An Analysis of “SECURE Act 2.0”

Chuck Rolph, JD, MSFS, CFP®, AIFA®
Technical Director, Advanced Consulting Group

“SECURE Act 2.0” is not the actual name of any legislation. Rather it is the moniker used by the popular employee benefits press to describe separate pieces of proposed legislation that build upon the original SECURE Act.[1] The House version of the proposed legislation is H.R. 2954 (Securing a Strong Retirement Act of 2022) and is the basis for the analysis in this paper. We will note those instances in which the proposed legislation in the Senate differs from the House proposed legislation. The Senate bills are the Enhancing American Retirement Now Act (S. 4808, the “EARN Act”), which was introduced in the Senate on September 8, 2022, and the Retirement Improvement and Savings Enhancement to Supplement Health Improvements for the Nest Egg Act (S. 4353, the “RISE & SHINE Act”), which was introduced in the Senate on June 7, 2022 and reported by Senator Murray with amendments to the Committee on Health, Education, Labor, and Pensions on June 21, 2022. There are provisions in both of the Senate bills that are not included in the House bill and these will be discussed separately toward the end of the paper. Keep in mind that, as of October 21, 2022 (the date this paper was finalized), this is all proposed legislation. When and if it finally becomes law, we will update this paper accordingly.

TITLE I - EXPANDING COVERAGE AND INCREASING RETIREMENT SAVINGS

House Bill Sec. 101 - Expanding Automatic Enrollment in Retirement Plans

Current Law. Internal Revenue Code (IRC) sec. 414(w) describes an eligible automatic contribution arrangement (EACA) and IRC sec. 401(k)(13) describes a qualified automatic contribution arrangement (QACA). The use of either of these arrangements is optional with the plan sponsor.

House Provision. New IRC sec. 401(k) and IRC sec. 403(b) plans must include an EACA, with a default rate of between 3% and 10%, as well as automatic escalation of 1% per year up to a maximum of at least 10%, but no more than 15%. The cap on permissible automatic escalation for both safe harbor and non-safe harbor plans is raised (15% for safe harbor plans, 10% for non-safe harbor plans until 2025, then 15%). The following plans are exempted from this mandate: (i) governmental plans; (ii) church plans; (iii) small employers with 10 or fewer employees; (iv) SIMPLE 401(k) plans; and (v) new employers that have been in existence for less than 3 years. Existing plans established before the date of enactment are exempt, except grandfathering does not apply to employers adopting an existing multiple employer plan (“MEP”) after the date of enactment. This provision is scheduled to be effective for plan years beginning after December 31, 2023.

Senate Provision. EARN Act sec. 101 would require default contributions must be no lower than 6% in the first year, increase 1% per year until the fifth and later years, in which case the default must be at least 10%. The provision would require employer matching contributions of 100% of the first 2% of deferred compensation, 50% of the next 4% deferred and 20% of the next 4% deferred. The provision would be effective after 2023.

House Bill Sec. 102 - Modification Of Credit For Small Employer Pension Plan Start-Up Costs

Current Law. IRC sec. 45E provides that small employers with fewer than 100 employees may be eligible for a three-year start-up credit that is up to 50% of administrative costs, up to a maximum yearly cap of $5,000.

House Provision. The existing credit under IRC sec. 45E is increased from 50% to 100% of qualified start-up costs for employers with up to 50 employees. The House provision provides for an additional credit for 5 years of up to $1,000 per employee based on sliding percentage, which starts at 100% in the first year, decreasing by 25 percentage points per year thereafter. This provision is scheduled to be effective for tax years beginning after 2022.

Senate Provision. Sec. 603 of the EARN Act would modify the existing credit by increasing the 50% rate to 75% in the case of an employer with 25 or fewer employees. The provision would be effective for taxable years beginning after December 31, 2023.

House Bill Sec. 103 - Promotion Of The Saver's Credit

Current Law. IRC sec. 25B provides a tax credit equal to a portion of the amount of a taxpayer's deferrals of up to $2,000, with the percentage determined by a taxpayer's adjusted gross income. The credit is phased out at $50,00 (adjusted for inflation).

House Provision. There is no substantive change to the credit; the House provision simply requires the Treasury Department to take steps to increase the public's awareness of the credit. This would become effective for tax years beginning after the date of enactment.

Senate Provision. No corresponding provision.

House Bill Sec. 104 - Enhancement Of Saver's Credit

Current Law. The existing Saver's Credit employs a tiered percentage system ranging from 10-50% based on Adjusted Gross Income (AGI) to determine the amount of the credit.

House Provision. Sec. 104 simplifies the Saver's Credit by creating one credit rate of 50%, as opposed to the current tiered credit percentage. This rate is phased out once a taxpayer reaches a certain income level. Sec. 104 is effective for tax years beginning after December 31, 2026.

Senate Provision. EARN Act Sec. 102 would modify the credit with respect to IRA and retirement plan contributions by changing it from a credit paid in cash as part of a tax refund to a government matching contribution that must be deposited into a taxpayer's IRA or retirement plan. The credit would be 50% of IRA or retirement plan contribution up to $2,000 per individual. The credit rate would phase out between $41,000 and $71,000 in the case of taxpayers filing a joint return ($20,500 to $35,500 for single taxpayers and married filing separate; $30,750 to $53,250 for head of household filers). The provision would be effective for years after 2026.

House Bill Sec. 105 - Enhancement Of 403(b) Plans

Current Law. Under IRC sec. 403(b), investments are limited to annuity contracts [403(b)(1)], mutual funds held in custodial accounts [403(b)(7)], and (for churches) retirement income accounts [403(b)(9)]. Group trusts are sometimes used by multiple tax-preferred retirement savings plans (such as 401(k) plans) and IRAs to diversify investments and lower costs. A sec. 403(b) plan that is structured as a custodial account is limited to mutual fund investments and cannot participate in a group trust unless the trust solely comprises of sec. 403(b) custodial accounts.

House Provision. The provision amends the tax and securities laws to allow IRC sec. 403(b) plans with custodial accounts to invest in collective investment trusts (81-100 group trusts). It is scheduled to be effective for amounts invested after December 31, 2022.

Senate Provision. Sec. 401 of the EARN Act is substantial identical to the House version. As is the case with the House Bill, this provision would permit 403(b) custodial accounts to participate in group trusts with other tax-preferred savings plans and IRAs, and would be effective after date of enactment.

House Bill Sec. 106 - Increase In Required Beginning Date (RBD) For Mandatory Required Minimum Distributions (RMDs)

Current Law. IRC sec. 401(a)(9)(C) provides that the RBD is April 1 of the calendar year following the year in which the individual attains age 72 (age 70 $^{1}/_{2}$ prior to January 1, 2020).

House Provision. Increases RBD age to 73 beginning in 2022, 74 beginning in 2029, and 75 beginning in 2032, and is effective for distributions after December 31, 2022 for individuals attaining age 72 after that date.

Senate Provision. EARN Act 201 increases the RBD from age 72 to age 75 in one step beginning in 2032, without the gradations that appear in the House version. It would be effective for calendar years beginning after the date of enactment.

House Bill Sec. 107 - Indexation Of The IRA Catch-Up Limit

Current Law. IRC sec. 219(b)(5) provides a $5,000 dollar amount for deductible IRA contributions that is indexed for inflation, plus an additional $1,000 catch-up contribution for individuals age 50 and older that is not indexed for inflation.

House Provision. The House Bill indexes IRA catch-up contributions in the same manner as the indexing for regular IRA contributions. The indexed amounts are rounded down to the nearest multiple of $100. This provision is scheduled to be effective for tax years beginning after December 31, 2023.

Senate Provision. EARN Act Sec. 108 would index this catch-up limit, effective for years beginning after the date of enactment.

House Bill Sec. 108 - Higher Catch-Up Limits

Current Law. IRC sec. 414(v)(2(B) provides a $5,000 (indexed) age 50 and older catch-up limit for all plans that have salary deferrals other than SIMPLE 401(k) and IRAs, where the indexed limit is $2,500.2

House Provision. The House Bill adjusts those indexed dollar amounts to $10,000 and $5,000, respectively, but only for ages 62, 63, and 64. This change would be effective for tax years beginning after December 31, 2023.

Senate Provision. EARN Act Sec. 109 would permit participants to elect to contribute an additional $10,000 (indexed) annually beginning between age 60 and 63 ($5,000 for Simple plans), and would apply to taxable years beginning after December 31, 2024.

House Bill Sec. 109 - Pooled Employer Plans (PEPs) Modifications

Current Law. Current law requires that PEPs designate a bank trustee to collect contributions and that they implement written collection procedures.

