

# Employee Relations

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## Significant Retirement Reform Ahead: Key Takeaways from the Anticipated SECURE Act 2.0 of 2021

*Mark E. Bokert and Alan Hahn*

On May 5, 2021, the House Ways & Means Committee (“Committee”) approved the “Securing a Strong Retirement Act of 2021” (H.R. 2954, or the “SECURE Act 2.0”) by a unanimous voice vote, with no substantive amendments offered during its markup.<sup>1</sup> The SECURE Act 2.0 has since moved on to the full House, where it has rallied considerable bipartisan support and is expected to pass without major interference either as a standalone or as part of broader legislation (although modifications may be made as the bill works its way through Congress).<sup>2</sup>

Assuming the SECURE Act 2.0 ultimately becomes law in substantially similar form, the proposed retirement reform legislation would enhance the long-term financial security of millions of Americans by providing wider access to retirement savings. And while many of the provisions would apply to plan years beginning after December 31, 2022, certain provisions would apply after December 31, 2021. Accordingly, employers, plan sponsors and administrators should familiarize themselves with the anticipated SECURE Act 2.0 as soon as possible, to ensure a smooth and informed transition towards expanded eligibility, flexibility, and retirement plan incentivization.

Mark E. Bokert is a partner and co-chairs the Benefits & Compensation Practice Group of Davis & Gilbert LLP. His practice encompasses nearly all aspects of executive compensation and employee benefits, including matters related to equity plans, deferred compensation plans, phantom equity plans, qualified retirement plans, and welfare plans. Mr. Bokert may be contacted at [mbokert@dglaw.com](mailto:mbokert@dglaw.com). Alan Hahn is a partner and co-chairs the firm’s Benefits & Compensation Practice Group. His practice is devoted to advising clients of all sizes, including in the design and implementation of a wide variety of creative, unique, and tax-effective employee benefit plans and programs. Mr. Hahn may be contacted at [ahahn@dglaw.com](mailto:ahahn@dglaw.com).

## ***Background***

At the end of 2019, the “Setting Every Community Up for Retirement Enhancement Act of 2019” (the “SECURE Act 1.0”) was signed into law as part of the Further Consolidated Appropriations Act, 2020.<sup>3</sup> The SECURE Act 1.0 paved the way for significant and popular retirement plan reform, becoming the first major retirement-related legislation enacted since the 2006 Pension Protection Act. Major elements of the bill included the following: expanding 401(k) eligibility for long-term, part-time workers; raising the minimum age for required minimum distributions from 70.5 years of age to 72 years of age; allowing workers to contribute to traditional Individual Retirement Accounts (“IRAs”) after turning 70.5 years of age; allowing individuals to use 529 plan money to repay student loans; eliminating the “stretch IRA” by requiring non-spouse beneficiaries of inherited IRAs to withdraw and pay taxes on all distributions from inherited accounts within 10 years; and making it easier for 401(k) plan administrators to offer annuities.<sup>4</sup> With the SECURE Act 1.0 still being implemented by many plan sponsors, Congress is now positioned to further close Americans’ retirement savings gap with the SECURE Act 2.0, which would compel even more changes (including to provisions altered by the SECURE Act 1.0) and may implement new requirements for certain plans.

Although the SECURE Act 2.0 has not yet passed the full House or Senate, it is widely expected to do so given its bipartisan support and relatively uncontroversial reception.<sup>5</sup> Accordingly, the below key takeaways offer a summary of the provisions most anticipated to substantively impact employers, plan sponsors and administrators, and necessarily do not cover every proposed provision nor every nuance or exception in those provisions covered. As a result, an employee benefits attorney should be consulted in connection with planning for or implementing any SECURE Act 2.0 features. Additionally, because the below covers the SECURE Act 2.0 as introduced to Congress, all proposed modifications to employee benefits plans and programs should be checked against the final legislation, as well as any subsequent guidance from the Internal Revenue Service (the “IRS”).

## ***Key Takeaways from the Anticipated SECURE Act 2.0***

### *Requires auto-enrollment and auto-increases for new defined contribution plans*

Under current law, automatic enrollment and automatic contribution increases may be used by 401(k) and 403(b) plans, but are not required features.<sup>6</sup> However, pursuant to proposed Section 101, defined contribution plans (including both 401(k) and 403(b) plans) established after

December 31, 2022, would be required to automatically enroll employees (upon their becoming eligible) at a pretax contribution level of at least three percent (and up to 10 percent) of their annual compensation, with the ability for such employees to opt out or to elect otherwise.<sup>7</sup> This base level participation rate would then automatically increase by one percent each year, up to a maximum of at least 10 percent (and not more than 15 percent) of annual compensation (unless the participant elects otherwise).<sup>8</sup> These auto-features, in particular, are widely expected to better position employees for stronger retirement savings, particularly as employees auto-enrolled in a retirement plan tend to actually remain enrolled (indicating that auto-enrollment and auto-escalation features may effectively introduce employees to employers' retirement plans and then retain such participation after their initial enrollment period).

