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Working for America's Retirement

Statement of Brian H. Graff
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For the
Senate Finance Committee Hearing on
"Building on Bipartisan Retirement Legislation: How Can Congress Help?"
July 28, 2021

Thank you, Chairman Wyden, Ranking Member Crapo, and the other Members of the Senate Finance Committee for holding a hearing to examine our workplace retirement savings plan system and for the opportunity to discuss with you how we can improve that system. My name is Brian Graff, and I am the Chief Executive Officer of the American Retirement Association (ARA).

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). Combined the ARA represents over 30,000 retirement plan professionals. The ARA's members and the organizations they are affiliated with support 95 percent of all the defined contribution plans, such as 401(k) plans, in the United States. The ARA and its underlying affiliate organizations are diverse in the roles they play, but united in their dedication to the success of America's private retirement system.

ARA's mission is to help American workers bolster their retirement security by facilitating well-designed workplace retirement savings plans. We do that by both educating and informing retirement benefits professionals, and by advocating for policies that give every working American the opportunity to achieve a comfortable retirement.

Workplace Plans are the Foundation for a Secure Retirement

The workplace retirement savings plan has been a success for those that have access to them. These plans provide long term economic growth and build financial security for the middle class. Nearly 60 percent of American households – some 74.5 million had access to a workplace plan in 2020. At the end of the first quarter in 2021, defined contribution retirement plans – the most common being the 401(k) plan – had $9.9 trillion in assets.[1] Household retirement savings – including assets accumulated through those retirement plans plus all other types of retirement plans represents 59 percent of the non-bank financial capital provided to the equity and bond markets.[2]

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[1]Investment Company Institute, Quarterly Retirement Market Data, June 16, 2021, available at https://www.ici.org/statistical-report/ret_21_q1

[2]Oxford Economics, *Another Penny Saved: The Economic Benefits of Higher US Household Savings,* June 2014, available at: http://www.oxfordeconomics.com/anotherpennysaved.

The middle class is the primary beneficiary of these plans. Nearly two-thirds (64 percent) of active participants in 401(k) plans have an adjusted gross income of less than $100,000 per year.[3] One-third (33 percent) of participants have an income less than $50,000.[4] The critical factor that determines whether these moderate-income workers save for their retirement is whether they have access to a retirement savings plan at work. Data shows that more than 70 percent of workers earning $30,000 to $50,000 will save in a plan when given the opportunity at work, but fewer than 7 percent save on their own through an IRA.[5] In other words, moderate income workers are 12 times more likely to save for their retirement if they have access to some type of payroll deduction retirement savings program through their work.

The Senate Finance Committee's continued support of expanding retirement plan coverage and simplifying retirement plan rules will increase retirement savings and build even further on the success of the workplace retirement plan system. An analysis by Oxford Economics in 2014, projected that increasing retirement savings one to five percentage points, including increasing the number of working Americans saving, was projected to increase the nation's long-term economic growth by a full 3 percent - $3,500 per person - over the next 25 years.[6] In other words, an increase in access, and the resulting increase in retirement savings, produces not only individual wealth, but ultimately benefits the greater economy.

Who is Left Behind?

Despite these positive results, far too many Americans still lack access to a retirement plan at work and thus lack an equitable opportunity to achieve a comfortable retirement. This retirement plan coverage gap, and the corresponding lack of retirement savings, is particularly pronounced in the Black and Latinx communities. In fact, according to a recent research report, 52 percent of Black Americans and 68 percent of Latinx Americans **do not** currently have access to a workplace retirement plan.[7] By contrast, only 40 percent of White Americans lack access to a retirement plan at work. [8]

Since so many Black and Latinx workers do not have access to a retirement plan, it should be no surprise that a majority of Black and Latinx families do not have **any** retirement account savings. 56 percent of Black families and 67 percent of Latinx families have **zero** retirement savings assets compared with 35 percent of White families.[9]