House Provision. A PEP may designate any named fiduciary (other than an employer in the plan) to collect contributions and implement written collection procedures. This provision would be effective for plan years beginning after December 31, 2022.

Senate Provision. RISE & SHINE Act Sec. 104 includes the same provision. It would also be effective for plan years beginning after December 31, 2022.

House Bill Sec. 110 - Multiple Employer Sec. 403(b) Plans

Current Law. Sec. 403(b) plans were not part of the SECURE Act legislation that authorized PEPs. Currently, there are no statutory provisions specifically authorizing Sec. 403(b) PEPs and MEPs.

House Provision. The House Bill provides that 403(b) plans can be established and maintained as a MEP/PEP under rules similar to qualified plans and provides that 403(b) and qualified plan MEPs operate under the same rules. This provision is scheduled to become effective for plan years beginning after December 31, 2022.

Senate Provision. Sec. 403 of the EARN Act would extend the SECURE Act rules relating to MEPs and PEPs to 403(b) plans, and would be effective for plan years beginning after date of enactment.

House Bill Sec. 111 - Treatment Of Student Loan Payments As Elective Deferrals For Purposes Of Matching Contributions

Current Law. There is no authority in the IRC for allowing an employer to make matching contributions based on an employee/participant's repayment of student loan debt. At least one employer, however, has received a private letter that authorizes this practice.

House Provision. The House Bill would allow employer contributions made on behalf of employees for "qualified student loan payments" to be treated as matching contributions, so long as certain requirements are satisfied. This treatment would apply to IRC sec. 401(k), IRC sec. 403(b), SIMPLE IRAs, and IRC sec. 457(b) plans. This treatment would become effective for plan years beginning after December 31, 2022.

Senate Provision. Sec. 104 of the EARN Act would permit employers to provide matching contributions under 401(k) and other tax-preferred retirement plans for employee student loan payments as if those payments were elective deferrals. The provision would be effective for plan years beginning after 2023.

House Bill Sec. 112 - Application Of The Start-Up Tax Credit To Employers That Join An Existing Plan

Current Law. IRC sec. 45E(d)(3)(A) provides that the first year tax credit applies to the taxable year which includes the date that the eligible employer plan to which such costs relate becomes effective, or, at the election of the employer, the preceding taxable year. Because it is based on the year that the plan becomes effective, this has the effect of precluding an employer that joins an existing MEP or PEP from taking advantage of the tax credit.

House Provision. The House Bill makes a subtle change to IRC sec. 45E(d)(3)(A) by striking "effective" and inserting "effective with respect to the eligible employer". The effect of this change is to allow employers that join a MEP or PEP to take advantage of the tax credit. This means that small employers that join a MEP are entitled to the start-up credit for their first 3 years in the MEP. The change is proposed to be effective as if included in sec. 104 of the SECURE Act.

Senate Provision. Sec. 605 of the EARN Act This provision would extend the credit to employers who join a multiple employer retirement plan, and would be effective after date of enactment.

House Bill Sec. 113 - Military Spouse Retirement Plan Eligibility Credit For Small Employers

Current Law. No provision.

House Provision. IRC sec. 45U is added, creating a new, nonrefundable income tax credit for eligible small employers (i.e., with respect to any year, an employer which had no more than 100 employees who received at least $5,000 of compensation from the employer for the preceding year) that employ military spouses and allow them to participate in the employer's defined contribution plan (subject to special rules). The credit is $250 per employee, plus up to $250 for contributions made by the employer, and applies for up to 3 years. This change would be effective for taxable years beginning after the date of enactment.

Senate Provision. Sec. 301 of the EARN Act would provide a tax credit to a small employer who permits military spouses to participate in the employer's defined contribution plan ($200 per spouse), along with an enhanced credit (up to an additional $300 per spouse) if the employer makes contributions to the plan for the military spouse. A small employer is an employer with 100 or fewer employees. The provision would be effective after date of enactment.

House Bill Sec. 114 - Small Immediate Financial Incentives For Contributing To A Plan

Current Law. The general rule of IRC sec. 401(k)(4)(A) states that a cash or deferred arrangement of any employer shall not be treated as a qualified cash or deferred arrangement if any other benefit is conditioned (directly or indirectly) on the employee electing to have the employer make or not make contributions under the arrangement in lieu of receiving cash. In other words, the employer cannot offer financial incentives to its employees to join the IRC sec. 401(k) plan and make contributions.

House Provision. The House Bill allows participants to receive de minimis financial incentives for contributing to an IRC sec. 401(k) or IRC sec. 403(b) plan by providing an exemption from the contingent benefit rule and providing relief from the Code and ERISA prohibited transaction rules. This provision is scheduled to be effective for plan years beginning after the date of enactment.

Senate Provision. Sec. 107 of the EARN Act would allow an employer to provide a de minimis financial incentive to employees who elect to make contributions and would be effective after date of enactment.

House Bill Sec. 115 - Safe Harbor For Correction Of Employee Elective Deferral Failures

Current Law. There is no remedy in the IRC for correction of employee elective deferral failures. Any correction must be accomplished through the IRS' Employee Plans Compliance System (EPCRS).

House Provision. The House Bill adds new IRC sec. 414(aa) that creates a safe harbor in which a plan will not fail to be a qualified plan merely because of a "reasonable administrative error" in administering automatic enrollment or automatic escalation features so long as that error is corrected within 9 $^1/_2$ months of the end of the plan year in which the error occurred and is resolved favorably toward the participant and without discrimination toward similarly situated participants. The safe harbor is available for IRC sec. 401(a), IRC sec. 403(b) and IRC sec. 457(b) plans and IRAs. This new IRC sec. would become effective for any errors with respect to which the date that is nine and one-half months after the end of the plan year during which the error occurred is after the date of enactment.

Senate Provision. Sec. 606 of the EARN Act states that the IRS has issued guidance on the correction of failures relating to default enrollment of employees into retirement plans such as 401(k) plans. This guidance includes a safe harbor, which expires December 31, 2023, that permits correction if notice is given to the affected employee, correct deferrals commence within certain specified time periods, and the employer provides the employee with any matching contributions that would have been made if the failure had not occurred. The provision would make this safe harbor permanent, and is effective after 2023.

House Bill Sec. 116 - One-Year Reduction In Period Of Service Requirement For Long-Term, Part-Time Workers

Current Law. Under IRC sec. 401(k)(2)(D)(ii), plans generally must permit an employee to contribute to a plan if the employee worked at least 500 hours per year with the employer for at least three consecutive years and has met the minimum age requirement (age 21) by the end of the three-consecutive year period.

House Provision. The House Bill reduces from three to two the required years of service before long-term, part-time workers are eligible to contribute to a plan, and clarifies that pre-2021 service is disregarded for vesting of employer contributions. This change is scheduled to be effective for plan years beginning after December 31, 2020. Generally effective for plan years beginning after December 31, 2022 (except for the clarification of pre-2021 service for vesting purposes that is effective as if included in the SECURE Act, which results in being effective for plan years beginning after December 31, 2020).

Senate Provision. EARN Act Sec. 103 and RISE & SHINE Act Sec. 109 include a similar provision. The EARN Act provision is effective for plan years beginning after December 31, 2022 (except for the clarification of pre-2021 service for vesting purposes that is effective as if included in the SECURE Act, so effective for plan years beginning after December 31, 2020). The RISE & SHINE Act provision is effective for plan years beginning at least one year after final regulations implementing this provision are promulgated.

House Bill Sec. 117 - Deferral Of Tax For Certain Sales Of Employer Stock To Employee Stock Ownership Plan Sponsored By S Corporation

Current Law. Under IRC sec. 1042, an individual owner of non-publicly traded stock in a C corporation that sponsors an ESOP may 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, such as stock or other securities issued by a U.S. operating corporation and certain other conditions are met. This non-recognition treatment does not currently apply in the case of S corporation stock.

House Provision. The House Bill expands the gain deferral provisions under existing law, with a 10% limit on the deferral, to sales of employer stock to S corporation ESOPs. This provision would become effective for plan years beginning after December 31, 2027.

Senate Provision. Sec. 615 of the EARN Act would permit the owner of employer stock issued by an S corporation to defer 10% of long term capital gain from the sale of that stock to an ESOP, effective for years after 2027.

House Bill Sec. 118 - Certain Securities Treated As Publicly Traded In Case Of Employee Stock Ownership Plans

Current Law. IRC sec. 401(a)(35) contains diversification requirements for certain "applicable defined contribution plans," which under subparagraph (E) is any defined contribution plan that holds publicly traded employer securities.

