



# H.R. 2954 SECURING A STRONG RETIREMENT ACT

## Section-by-Section Summary

### Title I – Expanding Coverage and Increasing Retirement Savings

**Section 101.** Expanding automatic enrollment in retirement plans. One of the main reasons many Americans reach retirement age with little or no savings is that too few workers are offered an opportunity to save for retirement through their employers. However, even for those employees who are offered a retirement plan at work, many do not participate. But automatic enrollment in 401(k) plans – providing for people to participate in the plan unless they take the initiative to opt out – significantly increases participation. Since first defined and approved by the Treasury Department in 1998, automatic enrollment has boosted participation by eligible employees generally, and particularly for Black, Latinx, and lower-wage employees. An early study found that adoption of auto-enrollment increased participation in a 401(k) plan by short-tenure Latinx employees from 19% to 75%. An Ariel Aon-Hewitt Study found that, in plans using auto-enrollment, “[t]he most dramatic increases in enrollment rates are among younger, lower-paid employees, and the racial gap in participation rates is nearly eliminated among employees subject to auto-enrollment.”

Section 101 requires 401(k) and 403(b) plans to automatically enroll participants in the plans upon becoming eligible (and the employees may opt out of coverage). The initial automatic enrollment amount is at least 3 percent but no more than 10 percent. And then each year that amount is increased by 1 percent until it reaches 10 percent. All current 401(k) and 403(b) plans are grandfathered. There is an exception for small businesses with 10 or fewer employees, new businesses (i.e., have been in business for less than 3 years), church plans, and governmental plans. Section 101 is effective for plan years beginning after December 31, 2023.

**Section 102.** Modification of credit for small employer pension plan startup costs. The three-year small business startup credit is currently 50% of administrative costs, up to an annual cap of \$5,000. Section 102 enhances the startup credit by increasing the credit from 50% to 100% for employers with up to 50 employees. In addition, the bill provides an additional credit except in the case of defined benefit plans. The amount of the additional credit generally is a percentage of the amount contributed by the employer on behalf of employees, up to a per-employee cap of \$1,000. This full additional credit is limited to employers with 50 or fewer employees and phased out for employers with between 51 and 100 employees. The applicable percentage is 100% in the first and second years, 75% in the third year, 50% in the fourth year, 25% in the fifth year – and no credit for tax years thereafter. Section 102 is effective for taxable years beginning after December 31, 2022.

**Section 103.** Promotion of Saver’s Credit. Section 103 directs the Treasury Department to increase public awareness of the Saver’s Credit to increase use of the credit by low and moderate income taxpayers. The Treasury Secretary must report to Congress its anticipated promotion efforts no later than 90 days after the date of enactment of this Act.

**Section 104.** Enhancement of Saver’s Credit. The Saver’s Credit provides millions of low and middle-income individuals with an incentive to save for retirement each year. However, the current credit can be complicated and not easy to understand. Section 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. Section 104 is effective for tax years beginning after December 31, 2026.



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**Section 105.** Enhancement of 403(b) plans. Under current law, 403(b) plan investments are generally limited to annuity contracts and mutual funds. This limitation cuts off 403(b) plan participants – generally employees of charities and public educational organizations – from access to collective investment trusts, which are often used by 401(a) plans due to their lower fees.

Section 105 permits 403(b) custodial accounts to invest amounts in collective investment trusts. Section 105 amendments are effective for amounts invested after December 31, 2022.

**Section 106.** Increase in age for required beginning date for mandatory distributions. Under current law, participants are generally required to begin taking distributions from their retirement plans at age 72. The policy behind this rule is to ensure that individuals spend their retirement savings during their lifetime and not use their retirement plans for estate planning purposes to transfer wealth to beneficiaries. The Setting Every Community Up for Retirement Enhancement Act of 2019 (“SECURE Act”)[<sup>1</sup>] generally increased the required minimum distribution age to 72. Section 106 increases the required minimum distribution age further to 73 starting on January 1, 2023 – and increases the age to 74 starting on January 1, 2030, and 75 starting on January 1, 2033.

**Section 107.** Indexing IRA catch-up limit. Under current law, the limit on individual retirement account (“IRA”) contributions is increased by \$1,000 (not indexed) for individuals who have attained age 50. Section 107 indexes such limit effective for taxable years beginning after December 31, 2023.