It is, however, also anticipated that there may be some practical challenges faced by plan sponsors when implementing these new auto-features, particularly with respect to potential adjustment errors committed during good faith compliance efforts – significantly, and to help ease anticipated transition issues, the SECURE Act 2.0 also codifies a corrective window of 9.5 months following the end of a given plan year (as further discussed below), which will provide an important grace period for plans to rectify (without penalty) inadvertent administrative errors.<sup>9</sup> Additionally, existing 401(k) and 403(b) plans established before the date of enactment would be exempt from the new auto-enrollment requirements (thereby rendering such plans unaffected by this proposed mandate); however, such grandfathering would not apply to employers adopting an existing multiple employer plan after the date of enactment.<sup>10</sup>

As currently drafted, there also would be certain exceptions to these required auto-features, including church and government retirement plans, small businesses with 10 or fewer employees, SIMPLE 401(k) plans, and businesses in existence for less than three years.<sup>11</sup>

*Increases the required minimum distribution age to 75 over a 10-year period*

Before the SECURE Act 1.0, the required minimum distribution (“RMD”) age was 70.5 for decades; the SECURE Act 1.0 then raised that threshold generally to 72 beginning in 2020, allowing participants more time before mandating certain minimum distributions.<sup>12</sup> Pursuant to proposed Section 105, the SECURE Act 2.0 now further increases the RMD to age 73 beginning January 1, 2022; age 74 beginning January 1, 2029; and age 75 beginning January 1, 2032.<sup>13</sup> Such changes would be effective for distributions required after December 31, 2021, for individuals attaining age 72 after such date.<sup>14</sup> In practice, these changes to RMDs would allow retirees to wait longer to withdraw savings so to better manage their taxes (among other considerations). This should be useful and attractive to many employers, as organizations typically offer a retirement plan to

encourage employees to save and to help provide financial security to employees in retirement.

*Permits higher catch-up contributions for individuals aged 62 to 64 and indexes IRA catch-up limit*

Currently, the limit on catch-up contributions (for those aged 50 or older) for 2021 is generally \$6,500 (except for SIMPLE plans, in which case such cap for 2021 is \$3,000), indexed annually for inflation.<sup>15</sup> Pursuant to its Section 107, the SECURE Act 2.0 would keep the catch-up trigger age at 50 years but generally would increase the limit to \$10,000 per year (or \$5,000 for SIMPLE plans, and both then indexed for inflation) for employees aged 62 to 64 (then returning to the \$6,500 or \$3,000 limit, as applicable, in the year the individual turns age 65), effective after December 31, 2022.<sup>16</sup> Additionally, effective January 1, 2022, all catch-up contributions to applicable employer plans (with limited exceptions, including for SIMPLE plans) must be made on an after-tax, Roth basis.<sup>17</sup> Separately, the current limit on annual IRA catch-up contributions (also for those aged 50 or older) is a flat \$1,000 and is not indexed for inflation;<sup>18</sup> Section 106 would index IRA catch-up limits in the same manner in which regular IRA contributions are indexed, effective after December 31, 2022.<sup>19</sup> Such catch-up changes may provide much desired opportunities for employees to make up retirement savings and improve income planning.

*Permits treatment of student loan payments as elective deferrals for purposes of employer matching contributions*

Under current law, an employer matching contribution technically cannot be made based on student loan repayments (although the IRS has stated in a private letter ruling that a plan may provide for a non-elective employer contribution based on student loan repayments without violating the contingent benefit rule).<sup>20</sup> Section 109 of the proposed SECURE Act 2.0 would permit, but not require, certain employers to contribute to an employee's 401(k), 403(b), SIMPLE IRA or 457(b) plan account by matching a portion of their "qualified student loan payments," effectively treating the applicable student loan payment as an elective deferral for purposes of providing a matching contribution.<sup>21</sup> "Qualified student loan payments" is intentionally defined broadly, according to the Committee's own bill summary, to pick up any "indebtedness incurred by the employee solely to pay qualified higher education expenses of the employee";<sup>22</sup> as a result, such qualifying loan payments could include, for instance, graduate school payments. This provision, which is effective after December 31, 2021,<sup>23</sup> may be particularly helpful for employers who are eager to attract fresh waves of recent graduates, as workers who feel they must tackle student loan debt before retirement savings may now be able to do both under a plan structured to utilize this new

feature. (And broadening appealing plan offerings may be important to employers under the bill, as organizations commonly utilize retirement benefits to attract new employees.) Importantly, the SECURE Act 2.0 also contains changes to non-discrimination testing that would ease implementation concerns for this benefit, as eligible businesses who are incorporating this feature are then permitted to apply the ADP test separately to employees who receive employer matching contributions on account of such student loan payments.<sup>24</sup>