House Provision. Sec. 118 updates certain ESOP rules related to whether a security is a "publicly traded employer security" and "readily tradeable on an established securities market" by adding subparagraph (I) to IRC sec. 401(a)(35). In particular, the House Bill allows certain non-exchange traded securities to qualify as "publicly traded employer securities" so long as the security is subject to priced quotations by at least four dealers on an SEC-regulated interdealer quotation system; is not a penny stock and is not issued by a shell company; and has a public float of at least 10 percent of outstanding shares. For securities issued by domestic corporations, the issuer must publish annual audited financial statements. Securities issued by foreign corporations are subject to additional depository and reporting requirements. The updated definitions in Sec. 118 will 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 U.S. employees. Sec. 118 is effective for plan years beginning after December 31, 2026.

Senate Provision. No corresponding provision.

TITLE II - PRESERVATION OF INCOME

House Bill Sec. 201 - Remove Required Minimum Distribution ("RMD") Barriers For Life Annuities

Current Law. IRC sec. 401(a)(9)(A)(ii) requires distributions to begin not later than the required beginning date, in accordance with the regulations. The regulations specify that all annuity payments must be nonincreasing or only increase following certain limited exceptions.

House Provision. Sec. 201 of the House Bill adds IRC sec. 401(a)(9)(J), which amends the RMD rules under IRC sec. 401(a)(9) to permit commercial annuities that are issued in connection with any eligible retirement plan to provide additional types of payments, such as certain lump sum payments and annual payment increases at a rate less than 5% annually. This change would become effective upon enactment.

Senate Provision. EARN Act sec. 203 contains a provision that would permit a commercial annuity issued by a tax-preferred retirement plan to provide for certain features generally not permitted under present law such as a guaranteed increase in annual annuity payments of up to 5% per year and lump sum payments that reduce the annuity payment period. This provision would become effective after the date of enactment.

House Bill Sec. 202 - Qualifying Longevity Annuity Contracts (QLACs)

Current Law. Existing Treasury regulations under sec. 1.401(a)(9)-6 limit the premiums an individual can pay for a QLAC to the lesser of $135,000 or 25% of the individual's account balance. It also provides for other restrictions on non-spouse death benefits.

House Provision. Sec. 202 of the House Bill directs the Secretary of the Treasury to amend Q&A–17(b)(3) of Treasury Regulation sec. 1.401(a)(9)–6 and Q&A–12(b)(3) of Treasury Regulation sec. 1.408–8 to eliminate the requirement that premiums for qualifying longevity annuity contracts be limited to a percentage of an individual's account balance, and to make such corresponding changes to the regulations and related forms as are necessary to reflect the elimination of this requirement. It also includes a direction to the Secretary of the Treasury to amend Q&A–17(c) of Treasury Regulation sec. 1.401(a)(9)–6, to address changes to a QLAC that may be necessary following the divorce of spouses on whose behalf a joint and survivor annuity benefit was purchased. These changes would become effective for contracts purchased on or after enactment. For joint and survivor annuity contracts and the short free look period, the provisions are effective for contracts purchased on or after July 2, 2014.

Senate Provision. A qualified longevity annuity contract (QLAC) is a fixed annuity provided under a defined contribution plan that commences at an advanced age (but no later than age 85) and meets certain other requirements. Among the requirements are that the premiums for a QLAC cannot exceed $135,000 (2022) or 25% of the participant's account balance. Sec. 202 of the EARN Act would eliminate the 25% threshold, increase the dollar limit to $200,000 (indexed), and clarify that survivor benefits may be paid in the case of divorce, and would generally be effective after date of enactment.

House Bill Sec. 203 - Insurance-Dedicated Exchange Traded Funds (ETFs)

Current Law. IRC sec. 817(d)(3)(A) states that, in the case of a variable annuity contract, the amounts paid in, or the amount paid out, must reflect the investment return and the market value of the segregated asset account, and IRC sec. 817(d)(3)(B) states that, in the case of a variable life insurance contract, the amount of the death benefit (or the period of coverage) is adjusted on the basis of the investment return and the market value of the segregated asset account.

House Provision. The House Bill directs the Secretary of the Treasury to revise the regulations setting forth diversification requirements with respect to variable contracts to facilitate the use of ETFs. This provision would be effective for investments made on or after the date that is seven years after the date of enactment.

Senate Provision. Sec. 120 of the EARN Act would direct the Treasury Department to modify the regulations to permit ETFs to be held in the segregated account of a variable insurance contract. This provision would generally become effective seven years after date of enactment.

TITLE III - SIMPLIFICATION AND CLARIFICATION OF RETIREMENT PLAN RULES

House Bill Sec. 301 - Recovery of Retirement Plan Overpayments

Current Law. Fiduciaries of a qualified retirement plan that have mistakenly overpaid a participant his or her benefits must take reasonable steps to recoup the overpayment in order to maintain the qualified status of the plan and to avoid fiduciary liability for such overpayment.

House Provision. Sec. 301 of the House Bill adds IRC sec. 414(bb) [Special Rules Applicable to Benefit Overpayments]. This new IRC sec. would allow for "inadvertent" overpayments and the retroactive amendment of the plan to sanction the overpayment. The provision would be effective as of the date of enactment, with certain retroactive relief for prior good faith interpretations of existing guidance.

Senate Provision. Sec. 207 of the EARN Act would clarify that a tax-preferred employer plan does not violate the tax qualification rules if the plan does not seek repayment or if the plan is amended to account for the overpayments. This provision would also clarify that a mistaken overpayment for which no repayment is sought is eligible for rollover to another plan or IRA. This provision would be effective after date of enactment. Sec. 108 of the RISE & SHINE Act would add subsection (h) to sec. 206 of ERISA regarding special rules applicable to benefit overpayments.

House Bill Sec. 302 - Reduction In Excise Tax On Certain Accumulations In Qualified Retirement Plans

Current Law. IRC sec. 4974(a) imposes an excise tax on an individual if the amount distributed to an individual during a taxable year is less than the RMD under the plan for that year. The excise tax is equal to 50% of the shortfall (that is, 50% of the amount by which the required minimum distribution exceeds the actual distribution). IRC sec. 4974(d) provides for a waiver of the tax in certain circumstances.

House Provision. The House Bill reduces the excise tax for failure to take RMDs from 50% of the shortfall to 25%. It further reduces the excise tax to 10% if the individual corrects the shortfall during a two year correction window. This provision would be effective for taxable years beginning after December 31, 2022.

Senate Provision. Under present law, a 50% additional tax applies if a taxpayer fails to receive a required minimum distribution from an IRA or tax preferred retirement plan. Section 205 of the EARN Act would reduce the tax rate to 25%, and would further reduce the rate to 10% if the minimum distribution is taken within a correction period (generally ending no later than the end of the second tax year following the year in which the distribution should have been made), and would be effective after date of enactment.

House Bill Sec. 303 - Performance Benchmarks For Asset Allocation Funds

Current Law. Under DOL regs. sec. 2550.404a-5, certain information must be provided to plan participants who direct the investment of assets assigned to their accounts in defined contribution plans.

House Provision. The House Bill requires the Secretary of Labor to modify existing regulations no later than six months after enactment to provide that, in the case of a designated investment alternative which contains a mix of asset classes, a plan administrator may, but is not required to, use a benchmark which is a blend of different broad-based securities market indices. A study of the effectiveness of the benchmarking is due by December 31, 2022. This provision is scheduled to be effective upon enactment.

Senate Provision. RISE & SHINE Act Sec. 103 is similar, though it requires the Secretary to modify regulations within two years of enactment.

House Bill Sec. 304 - Review And Report To The Congress Relating To Reporting And Disclosure Requirements

Current Law. Plans are currently required to file reports with federal agencies (e.g., Form 5500) and provide numerous notices and other disclosures to participants (e.g., Summary Plan Description).

House Provision. The House Bill requires the Secretary of Labor, the Secretary of the Treasury, and the Pension Benefit Guaranty Corporation (PBGC) to review the reporting and disclosure requirements applicable to pension benefit plans and qualified retirement plans and make a report to Congress within two years of enactment addressing possible avenues for simplification, consolidation, or standardization. This provision would become effective upon enactment.

Senate Provision. Sec. 701 of the EARN Act requires the Treasury Department, Department of Labor, and Pension Benefit Guaranty Corporation (PBGC) to review and report to Congress within 18 months with respect to the various notice and disclosure requirements that apply to employer retirement plans, including an analysis of the effectiveness of these requirements and recommendations on simplification. Sec. 106 of the RISE & SHINE Act requires a similar report not later than three years after the date of enactment.