**Section 108.** Higher catch-up limit to apply at age 62, 63 and 64. Under current law, employees who have attained age 50 are permitted to make catch-up contributions under a retirement plan in excess of the otherwise applicable limits. The limit on catch-up contributions for 2021 is \$6,500, except in the case of SIMPLE plans for which the limit is \$3,000. Section 108 increases these limits to \$10,000 and \$5,000 (both indexed), respectively, for individuals who have attained ages 62, 63 and 64. Section 108 is effective for taxable years beginning after December 31, 2023.

**Section 109.** Pooled employer plans modification. Section 109 clarifies that a pooled employer plan (“PEP”) may designate a named fiduciary (other than an employer in the plan) to collect contributions to the plan. Such fiduciary would be required to implement written contribution collection procedures that are reasonable, diligent, and systematic. Section 109 is effective for plan years beginning after December 31, 2022.

**Section 110.** Multiple employer 403(b) plans. Multiple employer plans (“MEPs”) provide an opportunity for small employers to band together to obtain more favorable retirement plan investment results and more efficient and less expensive management services. The SECURE Act made MEPs more attractive by eliminating outdated barriers to the use of MEPs and improving the quality of MEP service providers. Section 110 allows 403(b) plans, which are generally sponsored by charities, educational institutions, and non-profits, to participate in MEPs, including PEPs, including relief from the one bad apple rule so that the violations of one employer do not affect the tax treatment of employees of compliant employers. Section 110 is effective for plan years beginning after December 31, 2022.

[1] [Pub.L. 116-94, December 20, 2019.](#)



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**Section 111.** Treatment of student loan payments as elective deferrals for purposes of matching contributions. Section 111 is intended to assist employees who may not be able to save for retirement because they are overwhelmed with student debt, and thus are missing out on available matching contributions from their retirement plans. Section 111 allows such employees to receive those matching contributions by reason of repaying their loan. Section 111 permits an employer to make matching contributions under a 401(k) plan, 403(b) plan, or SIMPLE IRA with respect to “qualified student loan payments”. Qualified student loan payment is broadly defined under the Act as any indebtedness incurred by the employee solely to pay qualified higher education expenses of the employee. Governmental employers will also be permitted to make matching contributions in a section 457(b) plan or another plan with respect to such repayments. For purposes of the nondiscrimination test applicable to elective contributions, Section 111 permits a plan to test separately the employees who receive matching contributions on student loan repayments. Section 111 is effective for contributions made for plan years beginning after December 31, 2022.

**Section 112.** Application of credit for small employer pension plan startup costs to employers which join an existing plan. Section 112 ensures the startup tax credit is available for 3 years for employers joining a MEP, regardless of how long the MEP has been in existence. Under both pre- and post-SECURE Act law, the startup tax credit only applies for the first 3 years that a plan is in existence. For example, if a small business joins a MEP that has already been in existence for 3 years, the startup credit is not available. If, for example, the MEP has been existence for 1 or 2 years when a small business joins, the small business may be able to claim the credit for 1 or 2 years, respectively. Section 112 fixes this problem so that employers joining a MEP (which includes PEPs) are eligible for the credit for all 3 years. Section 112 is effective retroactively to taxable years beginning after December 31, 2019.

**Section 113.** Military spouse retirement plan eligibility credit for small employers. Military spouses often do not remain employed long enough to become eligible for their employer’s plan or to vest in employer contributions. Under Section 113, small employers are eligible for a tax credit with respect to their defined contribution (“DC”) plans if they (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 2 years of service, and (3) make the military spouse 100% immediately vested in all employer contributions. The tax credit equals the sum of (1) \$250 per military spouse, and (2) 100% of all employer contributions (up to \$250) made on behalf of the military spouse, for a maximum tax credit of \$500. This credit applies for 3 years with respect to each military spouse – and does not apply to highly compensated employees. An employer may rely on an employee’s certification that such employee’s spouse is a member of the uniformed services. Section 113 is effective for taxable years beginning after the date of enactment of this Act.