*Allows certain employer matching contributions to receive Roth treatment*

Currently, employer matching contributions are not permitted to be made on an after-tax, Roth basis (and must be on a pre-tax basis only).<sup>25</sup> However, pursuant to proposed Section 604, defined contribution plan sponsors may, but are not required to, permit employees to elect that a portion or all of their employer matching contributions are to be treated as after-tax, Roth contributions.<sup>26</sup> Plan sponsors that wish to take advantage of this flexibility should prepare to act early, as this provision would become effective for contributions made immediately after the enactment of the SECURE Act 2.0.<sup>27</sup>

*Codifies and expands certain aspects of the Employee Plans Compliance Resolution System (“EPCRS”)*

Although the IRS’s EPCRS contains rules that permit plans to voluntarily or self-correct errors, including with respect to missed deferrals under auto-enrollment or auto-increase features, such corrective avenues have not yet been codified.<sup>28</sup> However, proposed Section 113 would now codify aspects of the EPCRS’s safe harbor for corrections of employee elective deferral failures – including automatic enrollment errors.<sup>29</sup> In particular, plans administering auto-enrollment and auto-escalation features would officially receive 9.5 months (following the end of the plan year in which the error occurred) as a “safe harbor” to resolve any innocent administrative missteps (referred to as “reasonable administrative errors”).<sup>30</sup> This corrective window is conditioned upon the error being resolved favorably toward the participant and without discrimination toward similarly situated participants.<sup>31</sup> Given the new SECURE Act 2.0’s requirements regarding certain mandatory auto-enrollment and auto-increase elements, this codified grace period for plan corrections would serve as crucial reassurance when such sweeping legislation could propel the creation of many new plans and adjustments to many existing plans, and, as a result, many errors committed in good faith.

Additionally, proposed Section 307 would expand the scope of the EPCRS, which allows plan sponsors to self-correct or self-report certain errors to the IRS and correct such errors without crippling penalties.<sup>32</sup> As

proposed, the SECURE Act 2.0 would generally permit any “eligible inadvertent failure” to comply with Internal Revenue Code Sections 401(a), 403(a), 403(b), 408(p) or 408(k) to be self-corrected under the EPCRS (subject to certain IRS-imposed limitations), and expand the EPCRS to (i) permit custodians of IRAs to remedy eligible inadvertent failures, and (ii) add new safe harbors for resolving eligible inadvertent failures (e.g., earnings calculations).<sup>33</sup> Such provisions would provide welcome relief for employers and plan sponsors who inadvertently err in plan administration, offering greater flexibility and a broader net of covered self-corrections (which should be well-received given that employers often grapple with plan compliance issues as a top retirement plan concern).

*Reduces the service requirement (from three years to two years) for long-term, part-time workers*

The SECURE Act 1.0 expanded the eligibility for “long-term, part-time workers” to contribute to their employers’ 401(k) plan, implementing a requirement that those who worked 500 or more hours per year with the employer for at least three consecutive years (and have satisfied minimum age requirements by the end of such three-year period) must be permitted to participate, beginning with plan year 2021.<sup>34</sup> Pursuant to proposed Section 114, the SECURE Act 2.0 would now expedite plan participation for such workers by shortening their eligibility waiting period from three to two years.<sup>35</sup>

As women are more likely to work part-time than men,<sup>36</sup> this provision may prove to be particularly important for women in the workforce (and for employers seeking to hire or retain more female employees). Additionally, this one-year reduction to service period requirements could materially increase the eligible part-time employee pool for employers that utilize a big part-time workforce, and such businesses should be mindful about this accelerated eligibility, particularly as plan modifications may be currently underway to implement the existing SECURE Act 1.0 requirements. To note, this SECURE Act 2.0 change would become effective as if included in the SECURE Act 1.0 (e.g., effective for plan years beginning after December 31, 2020).<sup>37</sup> As a result, if passed, the first group of affected part-time workers could potentially become eligible in 2023 (not 2024, as is the case under current law).

*Creates a national, online “lost and found” database for retirement plans*

Pursuant to proposed Section 306, the SECURE Act 2.0 would establish a new, online “lost and found” repository for retirement plans by requiring, within three years of the date of its enactment, that the Department of Labor, (“DOL”), Treasury Department (“Treasury”), and Commerce Department coordinate the creation of a central, searchable database for lost participant benefits.<sup>38</sup> Specifically, the retirement savings “lost and



found” (to be maintained by the Pension Benefit Guaranty Corporation (“PBGC”)) would collect information on plan administrators and plans in which an individual was a participant or beneficiary (including missing, lost or non-responsive participants and beneficiaries) and would enable the individual to locate any benefits owed (and would also enable companies to update plan contact information).<sup>39</sup> Individuals may opt-out of inclusion in the database.<sup>40</sup> This resource could prove invaluable for reuniting “lost” retirement accounts, including if an employer is experiencing difficulty locating a former employee, or vice versa (e.g., in instances of an employer’s name change, merger into a different company, and the like).