House Bill Sec. 305 - Eliminating Unnecessary Plan Requirements Related To Unenrolled Participants

Current Law. Employees who are eligible to participate in retirement plans, but who choose not to do so, generally receive the same notices as those employees who do enroll and become participants.

House Provision. The House Bill adds IRC sec. 414(cc) which says that, in the case of defined contribution plans, no notice, disclosure or other plan document be provided to unenrolled participants if they are given an annual reminder notice of their opportunity to enroll in the plan, together with any such documents as they might request. The House Bill also adds a new sec.

111 to ERISA in keeping with the modifications made to the IRC. This provision would be effective for plan years beginning after December 31, 2022.

Senate Provision. Sec. 703 of the EARN Act would exempt employer retirement plans from providing notices and disclosures to an employee who is not enrolled in the plan provided that an annual reminder notice is given to the employee of his or her eligibility to participate in the plan and the plan provides any notices or disclosures that the employee requests and would be entitled to receive if enrolled in the plan. This would be effective for plan years after date of enactment. Sec. 107 of the RISE & SHINE Act amends ERISA by adding a new sec. 111 and amends the IRC by adding subsection (aa) to sec. 414. Those amendments contain similar provisions to those of the EARN Act.

House Bill Sec. 306 - Retirement Savings Lost And Found
Current Law. No provision.

House Provision. Not later than two years after enactment of this Bill, the Secretaries of Labor, Treasury, and Commerce have to establish an online retirement lost and found database to be administered by the PBGC, which is a place where an individual can go to look for missing retirement plan benefits.

Senate Provision. EARN Act sec. 208 requires the Treasury Department to maintain a database that would provide contact information for employer retirement plans for the purpose of assisting participants and beneficiaries in recovering lost plan benefits. Treasury also would be required to hold a participant's account balance in an employer retirement plan if the balance is under $1,000, the employer sought to distribute the account balance because it was immediately distributable (e.g., following a termination of employment), and the participant did not affirmatively make an alternative election. An account balance held by the Treasury Department would be treated as being held in an IRA, would be credited with interest, and Treasury would periodically notify the owner of his or her distribution rights.

House Bill Sec. 307 - Updating Dollar Limit For Mandatory Distributions

Current Law. Under IRC sec. 401(a)(31)(B), plans may immediately distribute without the consent of the participant and directly rollover former employees' retirement accounts from a workplace retirement plan into an IRA if their balances are no more than $5,000.

House Provision. Sec. 307 of the House Bill increases the involuntary cash-out limit to $7,000 from $5,000. It is effective for distributions made after December 31, 2022.

Senate Provision. The House provision is included in the RISE & SHINE Act as Sec. 101. It is effective for distributions made after December 31, 2023.

House Bill Sec. 308 - Expansion Of The Employee Compliance Resolution System (EPCRS)

Current Law. EPCRS is an IRS program for correcting operational errors that occur in retirement plans, contained in Revenue Procedure 2021-30.

House Provision. The House Bill expands the scope of operational failures that may be corrected under the self-correction aspect of EPCRS, to include plans qualified under IRC secs. 401(a), 403(a), 403(b), 408(p) [SIMPLE IRAs], and 408(k) [Simplified Employee Pensions]. It also directs the Secretary of the Treasury to expand EPCRS to allow custodians of IRAs to address eligible inadvertent failures, and to add additional safe harbors for correcting such inadvertent failures (including earnings calculations). This provision would be effective upon enactment.

Senate Provision. Sec. 604 of the EARN Act would modify EPCRS to permit self-correction of inadvertent failures by a plan (generally without a time limit) provided that the failure at issue is not egregious. IRS would be authorized to issue guidance on correction methods that must be used for such self correction, including general correction principles if a specific correction is not proscribed. The provision would also expand EPCRS to cover certain failures with respect to IRAs, such as required minimum distribution failures. The provision would be effective after date of enactment.

House Bill Sec. 309 - Eliminate The "First Day Of The Month" Requirement For Governmental IRC Sec. 457(B) Plans

Current Law. Currently, participants in an IRC sec. 457(b) plan generally may only defer compensation if an agreement providing for the deferral has been entered into before the first day of the month in which the compensation is paid or made available.

House Provision. The House Bill conforms rule for governmental IRC sec. 457(b) plans to the rule that applies in the case of IRC sec. 401(k) and IRC sec. 403(b) plans by allowing participants in governmental IRC sec. 457(b) plans to change their deferral rate at any time before the compensation is available to the individual. For tax-exempt IRC sec. 457(b) plans, participants may defer compensation for any calendar month only if an agreement providing for such deferral has been entered into before the beginning of such month. This change is to be effective for taxable years beginning after enactment.

Senate Provision. EARN Act sec. 110 would replace the timing requirement with a rule requiring the deferral election be made prior to the date the compensation which is the subject of the election is currently available, and would be effective after date of enactment.

House Bill Sec. 310 - One-Time Election For Qualified Charitable Distribution (QCD) To Split-Interest Entity; Increase In Qualified Charitable Distribution Limitation

Current Law. IRC sec. 408(d)(8) describes distributions from IRAs for charitable purposes and states that an amount of a qualified charitable distribution up to $100,000 shall not be included in the gross income of the taxpayer.

House Provision. The House Bill allows individuals to make a one-time election of up to $50,000 (indexed) for qualifying charitable distributions to certain split-interest entities, including charitable remainder annuity trusts, charitable remainder unitrusts, and charitable gift annuity. It also indexes the $100,000 qualified charitable distribution limit to inflation. This change is scheduled to be effective for distributions made in taxable years ending after the date of enactment.

Senate Provision. EARN Act sec. 210 includes a provision that would index for inflation the annual IRA charitable distribution limit of $100,000, effective after 2023. Further, the provision would expand the IRA charitable distribution provision to allow for a one-time, $50,000 distribution to charities through charitable gift annuities, charitable remainder unitrusts, and charitable remainder annuity trusts, effective after date of enactment.

House Bill Sec. 311 - Distributions To Firefighters

Current Law. Current IRC sec. 72(t)(10) "qualified public safety employees" in a governmental plan to take retirement withdrawals beginning at age 50 after separation from service without incurring a 10% early withdrawal penalty.

House Provision. The House Bill extends the age 50 early withdrawal exception for qualified public safety employees to also apply to private sector firefighters receiving distributions from a qualified retirement plan or IRC sec. 403(b) plan. The amendments made by this sec. would apply to distributions made after December 31, 2022.

Senate Provision. EARN Act sec. 302 provides an exception to the 10% additional tax on early distributions from tax-preferred retirement savings applies in the case of public safety officers. This provision would extend this exception to private-sector firefighters, effective after date of enactment.

House Bill Sec. 312 - Exclusion Of Certain Disability-Related First Responder Retirement Payments

Current Law. Disability-related retirement payments are generally included in the recipient's taxable income.

House Provision. The House Bill adds new IRC sec. 139C, which excludes, for first responders, service-connected disability pension payments (from a 401(a), 403(a), governmental 457(b), or 403(b) plan) from gross income after reaching retirement age up to an annualized excludable disability amount. This provision is scheduled to be effective for amounts received with respect to taxable years beginning after December 31, 2027.

Senate Provision. EARN Act sec. 303 notes that some employers terminate disability payments once the recipient reaches normal retirement age because the recipient is eligible for pension benefits. Present law does not provide for a continuation of the gross income exclusion in such a case. This provision would continue the gross income exclusion and would be effective for after 2027.

House Bill Sec. 313 - Individual Retirement Plan Statute Of Limitations For Excise Tax On Excess Contributions And Certain Accumulations

Current Law. Filing of IRS Form 5329 starts the running of the statute of limitations for purposes of IRC sec. 4973 [additional 6% tax on excess IRA contributions] and IRC sec. 4974 [additional 50% tax on failure to distribute the minimum required amount.

House Provision. The House Bill adds a new paragraph (4) to IRC sec. 6501(l), which starts the running of the statute of limitations for purposes of any penalties under IRC sec. 4973 and 4974 in the case of an IRA with the filing of the income tax return; a separate filing of Form 5329 is no longer necessary to start the running of the statute of limitations. This is scheduled to be effective upon enactment.

Senate Provision. None.

House Bill Sec. 314 - Requirement To Provide Paper Statements In Certain Cases

Current Law. ERISA sec. 105(a)(1) requires that participants receive pension statements for defined contribution plans at least once per calendar year for participants who direct their own investments and once per calendar quarter for participants who do direct their own investments. In the case of defined benefit plans, the requirement to furnish a statement is once every three years. ERISA sec. 105(a)(2) permits the required statements to be delivered in written, electronic, or other appropriate form to the extent such form is reasonably accessible to the participant or beneficiary.