**Section 114.** Small immediate financial incentives for contributing to a plan. Under current law, employers may provide matching contributions as a long-term incentive for employees to contribute to a 401(k) plan. However, immediate financial incentives are prohibited even though individuals may be especially motivated by immediate financial incentives like gift cards in small amounts. Section 114 enables employers to offer de minimis financial incentives, such as low-dollar gift cards, to boost employee participation in workplace retirement plans by exempting de minimis financial incentives from section 401(k)(4)(A) and from the corresponding rule under section 403(b). Section 114 is effective for plan years beginning after the date of enactment of this Act.



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**Section 115.** Safe harbor for corrections of employee elective deferral failures. Under current law, employers, including small employers, that adopt a retirement plan with automatic enrollment and automatic escalation features could be subject to significant penalties if even honest mistakes are made. Section 115 eases these concerns by allowing for a grace period to correct, without penalty, reasonable errors in administering these automatic enrollment and automatic escalation features. Errors must be corrected prior to 9 ½ months after the end of the plan year in which the mistakes were made. Section 115 is effective after the date of enactment of this Act.

**Section 116.** Improving coverage for part-time workers. The SECURE Act requires employers to allow long-term, part-time workers to participate in their 401(k) plans. As women are more likely to work part-time than men, this provision is particularly important for women in the workforce. The SECURE Act provision provides that except in the case of collectively bargained plans, employers maintaining a 401(k) plan must have a dual eligibility requirement under which an employee must complete either a one year of service requirement (with the 1,000-hour rule) or 3 consecutive years of service where the employee completes at least 500 hours of service. Section 116 reduces the three-year rule to 2 years, effective for plan years beginning after December 31, 2022.

**Section 117.** Deferral of tax for certain sales of employer stock to employee stock ownership plan sponsored by S corporation. Under section 1042, an individual owner of stock in a non-publicly traded 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. After the sale, the ESOP must own at least 30% of the employer corporation's stock. Section 117 expands the gain deferral provisions of Code section 1042 with a 10% limit on the deferral to sales of employer stock to S corporation ESOPs. Section 117 is effective for deferrals made after December 31, 2027.

**Section 118.** Certain securities treated as publicly traded in case of employee stock ownership plans. Section 118 updates certain ESOP rules related to whether a security is a "publicly traded employer security" and "readily tradeable on an established securities market". In particular, Section 118 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 Section 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. Section 118 is effective for plan years beginning after December 31, 2026.



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### Title II – Preservation of Income

**Section 201.** Remove required minimum distribution barriers for life annuities. Section 201 eliminates certain barriers to the availability of life annuities in qualified plans and IRAs that arise under current law due to an actuarial test in the required minimum distribution regulations. The test is intended to limit tax deferral by precluding commercial annuities from providing payments that start out small and increase excessively over time. In operation, however, the test commonly prohibits many important guarantees that provide only modest benefit increases under life annuities. For example, guaranteed annual increases of only 1 or 2%, return of premium death benefits, and period certain guarantees for participating annuities are commonly prohibited by this test. Without these types of guarantees, many individuals are unwilling to elect a life annuity under a DC plan or IRA. Section 201 is effective for calendar years after the date of enactment of this Act.

**Section 202.** Qualifying longevity annuity contracts. In 2014, the Treasury Department published final regulations on qualifying longevity annuity contracts (“QLACs”). QLACs are generally deferred annuities that begin payment at the end of an individual’s life expectancy. Because payments start so late, QLACs are an inexpensive way for retirees to hedge the risk of outliving their savings in DC plans and IRAs. The minimum distribution rules were an impediment to the growth of QLACs in DC plans and IRAs because those rules generally require payments to commence at age 72, before QLACs begin payments. The 2014 regulations generally exempted QLACs from the minimum distribution rules until payments commence. However, due to a lack of statutory authority to provide a full exemption, the regulations imposed certain limits on the exemption that have prevented QLACs from achieving their intended purpose in providing longevity protection. Section 202 addresses these limitations by repealing the 25% limit with respect to contracts purchased or received in an exchange. Section 202 also facilitates the sales of QLACs with spousal survival rights – and clarifies that free-look periods are permitted up to 90 days with respect to contracts purchased or received in an exchange on or after July 2, 2014. Section 202 is effective the date of enactment of this Act.