### *Updates controlled group family attribution rules*

Family attribution rules address scenarios in which a family member, such as a spouse or child, is treated as having an ownership interest in a business, thereby contributing to the determination of the employer and/or the controlled group/affiliated service group (for various testing and distribution rights).<sup>41</sup> Currently, family attribution rules rely largely on principles of familial property ownership in a community property state.<sup>42</sup> Proposed Section 318 would introduce special rules to address family attribution and disregard certain community property laws for ownership determinations (and, helpfully, to the extent this provision results in controlled group/affiliated service group issues, the provision identifies that such change will qualify for transition relief under Section 410(b)(6)(C)).<sup>43</sup> It is anticipated that this reform to the current tax law would soften a penalty felt predominantly by small businesses in community property states, and which disproportionately affects female business owners.<sup>44</sup> In fact, the American Retirement Association recognized this measure as one of the more pivotal provisions within the SECURE Act 2.0 for this very reason, writing in a letter of support that it “corrects and modernizes the outdated and unfair family attribution rules to ensure women business owners are not penalized if they happen to have minor children or live in a community property state.”<sup>45</sup>

### *Creates penalty-free early withdrawals for individuals in instances of domestic abuse*

Proposed Section 317 would introduce certain new penalty-free early withdrawals in instances of domestic abuse (pursuant to the applicable participant-victim’s self-certification), in an amount up to the lesser of (i) \$10,000, or (ii) 50 percent of the value of the employee’s vested benefits under the plan.<sup>46</sup> In addition, these eligible distributions to a domestic abuse victim may be recontributed to the applicable retirement plan (subject to certain requirements) over three years.<sup>47</sup> This provision would become effective for distributions made immediately after the enactment

of the SECURE Act 2.0,<sup>48</sup> and is expected to provide much needed financial aid to victims in distress.

*Permits employers to rely on employee self-certifications with respect to hardship distribution conditions and revises 403(b) hardship rules to match 401(k) rules*

Hardship distributions from certain qualified plans may be made if prompted by an immediate and heavy financial need and if such withdrawal is necessary to meet that need, and current law requires a relatively streamlined hardship documentation approach (within which certain self-certifications may be available if certain requirements are met).<sup>49</sup> Proposed Section 316 would further relax this approach for employers by expressly permitting (i) employees to self-certify that they have experienced one of the qualifying hardship events for purposes of taking a hardship withdrawal (and that the withdrawal is not in excess of the amount required), and (ii) administrators to rely on the employee's self-certification.<sup>50</sup> This change would help shift the burden off employers, providing more latitude and administrative relief for organizations.

Additionally, proposed Section 602 would conform certain 403(b) plans' hardship distribution rules to those applicable to 401(k) plans.<sup>51</sup> For context, the Tax Cuts and Jobs Act of 2017 and Bipartisan Budget Act of 2018 removed the requirement that participants must exhaust plan loans prior to taking a hardship distribution, and broadened the contribution sources from which 401(k) hardship distributions may be made, such as qualified matching contributions ("QMACs"), qualified nonelective contributions ("QNECs") and earnings on elective contributions.<sup>52</sup> At the time, this expansion did not generally apply to 403(b) hardship distributions (and, where applicable, it was not without certain limitations or requirements);<sup>53</sup> however, the SECURE Act 2.0 would now similarly pickup such contribution sources for 403(b) plans and also remove the plan loan prerequisite.<sup>54</sup>

*Incentivizes smaller businesses to establish new qualified retirement plans and to provide matching employer contributions*

Under current law, small employers with fewer than 100 employees may be eligible for a three-year pension plan start-up tax credit equal to up to 50 percent of administrative costs, up to a maximum annual limit of \$5,000.<sup>55</sup> However, pursuant to proposed Section 102, this start-up tax credit, for businesses with 50 or fewer employees, would be increased to 100 percent of qualified start-up costs (up to \$5,000) for the new plan's first three years.<sup>56</sup> This change would make it less burdensome for small businesses to adopt and maintain retirement plans by essentially funding a low-cost startup for such qualifying employers for the first three years of operation.



Additionally, under Section 110, small employers that join a pooled employer plan or multiple employer plan (“PEP” or “MEP,” respectively) could benefit from the startup tax credit for their first respective three years of plan participation, no matter how old the underlying, shared plan (with the first eligible credit year triggered by the date such plan becomes effective for that applicable employer).<sup>57</sup> (By way of background, PEPs were created by the SECURE Act 1.0 and allow two or more unrelated employers to join the same retirement plan, which is then treated as a single plan for ERISA purposes; PEPs are therefore considered to be “open MEPS” and are not subject to the DOL’s commonality requirements (versus “closed MEPS,” which were permitted prior to the SECURE Act 1.0 assuming the multiple, unrelated employers shared a common nexus).)<sup>58</sup> Effective after December 31, 2021, proposed Section 108 would further allow PEPs and MEPS to now include 403(b) plans, which is currently unavailable under the SECURE Act 1.0.<sup>59</sup> As a result, the SECURE Act 2.0 would broaden the scope of the existing PEP and MEP provisions to allow certain unrelated non-profit employers to join a single 403(b) plan, so that such plans can be established and maintained under rules similar to qualified plans (and thereby becoming more attractive offerings for employers who may not otherwise offer a retirement plan at all).