House Provision. The House Bill modifies the pension benefit statements requirement to generally require that: (i) for a defined contribution plan, at least one statement must be provided on paper in written form for each calendar year; and (ii) for a defined benefit plan, at least one statement must be provided on paper every three years. Exceptions are allowed for plans that allow employees to opt in to e-delivery or plans that follow the 2002 safe harbor. It also directs the Secretary of Labor to make changes by December 31, 2021 to the e-delivery rules to include certain participant protections. This change would be effective for plan years beginning after December 31, 2023.

Senate Provision. None.

House Bill Sec. 315 - Separate Application Of The Top-Heavy Rules To Defined Contribution Plans Covering Excludible Employees

Current Law. IRC sec. 416(c)(2) requires, in the case of a defined contribution plan, a minimum top-heavy contribution to be made for each participant who is a non-key employee.

House Provision. The House Bill adds a new paragraph to IRC sec. 416(c)(2) that allows a top-heavy plan that covers otherwise excludable employees (e.g., the IRC's minimum age and service rules – age 21 and one year of service) and which meet the top-heavy minimum contribution rules testing only this group, to disregard this group from the top-heavy minimum contribution testing. This change is scheduled to be effective for plan years beginning after date of enactment.

Senate Provision. EARN Act sec. 602 provides that the top heavy rules do not apply for those employees that an employer is not required to cover under ERISA, which is generally employees with less than 1 year of service or under age 21. The provision would be effective after date of enactment.

House Bill Sec. 316 - Repayment Of Qualified Birth Or Adoption Distribution Limited To Three Years

Current Law. IRC sec. 72(t)(2)(H) provides an exception to the 10% additional tax on early distributions from qualified retirement plans in the case of a qualified birth or adoption distribution and allows for the repayment of such distribution to a qualified retirement plan without regard to any time limit.

House Provision. The House Bill adds a three-year window, measured from the date the distribution was received, in order to make repayment. The provision is scheduled to be retroactively effective as if it were included in the SECURE Act Sec. 113.

Senate Provision. EARN Act sec. 801 would provide for a 3-year repayment deadline under the same conditions as the House Bill.

House Bill Sec. 317 - Employer May Rely On Employee Certifying That Deemed Hardship Conditions Being Met

Current Law. IRC sec. 401(k)(14) provides rules governing which amounts may be withdrawn from a 401(k) plan based on the hardship of the employee.

House Provision. New provisions are added to the IRC for the following plan types that allow an employee to self-certify to the plan administrator that a hardship distribution is on account of an immediate and heavy financial need: (i) 401(k)(14)(C) for 401(k) plans; (ii) 403(b)(7)(D) for custodial account 403(b) plans; (iii) 403(b)(7)(D) for custodial account 403(b) plans; (iv) 403(b)(11) for annuity contract 403(b) plans; and (v) and 457(d)(4) for 457(b) plans. This provision would be effective for plan years beginning after December 31, 2022.

Senate Provision. EARN Act sec. 113 would permit a retirement plan to rely on an employee's certification that the conditions for a hardship distribution are satisfied, and would provide regulatory authority for exceptions to this reliance (e.g., if the plan has knowledge the hardship conditions are not actually satisfied). The provision would be effective after date of enactment.

House Bill Sec. 318 - Penalty-Free Withdrawals From Retirement Plans For Individuals In Case Of Domestic Abuse
Current Law. No provision.

House Provision. A new paragraph [IRC sec. 72(t)(2)(I)] is added to the IRC, which allows for penalty-free withdrawals in the case of domestic abuse. The amount which may be distributed according to this new provision is the lesser of $10,000 or 50% of the nonforfeitable account balance of the employee. It is scheduled to be effective for distributions made after the date of enactment of the legislation.

Senate Provision. EARN Act sec. 114 would waive the 10% additional tax that applies to early distributions from tax-preferred retirement accounts (e.g., 401(k) plans and IRAs) in the case of eligible distributions to domestic abuse victims. Eligible distributions are capped at $10,000 (or 50% of the account balance if lesser) and may be recontributed to a tax-preferred retirement account. The provision would be effective after date of enactment.

House Bill Sec. 319 - Reform Of Family Attribution Rules

Current Law. The family attribution rules address scenarios in which a person, such as a family member, is treated as having an ownership interest in a business. These rules are important for determining who is the employer and in the controlled group/affiliated service group for various testing and distribution rights.

House Provision. The House Bill adds special rules to address family attribution and to disregard community property laws for purposes of determining ownership of a business. To the extent these changes result in changes to the controlled group or affiliated service group, the Sec. 410(b)(6)(C) transition relief is available. The change is scheduled to be effective for plan years beginning on or after the date of enactment of the legislation.

Senate Provision. Sec. 607 of the EARN Act would modify the ownership attribution rules to provide that an individual in a community property state is not treated as owning shares in a business owned by his or her spouse merely because the individual has a community share in the spouse's property. The provision would also disaggregate two businesses if the only common ownership link is on account of attribution of parental ownership to a child or on account of a stock option held by a minor child to acquire an ownership interest in either business. The provision would be effective after 2023.

House Bill Sec. 320 - Amendments To Increase Benefit Accruals Under Plan For Previous Plan Year Allowed Until Employer Tax Return Due Date

Current Law. Current law provides a remedial amendment period for plans to meet qualification requirements. In general, a discretionary plan amendment (which would include an increase in benefit accruals) must be adopted by the end of the plan year in which it is effective.

House Provision. The House Bill adds new paragraph IRC sec. 401(b)(3), which allows plans to make discretionary plan amendments to increase benefits until the employer's tax filing deadline (including extensions) for the taxable year in which the amendment is effective. This applies to stock bonus, pension, profit-sharing, or annuity plan to increase benefits for the preceding plan year (other than increasing matching contributions). It would be effective for amendments made in plan years beginning after December 31, 2023.

House Bill Sec. 321 - Retroactive First Year Elective Deferrals For Sole Proprietors

Current Law. Under sec. 201 of the SECURE Act, a 401(k) plan of a sole proprietor can be funded with employer contributions as of the due date for the tax return of the business, but the elective deferrals must be made as of December 31 of the prior year.

House Provision. The House Bill adds a new paragraph to IRC sec. 401(b) that provides an individual who owns the entire interest of an unincorporated trade or business in which the individual is the only employee to make elective deferrals up to the tax filing due date (determined without regard to any extensions). This provision is scheduled to be effective for plan years beginning after enactment.

Senate Provision. EARN Act sec. 116 would permit a sole proprietor of a business to determine the amount of his or her elective deferral contributions to the business' retirement plan for the first year of the plan's adoption until his or her tax return due date for such year, and would be effective for years after date of enactment.

House Bill Sec. 322 - Limiting Cessation Of IRA Treatment To Portion Of Account Involved In A Prohibited Transaction

Current Law. Under IRC sec. 408(e)(2)(A), if an IRA beneficiary engages in a prohibited transaction with respect to the IRA, the IRA loses its tax-favored status and ceases to be an IRA as of the first day of the taxable year in which the prohibited transaction occurs. As a result, the IRA is treated as distributing to the individual on the first day of that taxable year the fair market value of all of the assets in the account.

House Provision. IRC sec. 408(e)(2)(A) is amended by modifying the disqualification rule that applies when an IRA owner or beneficiary engages in a prohibited transaction so that only the portion of the IRA that is used in the prohibited transaction is treated as distributed to the individual. This provision would be effective for taxable years beginning after enactment.

Senate Provision. None.

House Bill Sec. 323 - Review Of Pension Risk Transfer Interpretive Bulletin

Current Law. DOL Interpretive Bulletin 95-1 provides guidance for plan sponsors of defined benefit plans seeking an annuity provider.

House Provision. Sec. 323 of the House Bill requires the DOL to review Interpretive Bulletin 95-1 regarding pension risk transfers to determine whether amendments are warranted and to report to Congress its findings within one year of enactment.

Senate Provision. Sec. 105 of the RISE & SHINE Act contains a provision similar to the House provision.

TITLE IV - TECHNICAL AMENDMENTS

House Bill Sec. 401 - Amendments Relating To Setting Every Community Up For Retirement Enhancement Act Of 2019

House Provision. Two technical amendments are proposed to be made to the original SECURE Act, as follows: (i) the increase in the age for the required beginning date from age 70 $^{1}/_{2}$ to age 72 does not change the general requirement to actuarially increase the accrued benefit of an employee who retires in a calendar year after the calendar year in which such employee attains age 70 $^{1}/_{2}$ (other than a 5% owner) in order to take into account the period after age 70 $^{1}/_{2}$ that the employee was not receiving benefits; and (ii) the excise tax on excess contributions to an IRA generally does not apply to difficulty of care payments contributed to an IRA. These technical changes would become effective as if they were included in the sec. of the original SECURE Act to which they relate.