**Section 203.** Insurance-dedicated exchange-traded funds. Exchange-traded funds (“ETFs”) are pooled investment vehicles that are traded on stock exchanges. They are similar to mutual funds, except the shares can be traded throughout the day on the stock market, rather than having to be held until after the market closes. ETFs are widely available through retirement plans, IRAs, and taxable investment accounts. However, outdated Treasury Department regulations have prevented ETFs from being widely available through individual variable annuities. Simply because the regulations were written before ETFs existed, ETFs cannot satisfy the regulatory requirements to be “insurance-dedicated.” Section 203 directs the Treasury Department to update their regulations to reflect the ETF structure to provide that ownership of an ETF’s shares by certain types of institutions that are necessary to the ETF’s structure would not preclude look-through treatment for the ETF, as long as it otherwise satisfies the current-law requirements for look-through treatment. This essentially would facilitate the creation of a new type of ETF that is “insurance-dedicated.” The Treasury Department is to update the regulations no later than 7 years after the date of enactment of this Act.



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### Title III – Simplification and Clarification of Retirement Plan Rules

**Section 301.** Recovery of retirement plan overpayments. Sometimes retirees mistakenly receive more money than they are owed under their retirement plans. These mistakes cause problems when they occur over time, and plan fiduciaries later seek to recover the overpayments from unsuspecting retirees. When an overpayment has lasted for years, plans often compel retirees to repay the amount of the overpayment, plus interest, which can be substantial. Even small overpayment amounts can create a hardship for a retiree living on a fixed income. Section 301 allows retirement plan fiduciaries the latitude to decide not to recoup overpayments that were mistakenly made to retirees. If plan fiduciaries choose to recoup overpayments, limitations and protections apply to safeguard innocent retirees. This protects both the benefits of future retirees and the benefits of current retirees. In addition, rollovers of the overpayments remain valid, which is another important protection for participants. Section 301 is effective after the date of enactment of this Act.

**Section 302.** Reduction in excise tax on certain accumulations in qualified retirement plans. Section 302 reduces the penalty for failure to take required minimum distributions from 50 to 25 percent. Further, if a failure to take a required minimum distribution from an IRA is corrected in a timely manner, as defined under this Act, the excise tax on the failure is further reduced from 25 percent to 10 percent. Section 302 is effective for taxable years beginning after December 31, 2022.

**Section 303.** Performance benchmarks for asset allocation funds. The Department of Labor's ("DOL") participant disclosure regulation requires that each designated investment alternative's historical performance be compared to an appropriate broad-based securities market index. However, the rule does not adequately address increasingly popular investments like target date funds that include a mix of asset classes. Section 303 directs the DOL to update its regulations so that an investment that uses a mix of asset classes can be benchmarked against a blend of broad-based securities market indices, provided (a) the index blend reasonably matches the fund's asset allocation over time, (b) the index blend is reset at least once a year, and (c) the underlying indices are appropriate for the investment's component asset classes and otherwise meet the rule's conditions for index benchmarks. This change in the disclosure rule allows better comparisons and aids participant decision-making. The DOL is to update its regulations no later than one year after enactment of this Act. Section 303 also requires DOL to report to Congress on the effectiveness of its benchmarking requirements no later than 3 years after enactment of this Act.

**Section 304.** Review and report to the Congress relating to reporting and disclosure requirements. Section 304 directs the Treasury Department, the DOL, and Pension Benefit Guaranty Corporation to review reporting and disclosure requirements for pension plans as soon as practicable after enactment of this Act. Further Section 304 directs the agencies to make recommendations to Congress to consolidate, simplify, standardize, and improve such requirements no later than 2 years after the date of enactment of this Act.



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**Section 305.** Eliminating unnecessary plan requirements related to unenrolled participants. Under current law, employees eligible to participate in a retirement plan are required to receive a broad array of notices that are intended to inform them of their various options and rights under the plan. In the case of eligible employees who have not elected to participate in the plan (“unenrolled participants”), these notices, such as notices regarding the different investment options available under the plan, are generally unnecessary, and can even have adverse effects on savings and coverage.

Section 305 no longer requires employers provide certain intermittent ERISA or Code notices to unenrolled participants who have not elected to participate in a workplace retirement plan. However, to further encourage participation of unenrolled participants, the plan is required to send (1) an annual reminder notice of the participant's eligibility to participate in the plan and any applicable election deadlines, and (2) any otherwise required document requested at any time by the participant. This rule only applies with respect to an unenrolled participant who received the summary plan description, in connection with initial eligibility under the plan. Section 305 is effective for plan years beginning after December 31, 2022.