Some of this gap can be attributed to the size of the organizations for which these communities tend to work. According to the Department of Labor's Bureau of Labor Statistics, only 53 percent of employees at smaller businesses (firms with less than 50 workers) have access to a workplace retirement plan,

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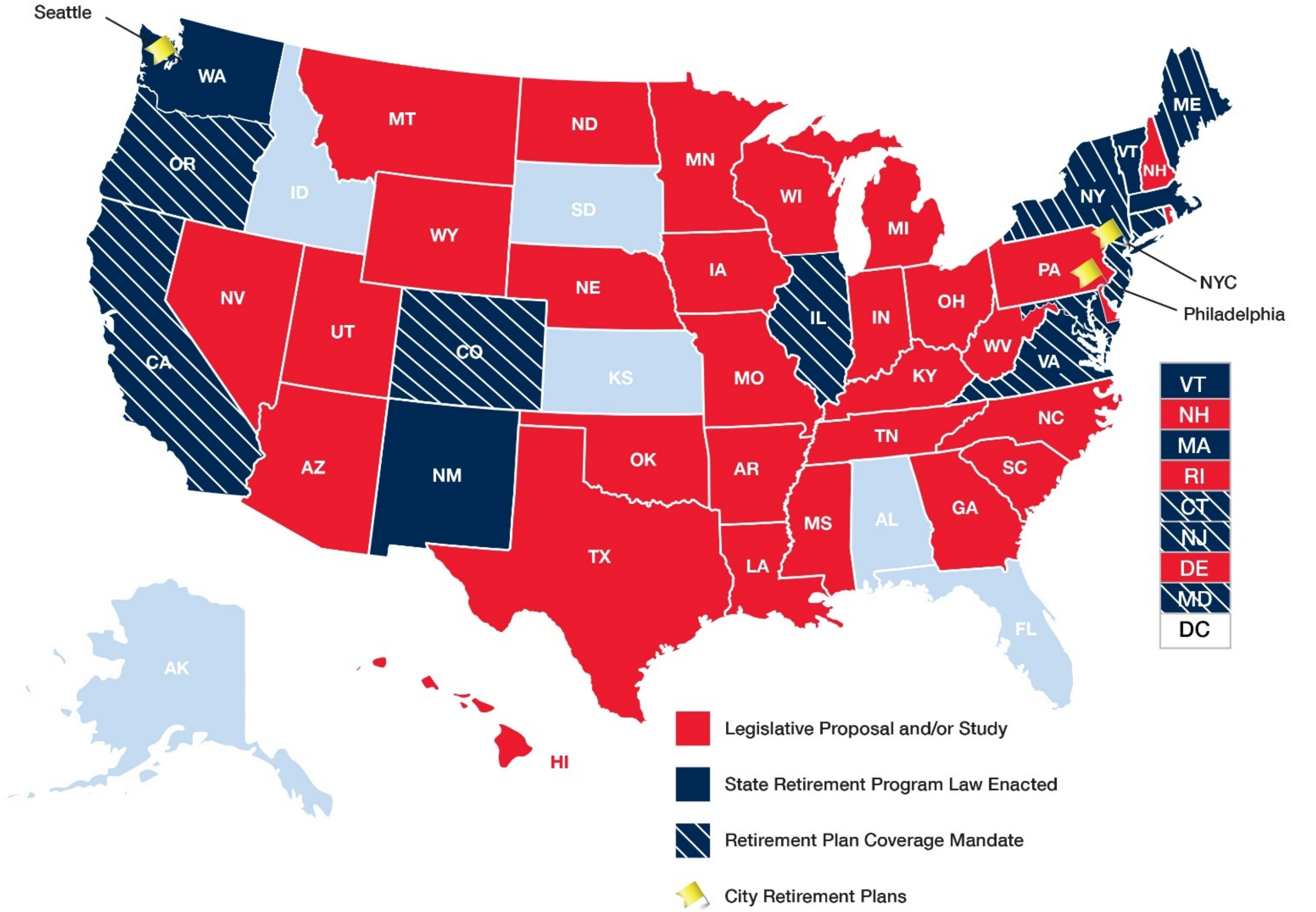
[3]Judy Xanthopoulos, PhD of Quantria Strategies, analysis of Internal Revenue Service, Statistics of Income, Individual Income Tax, and IRA Studies, 2017 Tax Year
[4]*Ibid.*
[5]IRS tabulations and Vanguard, *How America Saves*, 2018
[6]Oxford Economics, *Another Penny Saved: The Economic Benefits of Higher US Household Savings,* June 2014, available at: http://www.oxfordeconomics.com/anotherpennysaved.
[7] Richard W. Johnson, Urban Institute Fellow, *How Can Policymakers Close the Racial Gap in Retirement Security?*, October 2020, available at: https://www.urban.org/research/publication/how-can-policymakers-close-racial-gap-retirement-security/view/full_report
[8]*Ibid.*
[9]Monique Morrissey, Economic Policy Institute, *The State of American Retirement Savings*, December 2019, available at: https://www.epi.org/publication/the-state-of-american-retirement-savings/