Furthermore, proposed Section 102 would provide for a new, separate tax credit to motivate small businesses to make direct employer contributions to their eligible plan (which, for this new credit, would not include defined benefit plans), offsetting 100 percent of matching employer contributions per participant (up to a maximum annual limit of \$1,000 per employee), with such 100 percent gradually phased out over the first five years.<sup>60</sup> This tax credit would apply to tax years beginning after December 31, 2021, and to businesses with 50 or fewer employees (and is then phased out for business with between 51 and 100 employees).<sup>61</sup> Such provisions would thus incentivize small businesses to offer retirement plans features that may otherwise seem overly burdensome, and motivate small employers to provide financial rewards to employees to promote participation (particularly as employer matches can be significant lures for employees).

Along this vein, various SECURE Act 2.0 provisions offer additional, minor financial incentives to increase small employer plan offerings and encourage participation. Such provisions include a new military spouse retirement plan eligibility tax credit for certain small businesses upon the business implementing certain eligibility and vesting requirements (equal to the sum of, per year, \$250 per military spouse-participant plus up to \$250 per eligible spouse for employer contributions, which apply for up to three years per spouse);<sup>62</sup> and permitting de minimis rewards (such as small gift cards) to participants for contributions, by providing an exemption from the contingent benefit rule and providing relief from prohibited transaction rules.<sup>63</sup>

### *Eases plan administration*

The SECURE Act 2.0 contains a number of additional provisions designed to ease the administration of retirement plans. A few examples include: changing benefit overpayment recovery requirements (for instance, by limiting the extent to which plans must recoup excess plan payments from participants and instituting certain protections for the affected participant, as well as minimizing consequences if the plan fails to recover inadvertent benefit overpayments);<sup>64</sup> reducing the individual tax penalty for failure to take RMDs for the applicable tax year from 50 percent to 25 percent of the shortfall (i.e., the amount by which the RMD exceeds the actual distribution made), with further reductions for IRAs to 10 percent if resolved within a two-year correction window;<sup>65</sup> amending and/or relaxing certain life annuity requirements in qualified plans and IRAs;<sup>66</sup> modifying the disqualification rule that applies when an IRA owner or beneficiary engages in a prohibited transaction (by limiting treatment to the applicable portion of the account involved in a prohibited transaction rather than disqualifying the entire IRA);<sup>67</sup> and reducing notice requirements for unenrolled plan participants (by eliminating certain superfluous required disclosures for non-participants).<sup>68</sup> The SECURE Act 2.0 also requires that the DOL, Treasury, and PBGC, among others, study, modify, revisit, and/or provide additional guidance regarding, as applicable, certain other existing retirement plan requirements and regulations such that possible avenues for simplification, consolidation, and standardization can be addressed. As common factors considered by employers when making benefit decisions include cost to the organization and satisfying legal requirements, such provisions would likely relieve and reassure many employers.

### ***Conclusion***

While 90 percent of the highest-paid workers had access to an employer-sponsored retirement plan in 2020, just 30 percent of the lowest-paid workers had the same opportunities; and additional divides exist, as part-time workers, nonunion workers, and workers at smaller companies have even less access to employer-sponsored retirement plans.<sup>69</sup> However, the SECURE Act 2.0 is poised to close these gaps for employers and employees, providing incentives to even the smallest businesses to expand coverage. Given the broad implications of its reform, the SECURE Act 2.0 has thus far garnered substantial bipartisan support and the backing of the American Retirement Association.<sup>70</sup> This strong push among both House and Senate membership, as well as the legislation's popular reception, indicates that the SECURE Act 2.0 may enjoy a relatively smooth path toward final passage.

Employers, plan sponsors and administrators should thus reach out to their legal counsel to learn more about the anticipated SECURE Act

2.0 and to understand their obligations and options thereunder, including how to incorporate its likely changes into employee benefits packages, design programs that maximize opportunities for both employers and employees, and establish procedures that comply with any new requirements. Businesses should begin strategizing and become familiar enough such that they could implement any necessary plan changes following December 31, 2021 or 2022, as applicable.

Employers and counsel alike should also carefully review the final iteration of the SECURE Act 2.0 and any subsequent guidance from the IRS, which would help clarify certain provisions, including with respect to their implementation, interpretation, and enforcement.