**Section 306.** Retirement savings lost and found. Every year, thousands of people approach retirement but are unable to find and receive the benefits that they earned often because the company they worked for moved, changed its name, or merged with a different company. Similarly, every year there are employers around the country ready to pay benefits to retirees, but they are unable to find the retirees because the former employees changed their names or addresses. Section 306 creates a national online searchable lost and found database for Americans' retirement plans at the DOL. The database will enable retirement savers, who might have lost track of their pension or 401(k) plan, to search for the contact information of their plan administrator. Section 306 directs the creation of the database no later than 2 years after the date of enactment of this Act.

**Section 307.** Updating Dollar Limit for Mandatory Distributions. Under current law, employers may transfer former employees' retirement accounts from a workplace retirement plan into an IRA if their balances are between \$1,000 and \$5,000. Section 307 increases the limit from \$5,000 to \$7,000, effective for distributions made after December 31, 2022.

**Section 308.** Expansion of Employee Plans Compliance Resolution System. Because of the ever growing complexity of retirement plan administration, Section 308 expands the Employee Plans Compliance Resolution System (EPCRS), as of the date of enactment of this Act, to (1) allow more types of errors to be corrected internally through self-correction, (2) apply to inadvertent IRA errors, and (3) exempt certain failures to make required minimum distributions from the otherwise applicable excise tax. For example, Section 308 allows for correction of many plan loan errors through self-correction, which are a frequent area of error and can be burdensome to correct a single loan error through the Internal Revenue Service. Section 308 is effective after the date of enactment of this Act.



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**Section 309.** Eliminate the “first day of the month” requirement for governmental section 457(b) plans. Under current law, participants in a governmental 457(b) plan must request changes in their deferral rate prior to the beginning of the month in which the deferral will be made. This rule does not exist for other DC plans. Section 309 allows such elections to be made at any time prior to the date that the compensation being deferred is available. Section 309 is effective for taxable years beginning after the date of enactment of this Act.

**Section 310.** One-time election for qualified charitable distribution to split-interest entity; increase in qualified charitable distribution limitation. Section 310 expands 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 for distributions made in taxable years beginning after the date of enactment of this Act. Section 310 also indexes for inflation, the annual IRA charitable distribution limit of \$100,000, effective for taxable years ending after the date of enactment of this Act.

**Section 311.** Distributions to firefighters. Under current law, if an employee terminates employment after age 55 and takes a distribution from a retirement plan, the 10% early distribution tax does not apply. However, there is a special rule for “qualified public safety employees” in governmental plans, under which age 50 is substituted for age 55 for purposes of this exception from the 10% tax. This exemption applies to public sector firefighters, but not private sector firefighters. Section 311 extends the age 50 rule to private sector firefighters, who merit the same treatment for distributions. Section 311 is effective for distributions made after December 31, 2022.

**Section 312.** Exclusion of certain disability-related first responder retirement payments. Section 312 permits first responders to exclude service-connected disability pension payments from gross income after reaching retirement age. Section 312 is effective for amounts received in taxable years beginning after December 31, 2027.

**Section 313.** Individual retirement plan statute of limitations for excise tax on excess contributions and certain accumulations. Under current law, the statute of limitations for taxes for prohibited transactions, excess contributions, or required minimum distribution failures starts as of the date that a return is filed for the violation. Section 313 provides instead that the statute of limitations starts when the taxpayer files an individual tax return for the year of the violation. This provides relief from the statute of limitations for violations of which taxpayers were not aware and thus did not file a return. Section 313 is effective after the date of enactment of this Act.

**Section 314.** Requirement to provide paper statements in certain cases. Section 314 amends ERISA to generally provide that with respect to DC plans, unless a participant elects otherwise, the plan is required to provide a paper benefit statement at least once annually, effective for plan years beginning after December 31, 2023. The other three quarterly statements required under ERISA are not subject to this rule (i.e., they can be provided electronically). For defined benefit plans, unless a participant elects otherwise, the statement that must be provided once every 3 years under ERISA must be a paper statement. The Labor Secretary must update the relevant sections of their regulations and corresponding guidance by December 31, 2022.