Senate Provision. EARN Act sec. 802 clarifies that, similar to a traditional 401(m) safe harbor plan, a 401(m) safe harbor plan with automatic enrollment must satisfy notice requirements, regardless of whether the plan includes safe harbor matching contributions or safe harbor nonelective contributions. The proposal also includes several clarifications of the rules relating to long-term part-time employees. First, it clarifies that in addition to excluding long-term part-time employees from nondiscrimination requirements that apply to safe harbor plans under section 401(k), an employer may also elect to exclude such employees from the nondiscrimination requirements that apply to safe harbor plans under section 401(m).667 Second, the proposal clarifies that the vesting rules apply to the plan, and not only to the cash or deferred arrangement. Third, the proposal clarifies that an employee ceases to be considered a long-term part-time employee (and is instead considered to be a full-time employee) when the employee satisfies the age and service requirements that apply under a section 401(k) plan to full-time employees. The proposal also clarifies that the excise tax on excess contributions to an IRA generally does not apply to difficulty of care payments contributed to an IRA. The amendments made by the proposal are effective as if included in the section of the SECURE Act to which the amendment relates.

TITLE V - ADMINISTRATIVE PROVISIONS

House Bill Sec. 501 - Provisions Relating To Plan Amendments

House Provision. The House Bill allows plan amendments required to be made by this Bill to occur by the end of the 2023 plan year (2025 plan year 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. This provision also extends the plan amendment deadlines under the SECURE Act and the CARES Act to these new dates. It would be effective upon enactment.

Senate Provision. EARN Act sec. 901 would provide employer retirement plans with an extended period of time by which plan amendments must be adopted to reflect the changes in law made by this legislation. The extended deadline would generally be December 31, 2024 for calendar year plans. RISE & SHINE Act contains similar provisions.

TITLE VI - REVENUE PROVISIONS

House Bill Sec. 601 - SIMPLE And SEP Roth IRAs

Current Law. Neither a Simplified Employee Pension (SEP) IRA plan nor a SIMPLE IRA plan allow for Roth contributions.

House Provision. Under the House Bill IRC sec. 408(k)(7) is amended to add Roth provisions to a SEP and IRC sec. 408(p)(1 1) is added to allow Roth provisions in the case of a SIMPLE IRA. The changes would become effective for taxable years beginning after December 31, 2022.

Senate Provision. EARN Act sec. 1101 would permit an employee participating in a SIMPLE IRA plan or a Simplified Employee Pension (SEP) to elect to treat elective deferrals and employer contributions as after-tax Roth contributions, and would be effective after 2023.

House Bill Sec. 602 - Hardship Withdrawal Rules For IRC Sec. 403(b) Plans

Current Law. Currently, there are some differences in the hardship withdrawal rules that pertain to those from IRC sec. 401(k) plans and those from IRC sec. 403(b) plans.

House Provision. IRC sec. 403(b)(15) is added, which conforms the hardship distribution rules for IRC sec. 403(b) plans to those of IRC sec. 401(k) plans. Therefore, a 403(b) plan may distribute qualified nonelective contributions (QNECs), qualified matching contributions (QMACs), and earnings on any of these contributions (including elective deferrals). This change is scheduled to be effective for plan years beginning after December 31, 2022.

Senate Provision. EARN Act sec. 402 would make technical modifications to conform the hardship distribution rules that apply to 403(b) plans to those that apply to 401(k) plans, such as allowing hardship distributions to be made from earnings on elective deferrals held in a 403(b) custodial account. The provision would be effective after date of enactment.

House Bill Sec. 603 - Elective Deferrals Generally Limited To Regular Contribution Limit

Current Law. IRC sec. 414(v)(1) deals with catch-up contributions made to IRC sec. 401(k), 403(b), and governmental 457(b) plans for employees who are age 50 and older, subject to certain limitations.

House Provision. The House Bill requires that any catch-up contributions to the aforementioned plans be made on a Roth basis, instead of a pre-tax basis. The proposal does not apply to SIMPLE IRAs or SEP plans. It would be effective for taxable years beginning after December 31, 2022.

Senate Provision. EARN Act sec. 1102 would require catch-up contributions within an employer retirement plan to be made as after-tax Roth contributions, and would be effective after 2023.

House Bill Sec. 604 - Optional Treatment Of Employer Matching Contributions As Roth Contributions

Current Law. Roth matching contributions by employers are not permitted.

House Provision. IRC sec. 402A(a) is amended to allow IRC sec. 401(a), 403(b), or a governmental 457(b) plan to permit employees to designate matching contributions as Roth contributions. Matching contributions designated as Roth contributions are not excludable from income. This is scheduled to be effective for contributions made after enactment.

Senate Provision. EARN Act sec. 1103 would permit an employee to elect to treat employer matching and other employer contributions as after-tax Roth contributions, and would be effective after 2023.

PROVISIONS INCLUDED IN THE EARN ACT THAT ARE NOT IN THE HOUSE BILL

Secure Deferral Arrangements

Current Law. Under present law, a 401(k) plan that default enrolls employees into elective deferral contributions and makes certain mandatory employer contributions is treated as satisfying nondiscrimination testing. This testing ensures that nonhighly compensated employees are proportionally benefiting from the plan. The default contribution must be no lower than 3% in the first year of enrollment and increases to no lower than an additional 1% per year until the fourth and later years, in which case the default must be at least 6%. The mandatory employer contributions are either a matching contribution equal to 100% of the first 1% of compensation deferred and 50% of the next 5% deferred, or an employer contribution of 3% of compensation (even if no deferrals are made by the employee). This provision would provide an alternative method of satisfying nondiscrimination testing and, if offered by a small employer, the employer would be eligible for a tax credit.

EARN Act sec. 101. This provision would require default contributions must be no lower than 6% in the first year, increase 1% per year until the fifth and later years, in which case the default must be at least 10%. The provision would require employer matching contributions of 100% of the first 2% of deferred compensation, 50% of the next 4% deferred and 20% of the next 4% deferred. The provision would be effective after 2023.

EARN Act sec. 601. Under this provision, a small employer (100 or fewer employees) that adopts a plan that satisfies the default enrollment requirements and employer matching contributions described in sec. 101 would be eligible for a tax credit. The credit generally would be equal to the sum of the employer's matching contributions required under sec. 101. However, no credit would be available with respect to matching contributions for highly compensated employees, and matching contributions eligible for the credit would be limited to matching contributions provided for the first 2% of an employee's deferral contributions and only with respect to an employee's first 5 years of participation (after the plan is amended to incorporate the default enrollment requirements of sec. 101). The provision would be effective after 2023.

Withdrawals For Certain Emergency Expenses

Current Law. IRC sec. 72(t) imposes a 10% penalty on early withdrawals before normal retirement age from tax-preferred retirement accounts.

EARN Act sec. 105. This provision would provide an exception for certain distributions used for emergency expenses, which are unforeseeable or immediate financial needs relating to personal or family emergency expenses. Only one distribution would be permissible per year of up to $1,000, and a taxpayer would have the option to repay the distribution within 3 years. No further emergency distribution would be permissible during the 3-year repayment period unless repayment occurs. The provision would be effective after 2023.

Allow Additional Nonelective Contributions To SIMPLE Plans

Current Law. Present law requires employers with SIMPLE plans to make employer contributions to employees of either 2% of compensation or 3% of employee elective deferral contributions.

EARN Act sec. 106. This provision would permit an employer to make additional contributions to each employee of the plan in a uniform manner, provided that the contribution may not exceed the lesser of 10% of compensation or $5,000 (indexed). The provision would be effective after 2023.

Tax Treatment Of Certain Non-Trade Or Business SEP Contributions

Current Law. Under IRC 408(k)(2), participation in a SEP is limited to the employees of the employer.

EARN Act sec. 111. This provision would permit employers of domestic employees (e.g., nannies) to provide retirement benefits for such employees under a Simplified Employee Pension (SEP), and would be effective after date of enactment.

Elimination Of Additional Tax On Corrective Distributions Of Excess Contributions

Current Law. Present law requires a corrective distribution if too much is contributed to an IRA. The corrective distribution includes the excessive contribution and any earnings allocable to that contribution.

EARN Act sec. 112. This provision would exempt the excess contribution and earnings allocable to the excess contribution from the 10% additional tax on early distributions, and would be effective after date of enactment.