### Notes

1. Press Release, House Ways & Means Comm., Ways and Means Committee Continues Bipartisan Tradition with Passage of Landmark Retirement Legislation (May 5, 2021), available at <https://waysandmeans.house.gov/media-center/press-releases/ways-and-means-committee-continues-bipartisan-tradition-passage-landmark>; see also Press Release, House Ways & Means Comm., Chairman Neal Opening Statement at Committee Markup of Views and Estimates Letter and Bill to Strengthen Retirement Security (May 5, 2021), available at <https://waysandmeans.house.gov/media-center/press-releases/chairman-neal-opening-statement-committee-markup-views-and-estimates>; see also H.R. 2954, 117th Cong. (2021); see also Staff of House Ways and Means Comm., 117th Cong., *Overview of the Securing a Strong Retirement Act of 2021* (May 3, 2021), available at <https://waysandmeans.house.gov/sites/democrats.waysandmeans.house.gov/files/documents/SECURE%202.0%20Section%20by%20section%205.3.21.pdf>.
2. Stephen Miller, *Congress Considers "SECURE Act 2.0" with a New Round of Retirement Plan Fixes*, Society for Human Resource Management (May 11, 2021), available at <https://www.shrm.org/resourcesandtools/hr-topics/benefits/pages/congress-considers-a-new-round-of-retirement-legislation.aspx>.
3. Setting Every Community Up for Retirement Enhancement Act of 2019, Pub. L. 116-94, 133 Stat. 3137 (2019).
4. Elizabeth O' Brien, *Congress Just Passed the Biggest Retirement Bill in More Than a Decade. Here's What You Need to Know*, Money.com (Dec. 29, 2019), available at <https://money.com/what-serure-act-retirement-law-means-for-you/>; see also Leon LaBrecque, *The SECURE Act And Your 401(k) & IRA: 5 Things You Need To Know Right Now*, Forbes (Dec. 21, 2019), available at <https://www.forbes.com/sites/leonlabrecque/2019/12/21/the-secure-act-and-your-401k--ira-5-things-you-need-to-know-right-now/?sh=7486e87b2ebb>.
5. Stephen Miller, *Congress Considers "SECURE Act 2.0" with a New Round of Retirement Plan Fixes*, Society for Human Resource Management (May 11, 2021), available at <https://www.shrm.org/resourcesandtools/hr-topics/benefits/pages/congress-considers-a-new-round-of-retirement-legislation.aspx>.
6. *FAQs - Auto Enrollment - What is an automatic contribution arrangement in a retirement plan?*, IRS (June 3, 2021), available at <https://www.irs.gov/retirement-plans/faqs-auto-enrollment-what-is-an-automatic-contribution-arrangement-in-a-retirement-plan>.

7. H.R. 2954, 117th Cong. § 101(a), (c) (2021).
8. *Id.*
9. H.R. 2954, 117th Cong. § 113(a) (2021).
10. H.R. 2954, 117th Cong. § 101(a) (2021).
11. *Id.*; see also Staff of House Ways and Means Comm., 117th Cong., *Overview of the Securing a Strong Retirement Act of 2021*, at 1 (May 3, 2021), available at <https://waysandmeans.house.gov/sites/democrats.waysandmeans.house.gov/files/documents/SECURE%202.0%20Section%20by%20section%205.3.21.pdf>.
12. *Id.* at 2.
13. H.R. 2954, 117th Cong. § 105(a)-(c) (2021).
14. H.R. 2954, 117th Cong. § 105(e) (2021).
15. Staff of House Ways and Means Comm., 117th Cong., *Overview of the Securing a Strong Retirement Act of 2021*, at 2 (May 3, 2021), available at <https://waysandmeans.house.gov/sites/democrats.waysandmeans.house.gov/files/documents/SECURE%202.0%20Section%20by%20section%205.3.21.pdf>.
16. H.R. 2954, 117th Cong. § 107(a)-(c) (2021).
17. H.R. 2954, 117th Cong. § 603(a)-(c) (2021).
18. Staff of House Ways and Means Comm., 117th Cong., *Overview of the Securing a Strong Retirement Act of 2021*, at 2 (May 3, 2021), available at <https://waysandmeans.house.gov/sites/democrats.waysandmeans.house.gov/files/documents/SECURE%202.0%20Section%20by%20section%205.3.21.pdf>.
19. H.R. 2954, 117th Cong. § 106(a)-(b) (2021).
20. PLR 201833012.
21. H.R. 2954, 117th Cong. § 109(a), (c), (d), (e), (f) (2021).
22. Staff of House Ways and Means Comm., 117th Cong., *Overview of the Securing a Strong Retirement Act of 2021*, at 3 (May 3, 2021), available at <https://waysandmeans.house.gov/sites/democrats.waysandmeans.house.gov/files/documents/SECURE%202.0%20Section%20by%20section%205.3.21.pdf>; see also H.R. 2954, 117th Cong. § 109(b) (2021).
23. H.R. 2954, 117th Cong. § 109(h) (2021).
24. H.R. 2954, 117th Cong. § 109(c) (2021).
25. Staff of House Ways and Means Comm., 117th Cong., *Overview of the Securing a Strong Retirement Act of 2021*, at 11 (May 3, 2021), available at <https://waysandmeans.house.gov/sites/democrats.waysandmeans.house.gov/files/documents/SECURE%202.0%20Section%20by%20section%205.3.21.pdf>.
26. H.R. 2954, 117th Cong. § 604(a)-(d) (2021).
27. H.R. 2954, 117th Cong. § 604(e) (2021).
28. *ECPRS Overview*, IRS (June 26, 2021), available at <https://www.irs.gov/retirement-plans/epcrs-overview>; see also Rev. Proc. 2021-30 (Jul. 16, 2021) and Rev. Proc. 2019-19 (May 6, 2019); see also Staff of House Ways and Means Comm., 117th Cong., *Overview of the Securing a Strong Retirement Act of 2021* (May 3, 2021), at 4, available at <https://>