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**Section 315.** Separate application of top heavy rules to defined contribution plans covering excludible employees. Under current law, qualified retirement plans must pass the top-heavy test, in addition to other nondiscrimination tests. Plans that are deemed top-heavy are required to provide employees with a minimum of a 3% of pay non-elective contribution, which is a significant cost to small businesses. Other nondiscrimination tests that apply to 401(k) plans allow an employer to test otherwise excludable employees (e.g., those who are under age 21 and have less than one year of service) separately. This was intended to encourage plan sponsors to permit employees to defer earlier than the minimum age and service conditions permitted under the law because it reduces the situations where plans would fail the nondiscrimination tests if these employees were included when performing the test. However, this separate testing is not allowed for the top-heavy test. Small business retirement plans often do not cover excludable employees because if the plan is or becomes top heavy, the employer may be required to contribute a top-heavy employer contribution for all employees who are eligible to participate in the plan, straining the budget for these small businesses.

Section 315 allows an employer to perform the top-heavy test separately on the non-excludable and excludable employees. This removes the financial incentive to exclude employees from the 401(k) plan and increase retirement plan coverage to more workers. Section 315 is effective for plan years beginning after the date of enactment of this Act.

**Section 316.** Repayment of qualified birth or adoption distribution (“QBAD”) limited to 3 years. The SECURE Act included a provision that allows individuals to receive distributions from their retirement plan in the case of birth or adoption without paying the 10% additional tax under Code Section 72(t). The distributions can be recontributed to a retirement plan at any time and are treated as rollovers. The problem with current law is the allowance of recontributions at any time. Code Section 6511 prevents a refund from being provided to a taxpayer after the period of limitations for the return has closed, which is generally a 3-year period. Thus, there would not be a mechanism under the Code allowing someone who took a birth/adoption distribution to recontribute the distribution more than 3 years later and amend their return to receive a refund for the taxes that were paid in the year of the withdrawal. Therefore, Section 316 amends the QBAD provision to restrict the recontribution period to 3 years. Section 316 is effective retroactively to distributions made after December 31, 2019.

**Section 317.** Employer may rely on employee certifying that hardship distribution conditions are met. Section 317 provides that, under certain circumstances, employees will be permitted to self-certify that they have had an event that constitutes a hardship for purposes of taking a hardship withdrawal. This is a logical step in light of the success of the coronavirus-related distribution self-certification rules and the current hardship regulations that already permit employees to self-certify that they don’t have other funds available to address a hardship. Section 317 is effective for plan years beginning after December 31, 2022.

**Section 318.** Penalty-free withdrawals from retirement plans for individuals in case of domestic abuse. A domestic abuse survivor may need to access his or her money in their retirement account for various reasons, such as escaping an unsafe situation. Section 318 allows retirement plans to permit participants that self-certify that they experienced domestic abuse to withdraw a small amount of money (the lesser of \$10,000 or 50 percent of the participant’s account). A distribution made under this provision is not subject to a 10 percent tax on early distributions. Additionally, a participant has the opportunity to repay the withdrawn money to the retirement plan over 3 years and will be refunded for income taxes on money that is repaid. Section 318 is effective for distributions made after the date of enactment of this Act.



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**Section 319.** Reform of family attribution rule. Under the tax code, certain related businesses must be aggregated when performing the coverage and nondiscrimination tests. The aggregation rules are generally based on the degree of common ownership of the businesses. In determining the level of ownership in a business, the tax laws have certain attribution rules whereby an individual is deemed to own stock held by other individuals or entities. Section 319 updates two of the stock attribution rules. The first update addresses inequities where spouses with separate businesses reside in a community property state when compared to spouse who reside in separate property states. The second update modifies the attribution of stock between parents and minor children. Section 319 is effective for plan years beginning on or after the date of enactment of this Act.

**Section 320.** Amendments to increase benefit accruals under plan for previous plan year allowed until employer tax return due date. Section 201 of the SECURE Act permits an employer to adopt a new retirement plan by the due date of the employer's tax return for the fiscal year in which the plan is effective. Current law, however, provides that plan amendments to an existing plan must generally be adopted by the last day of the plan year in which the amendment is effective. This precludes an employer from adding plan provisions that may be beneficial to participants. Section 320 amends these provisions to allow discretionary amendments that increase participants' benefits to be adopted by the due date of the employer's tax return. Section 320 is effective for plan years beginning after December 31, 2023.