compared to 69 percent of those at firms with more than 50 workers and 83 percent of those at firms with more than 100 workers.[10]

Retirement Plan Coverage Initiatives



What Can be Done?

Expanding coverage with auto-enrollment is the key to addressing racial inequities in retirement savings. Data shows that when moderate income workers are auto-enrolled in a workplace retirement plan there is no racial disparity in retirement savings participation with Black, Latinx, and White Americans all at about 80 percent.[11]

In recent years, state and local governments have taken steps to close the retirement plan coverage gap in their jurisdictions with the enactment of laws that have created government facilitated automatic IRA

[10]Department of Labor, Bureau of Labor Statistics, *Employee Benefits in the United States News Release*, September 2020, available at: https://www.bls.gov/news.release/archives/ebs2_09242020.htm

[11] 401(k) Plans in Living Color, A Study of 401(k) Savings Disparities Across Racial and Ethnic Groups, The Ariel/Aon Hewitt Study, 2012.

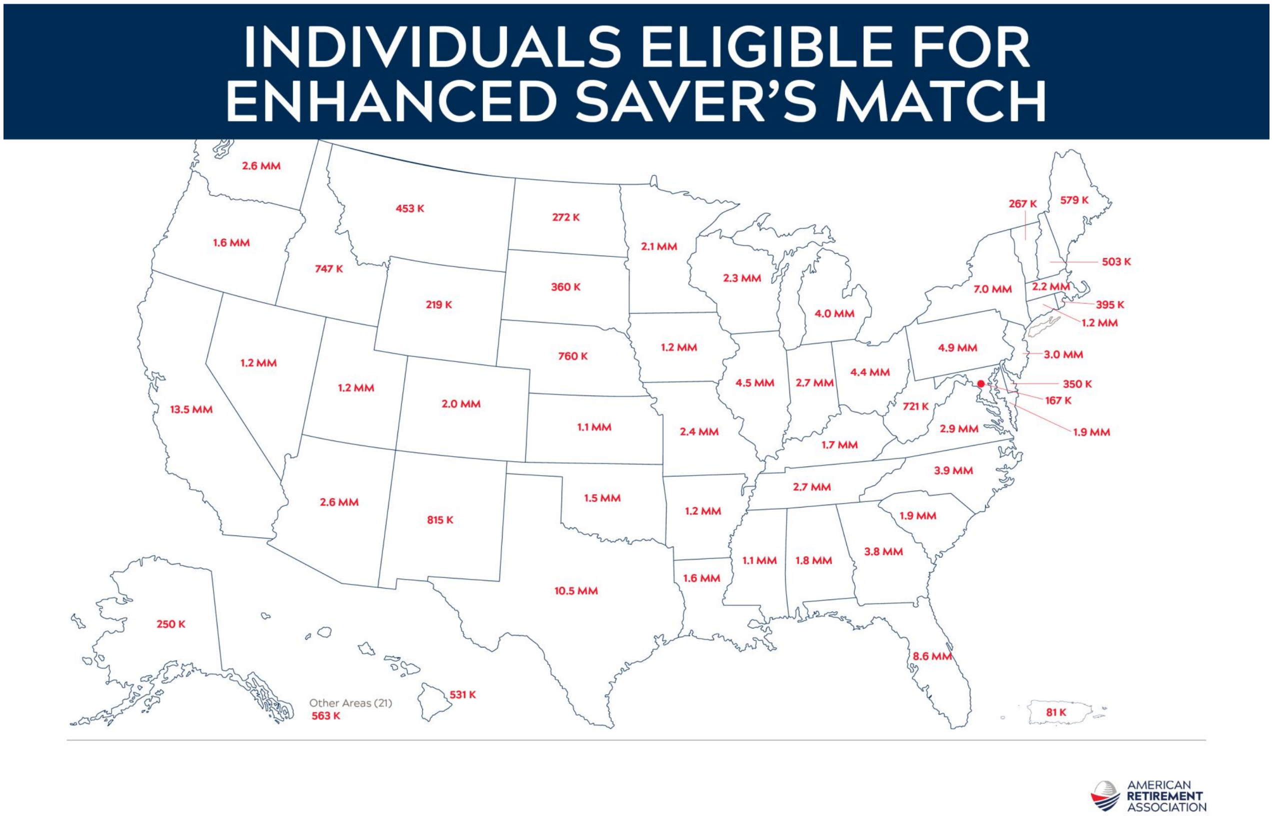
programs. Chairman Wyden's home state of Oregon was a trailblazer here, becoming the first state in the nation to formally launch such a program when OregonSaves came online on July 1, 2017.