*waysandmeans.house.gov/sites/democrats.waysandmeans.house.gov/files/documents/SECURE%202.0%20Section%20by%20section%205.3.21.pdf*.

29. H.R. 2954, 117th Cong. § 113(a) (2021).

30. *Id.*

31. *Id.*

32. *ECPRS Overview*, IRS (June 26, 2021), available at <https://www.irs.gov/retirement-plans/ecprs-overview>; see also Rev. Proc. 2021-30 (Jul. 16, 2021) and Rev. Proc. 2019-19 (May 6, 2019).

33. H.R. 2954, 117th Cong. § 307(a), (c), (d) (2021).

34. Staff of House Ways and Means Comm., 117th Cong., *Overview of the Securing a Strong Retirement Act of 2021*, at 4 (May 3, 2021), available at <https://waysandmeans.house.gov/sites/democrats.waysandmeans.house.gov/files/documents/SECURE%202.0%20Section%20by%20section%205.3.21.pdf>; see also IRS Notice 2020-68, at 10-11.

35. H.R. 2954, 117th Cong. § 114(a) (2021).

36. Staff of House Ways and Means Comm., 117th Cong., *Overview of the Securing a Strong Retirement Act of 2021*, at 4 (May 3, 2021), available at <https://waysandmeans.house.gov/sites/democrats.waysandmeans.house.gov/files/documents/SECURE%202.0%20Section%20by%20section%205.3.21.pdf>.

37. H.R. 2954, 117th Cong. § 114(c) (2021).

38. H.R. 2954, 117th Cong. § 306(a) (2021).

39. *Id.*

40. *Id.*

41. *Attribution of Ownership in Retirement Plans*, Lincoln Financial Group, at 2-4, available at <https://www.lfg.com/wcs-static/pdf/Attribution%20of%20Ownership%20in%20Retirement%20Plans%20-%20PDF.pdf> (last visited July 15, 2021).

42. Allison Brecher, *Top SECURE ACT 2.0 benefits for plan sponsors and participants*, Benefits Pro (May 26, 2021), available at <https://www.benefitspro.com/2021/05/26/top-secure-act-2-0-benefits-for-plan-sponsors-and-participants/?sreturn=20210613112256>, which notes: “Under existing law, spouses in the nine community property states are automatically considered to own half of all property obtained during the marriage. As a result, business owners must bundle their business with their spouse when performing retirement plan coverage and nondiscrimination tests, which can be problematic, especially if there is a separation or family conflict.” See also IRM § 25.18.1.3.14 (03-04-2011), including Section 3 therein: “When the business is operated after marriage, it has the effect of mixing separate property (the assets of the business) with community property (the spouse’s labor) . . . the presumption will be that the entire profit is community property.”

43. H.R. 2954, 117th Cong. § 318(a) (2021); see also Allison Brecher, *Top SECURE ACT 2.0 benefits for plan sponsors and participants*, Benefits Pro (May 26, 2021), available at <https://www.benefitspro.com/2021/05/26/top-secure-act-2-0-benefits-for-plan-sponsors-and-participants/?sreturn=20210613112256>, which notes: “The bill remedies this by removing attribution for spouses with separate and unrelated businesses who reside in community property states and between parents with separate and unrelated businesses who have minor children.”