**Section 321.** Retroactive first year elective deferrals for sole proprietors. Under the SECURE Act, an employer may establish a new 401(k) plan after the end of the taxable year, but before the employer's tax filing date and treat the plan as having been established on the last day of the taxable year. Such plans may be funded by employer contributions up to the employer's tax filing date. Section 321 allows these plans, when they are sponsored by sole proprietors or single-member LLCs, to receive employee contributions up to the date of the employee's tax return filing date for the initial year. Section 321 is effective for plan years beginning after the date of enactment of this Act.

**Section 322.** Limiting cessation of IRA treatment to portion of account involved in a prohibited transaction. When an individual engages in a prohibited transaction with respect to his or her IRA, the IRA is disqualified and treated as distributed to the individual, irrespective of the size of the prohibited transaction. Under Section 322, only the portion of the IRA account used in a prohibited transaction is treated as distributed. Section 322 is effective for taxable years beginning after the date of enactment of this Act.

**Section 323.** Review of pension risk transfer interpretive bulletin. Section 323 requires DOL to review the current interpretive bulletin governing pension risk transfers to determine whether amendments are warranted and to report to Congress its finding, including an assessment of any risk to participant, no later than 1 year after enactment of this Act.

## Title IV – Technical Amendments

**Section 401.** Technical amendments relating to Setting Every Community Up for Retirement Enhancement Act of 2019. Section 401 includes four technical and two clerical amendments to the SECURE Act. These amendments are effective as if included in the section of SECURE Act to which the amendment relates.



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### Title V – Administrative Provisions

**Section 501.** Provision relating to plan amendments. Section 501 allows plan amendments made pursuant to this Act to be made on or before the last day of the first plan year beginning on or after January 1, 2024 (2026 in the case of governmental plans) as long as the plan operates in accordance with such amendments as of the effective date of a bill requirement or amendment. Section 501 also conforms the plan amendment dates under the SECURE Act, the CARES Act, and the Taxpayer Certainty and Disaster Tax Relief Act of 2020 to these new dates (instead of 2022 and 2024).

### Title VI – Revenue Provisions

**Section 601.** SIMPLE and SEP Roth IRAs. Generally, all plans that allow pre-tax employee contributions are permitted to accept Roth contributions with one exception – SIMPLE IRAs. 401(k), 403(b), and governmental 457(b) plans are allowed to accept Roth employee contributions. Section 601 allows SIMPLE IRAs to accept Roth contributions as well. In addition, aside from grandfathered salaried reduction simplified employee pension plans, under current law, simplified employee pension plans (“SEPs”) can only accept employer money and not on a Roth basis. Section 601 allows employers to offer employees the ability to treat employee and employer SEP contributions as Roth (in whole or in part). The provisions in Section 601 are effective for taxable years beginning after December 31, 2022.

**Section 602.** Hardship rules for 403(b) plans. Under current law, the distribution rules for 401(k) and 403(b) are different in certain ways that are historical anomalies for varied reasons. For example, for 401(k) plans, all amounts are available for a hardship distribution. For 403(b) plans, in some cases, only employee contributions (without earnings) are available for hardship distributions. Section 602 conforms the 403(b) rules to the 401(k) rules, effective for plan years beginning after December 31, 2022.

**Section 603.** Elective deferrals generally limited to regular contribution limit. Under current law, catch-up contributions to a qualified retirement plan can be made on a pre-tax or Roth basis (if permitted by the plan sponsor). Section 603 provides all catch-up contributions to qualified retirement plans are subject to Roth tax treatment, effective for taxable years beginning after December 31, 2022.

**Section 604.** Optional treatment of employer matching contributions as Roth contributions. Under current law, plan sponsors are not permitted to provide employer matching contributions in their 401(k), 403(b) and governmental 457(b) plans on a Roth basis. Matching contributions must be on a pre-tax basis only. Section 604 allows DC plans to provide participants with the option of receiving matching contributions on a Roth basis, effective after the date of enactment of this Act.