Treasury Guidance On Rollovers

Current Law. None.

EARN Act sec. 117. This provision would require Treasury to simplify and standardize the rollover process by issuing sample forms for direct rollovers that may be used by both the incoming and outgoing retirement plan or IRA. Issuance of the forms would be due by January 1, 2025.

Exemption For Automatic Portability Transactions

Current Law. Under present law, an employer is permitted to distribute a participant's account balance without participant consent if the balance is under $5,000 and the balance is immediately distributable (e.g., after a termination of employment). Present law requires an employer to roll over this distribution into a default IRA if the account balance is at least $1,000 and the participant does not affirmatively elect otherwise.

EARN Act sec. 118. This provision would permit a retirement plan service provider to provide employer plans with automatic portability services. Such services involve the automatic transfer of a participant's default IRA (established in connection with a distribution from a former employer's plan) into the participant's new employer's retirement plan, unless the participant affirmatively elects otherwise. The provision would be effective after 2023.

Credit For Small Employers That Adopt An Automatic Portability Arrangement

Current Law. None.

EARN Act sec. 611. This provision would provide a $500 credit to small employers (100 or fewer employees) that adopt an automatic portability arrangement, effective after date of enactment.

Application Of IRC Sec. 415 Limit For Certain Employees Of Rural Electric Cooperatives

Current Law. Under present law, IRC sec. 415 generally limits the amount that may be paid by a pension plan in annual benefits to a participant to the lesser of $245,000 (2022) or 100% of the participant's average compensation.

EARN Act sec. 119. This provision would eliminate the compensation-based limit for participants who are nonhighly compensated employees and participate in a rural electric cooperative retirement plan. The provision would be effective after date of enactment.

Eliminating A Penalty On Partial Annuitization

Current Law. If a tax-preferred retirement account also holds an annuity, present law requires that the account be bifurcated between the portion of the account holding the annuity and the rest of the account for purposes of applying the required minimum distribution rules. This treatment may result in higher minimum distributions than would have been required if the account did not hold an annuity.

EARN Act sec. 204. The provision would permit the account owner to elect to aggregate distributions from both portions of the account for purposes of determining minimum distributions, and would be effective after date of enactment.

Clarification Of Substantially Equal Periodic Payment Rule

Current Law. Present law imposes a 10% additional tax on early distributions from tax-preferred retirement accounts, but an exception applies to substantially equal periodic payments that are made over the account owner's life expectancy.

EARN Act sec. 206. This provision would provide that the exception continues to apply if the case of a rollover of the account, an exchange of an annuity providing the payments, or an annuity that satisfies the required minimum distribution rules. The provision would be effective after date of enactment.

Roth Plan Distribution Rules

Current Law. Under present law, required minimum distributions are not required to begin prior to the death of the owner of a Roth IRA. However, pre-death distributions are required in the case of the owner of a Roth designated account in an employer retirement plan (e.g., 401(k) plan).

EARN Act sec. 209. This provision would eliminate the pre-death distribution requirement for Roth accounts in employer plans, effective after 2023.

Exception To Penalty On Early Distributions From Qualified Plans For Individuals With A Terminal Illness

Current Law. Under present law, an additional 10% tax applies to early distributions from tax-preferred retirement accounts.

EARN Act sec. 211. This provision would provide an exception to the tax in the case of a distribution to a terminally ill individual, and would be effective after date of enactment.

Surviving Spouse Election To Be Treated As Employee
Current Law. None.

EARN Act sec. 212. This provision would allow a surviving spouse to elect to be treated as the deceased employee for purposes of the required minimum distribution rules. The provision would be effective after 2023.

Long-Term Care Contracts Purchased With Retirement Account Distributions

Current Law. None.

EARN Act sec. 213. This provision would permit retirement plans to distribute up to $2,500 per year for the payment of premiums for certain specified long term care insurance contracts. Distributions from plans and IRAs to pay such premiums would be exempt from the additional 10% tax on early distributions. Only a policy that provides for high quality coverage is eligible for early distribution and waiver of the 10% tax. High quality in this context describes a policy that would provide meaningful financial assistance in the event that an insured needs home-based assistance or nursing home care. Treasury would also maintain a website providing consumer education regarding long term care contracts. The proposal would be effective 3 years after date of enactment.

Repeal Of Direct Payment Requirement On Exclusion From Gross Income Of Distributions From Governmental Plans For Health And Long-Term Care Insurance

Current Law. Present law provides an exclusion from gross income ($3,000) for a distribution from a governmental retirement plan to a public safety officer to pay for his or her health insurance premiums. The exclusion requires that the plan directly pay the insurance premiums.

EARN Act sec. 304. This provision would repeal the direct payment requirement and would be effective after date of enactment.

Modification Of Eligible Age For Exemption From Early Withdrawal Penalty

Current Law. The 10% additional tax on early distributions from tax preferred retirement savings plans does not apply to a distribution from a governmental plan to a public safety officer who is at least age 50.

EARN Act sec. 305. This provision would extend the exception to public safety officers with at least 25 years of service with the employer sponsoring the plan, and would be effective after date of enactment.

Special Rules For Use Of Retirement Funds In Connection With Qualified Federally Declared Disasters

Current Law. None.

EARN Act sec. 501. This provision would provide permanent rules relating to the use of retirement funds in the case of disaster. The permanent rules would allow up to $22,000 to be distributed from employer retirement plans or IRAs for affected individuals, and such distributions would not be subject to the 10% additional tax and would be taken into account as gross income over 3 years. Distributions would be permitted to be repaid to a tax preferred retirement account. Additionally, amounts distributed prior to the disaster to purchase a home would be permitted to be recontributed, and an employer would be permitted to provide for a larger amount be borrowed from a plan by affected individuals and for additional time for repayment of plan loans owed by affected individuals. The provision would be effective for disasters occurring on or after January 26, 2021.

Contribution Limit For Simple IRAs

Current Law. Under present law the annual contribution limit for employee elective deferral contributions to a Simple IRA plan is $14,000 (2022) and the catch-up contribution limit beginning at age 50 is $3,000. A Simple IRA plan may only be sponsored by a small employer (100 or fewer employees), and the employer is required to either make matching contributions of the first 3% of compensation deferred or an employer contribution of 2% of compensation (regardless of whether the employee elects to make contributions).

EARN Act sec. 608. This provision would increase the annual deferral limit to $16,500 (indexed) and the catch-up contribution at age 50 to $4,750 (indexed) in the case of an employer with no more than 25 employees. An employer with 26 to 100 employees would be permitted to provide these higher deferral limits, but only if the employer either provides a 4% matching contribution or a 3% employer contribution. The proposal would make similar changes to the contribution limits for simple 401(k) plans. The proposal would be effective after 2023.

Employers Allowed To Replace Simple Retirement Accounts With Safe Harbor 401(K) Plans During A Year

Current Law. An employer's ability to replace Simple IRA with a 401(k) plan mid-year is restricted.

EARN Act sec. 609. This provision would allow an employer to replace a Simple IRA plan with a simple 401(k) plan or other 401(k) plan that requires mandatory employer contributions during a plan year, and would be effective after 2023.

Starter 401(k) Plans For Employers With No Retirement Plan
Current Law. None.

EARN Act sec. 610. This provision would permit an employer that does not sponsor a retirement plan to offer a starter 401(k) plan (or safe harbor 403(b) plan). A starter 401(k) plan (or safe harbor 403(b) plan) would generally require that all employees be default enrolled in the plan at a 3 to 15% of compensation deferral rate. The limit on annual deferrals would be the same as the IRA contribution limit, which for 2022 is $6,000 with an additional $1,000 in catch-up contributions beginning at age 50. This provision would be effective after 2023.

Re-Enrollment Credit
Current Law. None.

EARN Act sec. 612. This provision would provide a $500 credit (for up to 3 years) if a small employer (100 or fewer employees) adopts a reenrollment feature in a retirement plan that default enrolls employees into elective deferral contributions. The reenrollment feature requires the employer to periodically reenroll employees (at least every 3 years) at the default contribution rate if the employee has elected a lower contribution rate in a prior year (although the employee may affirmatively select a different rate again). The provision would be effective after 2023.

Corrections Of Mortality Tables

Current Law. Minimum funding rules apply to defined benefit plans, and those rules use mortality tables to determine appropriate funding.

EARN Act sec. 613. This provision would generally require that for purposes of the minimum funding rules, a pension plan is not required to assume mortality improvements at any age greater than 0.78%, and would be effective after date of enactment.

