AMERICAN RETIREMENT ASSOCIATION

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Working for America's Retirement

December 15, 2020

The Honorable Richard Neal
Chairman
Committee on Ways and Means
United States House of Representatives
2309 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Neal:

The American Retirement Association (ARA) appreciates the opportunity to provide the following comments in response to the discussion draft text of the *Automatic Retirement Plan Act of 2020 (ARPA)*.

The ARA is the coordinating entity for its five underlying affiliate organizations representing the full spectrum of America's private retirement system – the American Society of Pension Professionals and Actuaries (ASPPA), the National Association of Plan Advisors (NAPA), the National Tax-Deferred Savings Association (NTSA), the American Society of Enrolled Actuaries (ASEA), and the Plan Sponsor Council of America (PSCA). The ARA's members include organizations of all sizes and industries across the nation who sponsor and/or support retirement saving plans and are dedicated to expanding on the success of employer-sponsored plans. In addition, the ARA has nearly 30,000 individual members who provide consulting and administrative services to the sponsors of retirement plans. The ARA and its underlying affiliate organizations are diverse but united in their common dedication to the success of America's private retirement system.

The American Retirement Association has long supported legislation to expand retirement plan coverage to all American workers, including the *Automatic IRA Act* authored by Chairman Neal dating back to 2006. The ARPA is the latest and most comprehensive bill yet that will achieve this critical policy objective. In the spirit of constructive cooperation, the American Retirement Association respectfully requests the following changes to ARPA to further improve the bill before it gets reintroduced.

Sec. 2 Employers Required to Maintain Automatic Contribution Plan

Section(aa)(1)(A)(iii) requires that an automatic contribution plan meets the notice requirements of, or similar to, the notice requirements of section 401(k)(13)(E) (section(aa)(1)(C)(ii) imposes the same notice requirement on SIMPLE plans). The reference to 401(k)(13) is problematic because it imposes the equivalent of a safe harbor notice (which is very robust). The American Retirement Association recommends that the notice be limited to explaining to an employee the right to elect not to have elective contributions made on his or her behalf as well as an explanation of how contributions under the arrangement are invested (i.e., limit the notice to the items required in section 401(k)(13)(E)(ii)(I) and (II)).

Section(aa)(1)(D) allows existing qualified retirement plans to satisfy the automatic contribution plan requirement subject to certain conditions. The American Retirement Association suggests the following changes to Section(aa)(1)(D) to clarify these grandfather rules that will ease the compliance burden on employers with existing plans.

1) Add "established and" before the word "maintained" in Section(aa)(1)(D)(i) [page 3, line 15]. Under the existing language, it is unclear whether a plan that is established as of a certain date but is made retroactively effective is a grandfathered plan, since it could be considered to be "maintained" as of the earlier date. This change clarifies that to be a grandfathered plan, the plan must be both established

and maintained as of the date of enactment to qualify for the grandfather rule. Further, in conjunction with this change, a one-year waiting period for the plan is not necessary. Thus, for example, a plan that was established September 15, 2020, effective as of January 1, 2020, would qualify for the grandfather rule (assuming the enactment date is January 1, 2021).

2) Strike Section(aa)(1)(D)(ii) [page 3, lines 18-21]. Requiring plans to be maintained at least 1 year before the date of enactment would unnecessarily burden employers that recently established qualified retirement plans. For example, if an employer adopts a plan on January 1, 2021 and ARPA was enacted September 15, 2021, those employers would be outside the grandfather clause and would have to spend money to evaluate whether their plan meets the new automatic contribution plan requirements. We believe that if an employer has established and maintained a qualified retirement plan as of the date of enactment, in other words the condition set forth in Section(aa)(1)(D)(i), then those employers should not have to meet an additional compliance burden.

3) Strike the words "coverage or benefits" after the word "its" in Section(aa)(1)(D)(iii) [page 3, lines 22-23] and replace with "cash or deferred arrangement coverage". As currently written, the Bill is overly broad by providing that the grandfather provision does not apply if there is a substantial reduction of benefits. One of the underlying purposes of the Act is to ensure more employees are able to participate in a workplace retirement plan that includes an automatic deferral component. The Act does not mandate that an employer provide additional benefits, such as matching or nonelective contributions. The current text, however, could cause confusion where an employer is reducing benefits that are not related to the qualified cash or deferred arrangement. The American Retirement Association recommends that a modification be made to clarify that a substantial reduction be limited to a reduction of coverage under the cash or deferred arrangement. A plan should not lose its grandfather status because of reduction of benefits that are unrelated to the cash or deferred arrangement, such as a reduction of matching or nonelective contributions.

4) Section(aa)(6)(A) requires that an automatic contribution plan permits plan participants to elect to receive at least 50 percent of their vested account balance in a form of distribution described in section 401(a)(38)(B)(iii). The American Retirement Association believes the final legislation should provide greater flexibility to plan sponsors in the type of annuity product offered to participants to satisfy this provision. An alternative option would be to permit participants to purchase deferred annuities as an investment rather than purchasing an immediate annuity at the time of a distribution. This would be consistent with section 109 of the SECURE Act which facilitates the portability of such investments. Including this as an alternative option will also ensure that there are multiple options in the marketplace for a plan sponsor to offer to participants to satisfy this provision.

Accordingly, the American Retirement Association recommends that Section 2(a)(1) of the Act be modified by moving current (B) to (A)(i) and adding new language to (B):

> (6) LIFETIME INCOME REQUIREMENTS.—Except in the case of a plan maintained by an eligible employer (as defined in section 408(p)(2)(C)(i)), the lifetime income requirements described in this paragraph are satisfied by using either (A) or (B)—
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> > ''(A) GUARANTEED INCOME FOR LIFE AVAILABLE.—A plan shall not be treated as an automatic contribution plan unless the plan permits participants to elect to receive at least 50 percent of their vested account balance in a form of distribution described in section 401(a)(38)(B)(iii).

"(i) EXCEPTIONS.—This paragraph shall not apply with respect to any participant whose vested account balance is $5,000 or less at the time of distribution.

"(B) Guaranteed Income for Life Available – A plan shall not be treated as an automatic contribution plan unless the plan permits participants to invest in a designated investment alternative, as described in section 2550.404(a)-5(h), that is a lifetime income investment as described in section 401(a)(38)(B)(ii).

5) Section(aa)(7) requires that no participants in a non-ERISA automatic contribution plan may be charged unreasonable fees solely on the basis that the participant's balance in an automatic contribution plan is small or solely on the basis that adoption of such a plan by the employee's employer is mandatory. This implies there could be circumstances where unreasonable fees would be permissible. We recommend that the provision be modified to provide that participants in the arrangement "may only be charged reasonable fees".

Technical Corrections

We have identified the following clerical issues.

In Section 4980J(d)(2) [page 26, line 10] after the word "any" add "employer with a".

In Section 4980J(d)(3) [page 26, line 12] after the word "any" add "employer with a".

The American Retirement Association applauds the efforts of Chairman Neal to close the retirement plan coverage gap in the private workforce so that all American workers can properly build a nest egg to achieve a secure retirement. The *Automatic Retirement Plan Act* squarely addresses this problem while imposing as minimum a burden as possible on employers. This approach strikes the right balance and deserves widespread support. The American Retirement Association stands ready to continue to work with Chairman Neal to address this critical issue in the 117th Congress.

Sincerely,

Will Hansen
Chief Government Affairs Officer
American Retirement Association