AMERICAN RETIREMENT ASSOCIATION

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Working for America's Retirement

American Retirement Association Statement for the Record For the Senate Health, Education, Labor, and Pensions Committee Hearing on "Retirement Security: Building a Better Future"

May 13, 2021

The American Retirement Association (ARA) thanks Chairman Murray, Ranking Member Burr, and the other Members of the Senate Health, Education, Labor and Pensions (HELP) Committee for holding a hearing to examine the various challenges that American businesses and workers face in ensuring all can save for a secure retirement.

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 Enrolled Actuaries (ASEA), the American Society of Pension Professionals and Actuaries (ASPPA), the National Association of Plan Advisors (NAPA), the National Tax-Deferred Savings Association (NTSA), 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. The ARA and its underlying affiliate organizations are diverse but united in their common dedication to the success of America's private retirement system.

Our mission is to help American workers bolster their retirement security by facilitating well-designed workplace-based retirement savings plans, particularly for small businesses. For most Americans – especially those with more moderate income – the key to a successful retirement is having access to a retirement plan through work, like a 401(k) plan. These plans primarily benefit the middle class. Sixty-four percent of active participants in 401(k) plans have an adjusted gross income of less than $100,000 per year. Thirty-three percent of participants have an income less than $50,000.[1] Perhaps most critically, workers earning between $30,000 and $50,000 per year are 12 times more likely to save for their retirement if those workers have access to some type of payroll deduction savings program through their work.[2]

Retirement Plan Coverage

We recognize that, despite our best efforts, far too many Americans lack access to a retirement plan at work. This retirement plan coverage gap is particularly pronounced with Americans who work for smaller employers. According to the Department of Labor's Bureau of Labor Statistics, only 53 percent of employees at firms with less than 50 workers have access to a workplace retirement plan, compared to 69 percent of those at firms with more than 50 workers and 83 percent of those at firms with more than

[1] Internal Revenue Service, Statistics of Income, Individual Income Tax, and IRA Studies, 2017 Tax Year
[2] IRS tabulations and Vanguard, How America Saves, 2018

100 workers.[3] State and local governments have tried to close that gap in recent years with the enactment of laws that have created government facilitated automatic IRA programs.[4] The key policy feature of most of these programs is a requirement of businesses over a certain size to provide some type of retirement plan for their employees. If employers do not already have their own retirement plan, or do not want to adopt one available to them in the private marketplace, then they can enroll their employees in the state or local program.

The ARA supports a federal program to supplement these state and local efforts so the retirement plan coverage gap can be addressed throughout the county. In the Senate, Senator Sheldon Whitehouse has introduced the *Automatic IRA Act* (S. 2370, 116th Congress) that would create a national requirement for businesses with 10 or more employees to adopt at minimum an automatic IRA plan. We believe this approach will close the retirement plan coverage gap to a great extent while imposing a minimal burden on employers. This approach leverages existing private sector solutions in the marketplace instead of replacing the entire system with a government run program. In short, it deserves serious consideration and widespread support.

Fiduciary Obligations

The Employee Retirement Income Security Act (ERISA) provides protection for private sector employees who are participants in their employer sponsored retirement plans. Under ERISA, employers or plan sponsors are classified as fiduciaries. The fiduciary must act exclusively in the interest of participants and their beneficiaries. Plan sponsors and other fiduciaries have a solemn responsibility to protect the interests of the workers and retirees in their benefit plans. Among those fiduciary responsibilities are the prudent selection and monitoring of plan service providers and plan investments.

"Fiduciary risk" is erroneously cited as a major reason that employers, particularly small employers, do not offer a plan. However, reputable surveys cite financial cost, limited administration resources, size of business, and uncertain business environment as the top reasons small employers do not offer plans, not concerns about fiduciary risk.[5] For any small employers who choose to not take on fiduciary responsibilities, there are other workplace-based retirement savings options available to them in the marketplace, such as SIMPLE IRAs, SEPs, or payroll deduction IRA products.

The ARA strongly opposes any proposals that would eliminate the fiduciary responsibility for smaller employers that join a multiple employer plan (MEP) or pooled employer plan (PEP). The elimination of the basic fiduciary responsibility to prudently select and monitor any service provider implementing such plans would leave the participants in such an arrangement open to fraud and abuse. An employer joining a MEP or PEP would have no obligation to consider cost, competency, financial stability, or the likelihood of fraud in choosing a MEP or PEP provider or the plan's underlying investments. Therefore, participants would be at risk for excessive fees, bad investments, and potential fraud. In fact, a multiple employer plan provider in Idaho is serving time in federal prison for crimes that had nothing to do with the

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[3]Department of Labor, Bureau of Labor Statistics, *Employee Benefits in the United States News Release*, September 2020, found at: https://www.bls.gov/news.release/archives/ebs2_09242020.htm
[4]See the Georgetown University, Center for Retirement Initiatives for a complete list of these programs found at: https://cri.georgetown.edu/
[5]The Pew Charitable Trusts, *Small Business Views on Retirement Savings Plans*, January 2017, Transamerica Institute, *16th Annual Transamerica Retirement Survey*, June 2016

fees that were charged – but only because his fraud was discovered by a plan sponsor who was monitoring the plan as part of their ERISA fiduciary responsibilities.[6]

As a new product, it can be expected that there will be many new MEP or PEP offerings from inexperienced and untested providers. Employer fiduciary oversight is absolutely necessary to look out for the interests of participants in MEPs and PEPs. The ARA remains concerned about this issue because certain stakeholders continue to advocate to eliminate this fiduciary responsibility for these particular arrangements. The issue was raised again during the Hearing and the proposal has been introduced as legislation in a prior Congress. The ARA urges Congress to maintain ERISA's basic protections for small business workers participating in a MEP or PEP so their retirement assets are adequately protected.

Emergency Savings

American workers are not saving enough, so are vulnerable to unexpected financial shocks. The Federal Reserve found that nearly 4 in 10 adults in 2019 would have difficulty covering a $400 unexpected expense using cash or its equivalent[7], a situation that has likely grown worse for significant portion of the population due the impact of the Pandemic.

The ARA supports leveraging the existing workplace-based defined contribution retirement plan system to address the emergency savings crisis. The ARA supports proposals to create a new category of retirement plan distribution in a 401(k) plan that would allow workers who have a balance in these accounts to quickly access their money to address a personal financial emergency without tax penalty and a minimal amount of paperwork. This approach is simple (no new accounts), includes a tax benefit to encourage saving, and does not undermine long-term retirement savings. Employers would be familiar with processing such requests since 401(k) plans already have built in rules allowing access to savings on account of hardships and the funds are protected through the Employee Retirement Income Security Act (ERISA).

The ARA has concerns with other approaches that push for employers to create and automatically enroll employees into an entirely new and separate emergency savings account program. The ARA believes that this sidecar approach would create an unnecessary administrative burden for employers and would potentially expose the employer to more liability.

Conclusion

The ARA appreciates the Senate HELP Committee's focus on the ongoing challenges that American families face in achieving a secure retirement. We thank Congress for taking a major step forward to improve the workplace-based retirement system with the enactment of the SECURE Act at the end of 2019. We look forward to working with Congress as it moves forward with further improvements to the system in this Congress.

[6]Department of Justice, U.S. Attorney's Office, District of Idaho, *Boise Jury Convicts Eagle Man of 17 Counts of Wire Fraud*, April 2013, found at: https://www.justice.gov/usao-id/pr/boise-jury-convicts-eagle-man-17-counts-wire-fraud

[7] Board of Governors of the Federal Reserve System, Report of the Economic Well-Being of U.S. Households in 2019: May 2020