of House-passed bill and section 402 of EARN Act.

[109] Provision modified from section 603 of House-passed bill and section 1102 of EARN Act.

[110] Provision from section 1103 of EARN Act and modified from section 604 of House-passed bill.

[111] Provision modified from section 1104 of EARN Act.

[112] Provision modified from section 603 of RISE & SHINE Act and section 614 of EARN Act.

[113] Provision modified from section 1001 of EARN Act.

[114] Provision slightly modified from section 1002 of EARN Act.