44. Ted Godbout, *Ways & Means to Mark Up SECURE Act 2.0*, American Society of Pension Professionals & Actuaries (May 4, 2021), available at <https://www.asppa-net.org/news/ways-means-mark-secure-act-20>.
45. Letter of Support for the Securing a Strong Retirement Act, American Retirement Association (May 3, 2021), available at <https://www.napa-net.org/sites/napa-net.org/files/21.05.03%20ARA%20Letter%20of%20Support%20-%20Securing%20a%20Strong%20Retirement%20Act%20-%20FINAL-1.pdf>.
46. H.R. 2954, 117th Cong. § 317(a) (2021).
47. *Id.*
48. H.R. 2954, 117th Cong. § 317(b) (2021).
49. IRM § 4.72.2.7.2 (08-26-2020); see also IRM Exh. 4.72.2-1 (“Attachment One – Hardship Substantiation Information and Notifications for Summary of Source Documents”) (Aug. 26, 2020).
50. H.R. 2954, 117th Cong. § 316(a)-(c) (2021).
51. H.R. 2954, 117th Cong. § 602(a)-(b) (2021).
52. Jeffrey T. Grey, *IRS Clarifies Amendment Period for Final Hardship Withdrawal Regulations*, Society for Human Resource Management (Dec. 20, 2019), available at <https://www.shrm.org/resourcesandtools/hr-topics/benefits/pages/irs-clarifies-amendment-period-for-final-hardship-withdrawal-regulations.aspx>.
53. IRS Hardship Distributions of Elective Contributions, Qualified Matching Contributions, Qualified Nonelective Contributions, and Earnings, 84 Fed. Reg. 4965, 49651-49659 (Sept. 23, 2019).
54. H.R. 2954, 117th Cong. § 602(a)-(b) (2021).
55. Staff of House Ways and Means Comm., 117th Cong., *Overview of the Securing a Strong Retirement Act of 2021* (May 3, 2021), at 1, available at <https://waysandmeans.house.gov/sites/democrats.waysandmeans.house.gov/files/documents/SECURE%202.0%20Section%20by%20section%205.3.21.pdf>.
56. H.R. 2954, 117th Cong. § 102(a) (2021).
57. H.R. 2954, 117th Cong. § 110(a)-(b) (2021); see also Staff of House Ways and Means Comm., 117th Cong., *Overview of the Securing a Strong Retirement Act of 2021* (May 3, 2021), at 3, available at <https://waysandmeans.house.gov/sites/democrats.waysandmeans.house.gov/files/documents/SECURE%202.0%20Section%20by%20section%205.3.21.pdf>.
58. For more information on the difference between PEPs and MEPs, as well as the SECURE Act 1.0’s creation of PEPs and PEP requirements, see Maureen J. Gorman, Lennine Occhino, et al., *Pooled Employer Plans – FAQs for US Employers*, Mayer Brown LLP (Aug. 6, 2020), available at <https://www.mayerbrown.com/en/perspectives-events/publications/2020/08/pooled-employer-plans-faqs-for-us-employers>; see also Stephen Miller, *DOL Final Rule Paves the Way for 2021 Launch of Pooled 401(k) Plans*, Society for Human Resource Management (Nov. 16, 2020), available at <https://www.shrm.org/resourcesandtools/hr-topics/benefits/pages/dol-final-rule-paves-way-for-2021-launch-of-pooled-401k-plans.aspx>; see also Press Release, Dept. of Labor, U.S. Department of Labor Announces Registration Requirements for Pooled Plan Providers (Nov. 12, 2020), available at <https://www.dol.gov/newsroom/releases/ebsa/ebsa20201112>; see also Registration Requirements for Pooled Plan Providers, 85 Fed. Reg. 7293, 72934-72956 (Nov. 16, 2020).



59. H.R. 2954, 117th Cong. § 108(b), (c), (h) (2021).
60. H.R. 2954, 117th Cong. § 102(b) (2021).
61. H.R. 2954, 117th Cong. § 102(b), (d) (2021).
62. H.R. 2954, 117th Cong. § 111(a) (2021).
63. H.R. 2954, 117th Cong. § 112(a)-(d) (2021).
64. H.R. 2954, 117th Cong. § 301(a)-(b) (2021).
65. H.R. 2954, 117th Cong. § 302(a)-(b) (2021).
66. H.R. 2954, 117th Cong. §§ 201-202 (2021).
67. H.R. 2954, 117th Cong. § 321(a)-(b) (2021).
68. H.R. 2954, 117th Cong. § 305(a)-(b) (2021).
69. Robert Maxim & Mark Muro, *What's stopping automatic retirement savings for more workers?*, Brookings Institution, (Apr. 9, 2021), available at <https://www.brookings.edu/blog/the-avenue/2021/04/09/whats-stopping-automatic-retirement-savings-for-more-workers/>.
70. On May 3, 2021, the American Retirement Association offered strong support for the legislation in the form of a letter to the House Ways & Means Committee, noting: "On behalf of the over 30,000 members of the American Retirement Association (ARA), we hereby express our support for the *Securing a Strong Retirement Act*. We commend you for championing this important piece of bipartisan retirement legislation." See Letter of Support for the Securing a Strong Retirement Act, American Retirement Association (May 3, 2021), available at <https://www.napa-net.org/sites/napa-net.org/files/21.05.03%20ARA%20Letter%20of%20Support%20-%20Securing%20a%20Strong%20Retirement%20Act%20-%20FINAL-1.pdf>.

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