Enhancing Retiree Health Benefits In Pension Plans

Current Law. Permits an employer to use assets from an overfunded pension plan to pay retiree health and life insurance benefits. These rules sunset at the end of 2025.

EARN Act sec. 614. This provision would extend the sunset date to the end of 2032 and would permit transfers to pay retiree health and life insurance benefits provided the transfer is no more than 1.75% of plan assets and the plan is at least 110% funded, and would be effective after date of enactment.

Report To Congress On IRC Sec. 402(f) Notices

Current Law. IRC sec. 402(f) notices are given by employer retirement plans in the case of a distribution to a participant that is eligible for rollover to another tax preferred retirement account and describes distribution options and tax consequences.

EARN Act sec. 702. This provision requires GAO to issue a report to Congress on the effectiveness of IRC sec. 402(f) notices. Report is due no later than 18 months after enactment.

Modification Of Required Minimum Distribution Rules For Special Needs Trusts

Current Law. The SECURE Act places limits on the ability of beneficiaries of defined contribution retirement plans and IRAs to receive lifetime distributions after the account owner's death. Special rules apply in the case of certain beneficiaries, such as those with a disability.

EARN Act sec. 803. This provision would clarify that in the case of a special needs trust established for a beneficiary with a disability, the trust may provide for a charitable organization as the remainder beneficiary. The provision would be effective after date of enactment.

Modification Of Age Requirement For Qualified ABLE Programs

Current Law. The Achieving a Better Life Experience (ABLE) Act of 2014 provided Americans with disabilities the opportunity to save up to $15,000 per year in a tax-deferred account similar to a 529 college savings plan, as a supplement to their government benefits. IRC sec. 529A provides for a tax-favored savings program intended to benefit disabled individuals, known as a qualified ABLE program. Eligibility is limited to individuals who become blind or disabled before age 26.

EARN Act - sec. 121. Increases the ABLE account eligibility age to age 46. It would be effective for taxable years beginning after December 31, 2025.

PROVISIONS INCLUDED IN THE RISE & SHINE ACT THAT ARE NOT IN THE HOUSE BILL

Multiple Employer 403(b) Plans

Current Law. Prohibits 403(b) plans from participating in MEPs, including PEPs.

Sec. 102. The section enables 403(b) retirement plans, which are generally sponsored by charities, educational institutions, and non-profits, to participate in multiple employer plans (MEPs) and pooled employer plans (PEPs). This change would be effective for plan years beginning after December 31, 2022.

Emergency Savings Accounts Linked To Defined Contribution Plans

Current Law. Does not explicitly permit for short-term emergency savings accounts to be offered by employers and administered in tandem with ERISA-covered plans.

Sec. 202. This section provides employers the option to offer pension-linked emergency savings accounts, which may automatically opt employees into these accounts at no more than 3% of their salary, and the accounts are capped at $2,500 (or lower as set by the employer). Contributions are made post-tax, and are treated as elective deferrals for purposes of retirement matching contributions. Once the cap is reached, the excess emergency savings contributions return to retirement plan savings. The provision would become effective after December 31, 2023.

Defined Contribution Plan Fee Disclosure Improvements

Current Law. Various sections of the IRC and ERISA contain disclosure requirements related to fees and fiduciary matters.

Sec. 301. This section builds on recommendations recently made to DOL by the Government Accountability Office (GAO), and requires the agency to review its fiduciary disclosure requirements in participant-directed individual account plan regulations. A report must be submitted to Congress on such findings, including recommendations for legislative changes.

Consolidation Of Defined Contribution Plan Notices

Current Law. Requires certain retirement plan notices to be provided to participants as individual notices.

Sec. 302. This provision directs the Secretaries of Treasury and DOL to amend regulations to permit a plan to consolidate certain required plan notices. Regulations must be promulgated within 2 years of enactment.

Information Needed for Financial Options Risk Mitigation (INFORM) Act

Current Law. Under present law, defined benefit plans are permitted to offer lump-sum buy-outs to plan participants in lieu of future lifetime payments. A 2015 Government Accountability Office report found that participants need better information before making such a decision.

Sec. 303. This section requires pension plan administrators to provide plan participants and retirees with critical information that would allow people considering what is best for their financial futures to compare between benefits offered under the plan and the lump sum, and would explain how the lump sum was calculated, the ramifications of accepting a lump sum such as the loss of certain federal protections, details about the election period, where to follow up with questions, and other information. The DOL and Treasury Department are required to issue joint regulations within 1 year of enactment. Such regulations will require plan sponsor compliance within no more than 1 year of the issuance of a final rule.

Defined Benefit Annual Funding Notices

Current Law. Defined benefit plans are required to provide an annual funding notice to the Pension Benefit Guaranty Corporation, to each plan participant and beneficiary, to each labor organization representing such participants or beneficiaries, and, in the case of a multiemployer plan, to each employer that has an obligation to contribute to the plan.

Sec. 304. This section aims to more clearly identify defined benefit pension plan funding issues on a plan's annual funding notice. The provision would become effective for plan years beginning after December 31, 2023.

Automatic Reenrollment Under Qualified Automatic Contribution Arrangements And Eligible Automatic Contribution Arrangements

Current Law. Provides a fiduciary safe harbor for employers that automatically enroll employees into a defined contribution retirement plan.

Sec. 401. Many employers automatically enroll their employees in retirement savings plans through certain safe harbors when they start the job, but many employees initially decide to opt out. This section would prompt those who opt out of a retirement savings plan to reconsider their choice at least every three years as their career progresses and financial situation changes. This would lead to more workers participating in employer-sponsored retirement plans and benefiting from employer matches during their careers. This provision would become effective for arrangements taking effect after December 31, 2024.

Incidental Plan Expenses

Current Law. ERISA limits which plan expenses can be billed to the plan to those relating to plan administration and investments. Settlor functions, such as decisions relating to the formation, design, and termination of a plan, cannot be billed to the plan.

Sec. 402. This section makes it easier for plan sponsors to engage advisors to assist in administering their retirement plans by permitting incidental expenses incurred related to plan design, such as automatic enrollment and reenrollment or automatic escalation, to be charged to the plan. This provision would become effective upon enactment.

Report On Pooled Employer Plans

Current Law. None.

Sec. 501. This section requires the DOL Secretary to conduct a study on the new and growing pooled employer plan industry. A report on the findings of the study must be completed five years after enactment, with subsequent reports completed every five years thereafter.

Annual Audits For Group Of Plans

Current Law. Under current law, generally, a Form 5500 for a defined contribution plan must contain an opinion from an independent qualified public accountant as to whether the plan's financial statements and schedules are fairly presented. However, no such opinion is required with respect to a plan covering fewer than 100 participants.

Sec. 502. This section would clarify that plans filing under a Group of Plans need only to submit an audit opinion if they have 100 participants or more, and that a trust-level audit is not required. In other words, DOL and Treasury would continue to receive full audit information on at least the number of plans as under current law. This provision would become effective upon enactment.

Cash Balance Plan Clarifications

Current Law. Cash balance and other "hybrid" plans are subject to numerous technical rules that impact the design and operation of these plans.

Sec. 601. This provision clarifies the application of IRC and ERISA rules, such as backloading and IRC sec. 415, as they relate to hybrid plans that credit variable interest. Specifically, the provision would clarify that, for purposes of the applicable IRC and ERISA rules, the interest crediting rate that is treated as in effect and as the projected interest crediting rate is a reasonable projection of such variable interest rate, subject to a maximum of 6%. This clarification will allow plan sponsors to provide larger pay credits for older longer service workers. This provision would become effective for years beginning after the date of enactment.

Termination Of Variable Rate Premium Indexing

Current Law. Defined benefit plans subject to Title IV of ERISA are required to pay a variable rate premium to PBGC. In 2022, the variable rate premium is $48 per each $1000 of unfunded vested benefits, but it is indexed for inflation.

Sec. 602. This section removes the "applicable dollar amount" language in the rules for determining the premium fund target for purposes of unfunded vested benefits, and replaces it with a flat $48 for each $1000 of unfunded vested benefits. This provision would become effective upon enactment.

Enhancing Retiree Health Benefits In Pension Plans

Current Law. IRC sec. 420 provides rules and restrictions for the transfer of excess pension assets to retiree health accounts made on or before December 31, 2025.

Sec. 603. This section amends the 420 rules to extend the provision through 2032. It would become effective upon enactment and is similar to a change included in the EARN Act, sec. F14.

Worker Ownership, Readiness, and Knowledge (WORK) Act

Current Law. None.

Sec. 702. This section boosts employee ownership programs through the DOL, which may make grants to promote employee

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[1] Setting Every Community Up for Retirement Enhancement Act, P.L. 116-94.