A key policy feature of most of these automatic IRA programs is a requirement that businesses over a certain size provide access to some type of retirement plan to their employees. If employers do not already offer a workplace retirement plan, or do not want to adopt one available to them in the private marketplace, they can enroll their employees in the state or local program. To date, 10 states – including Oregon – have enacted such programs. [12]

The ARA applauds the work and success of these state and local programs but believes a federal policy would better assure the retirement plan coverage gap can be addressed consistently throughout the entire country. In this regard, it is not our intent to displace the great work of state and local governments that have already enacted a program. Senator 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. Similar legislation has been introduced in the past by Congressman Neal, Chairman of the House Ways & Means Committee. We believe the approach in both pieces of legislation could significantly close the current retirement plan coverage gap while imposing practically no burden on employers. This approach leverages existing private sector solutions in the marketplace instead of causing a massive disruption by replacing the entire existing retirement plan system with a government run program.

The ARA enthusiastically supports Chairman Wyden's legislation, the *Encouraging Americans to Save Act* (S. 2452, 117th Congress), which shares a key provision in Senator Cardin's and Senator Portman's bipartisan *Retirement Security and Savings Act* (S. 1770, 117th Congress), specifically designed to incentivize and supplement the retirement savings of moderate-income workers. The bill, recently reintroduced in this Congress, expands and enhances the existing Saver's Credit by turning it from a tax credit of which only some can take advantage into a government matching contribution of up to $1,000 a year for workers who save in a retirement account. The bill also enhances and simplifies the new Saver's Match to make the full 50% match available to individuals earning up to $32,500 and families earning up to $65,000.

[12] See the Center for Retirement Initiatives at Georgetown University for a complete list of these programs…found at: https://cri.georgetown.edu/



Source: Estimates prepared by Judy Xanthopoulos, PhD of Quantria Strategies, based on IRS, SOI W-2 Data

With the increased income thresholds under this legislation, over 120 million American workers would now be eligible for the new Saver's Match incentive for retirement savings.[13] This includes millions of new gig workers in this country as well as government workers, like public school teachers, many of whom are not eligible for matching contributions. This expanded Saver's Match would both encourage saving and help moderate income earners build assets by providing an immediate, meaningful return on personal retirement contributions.

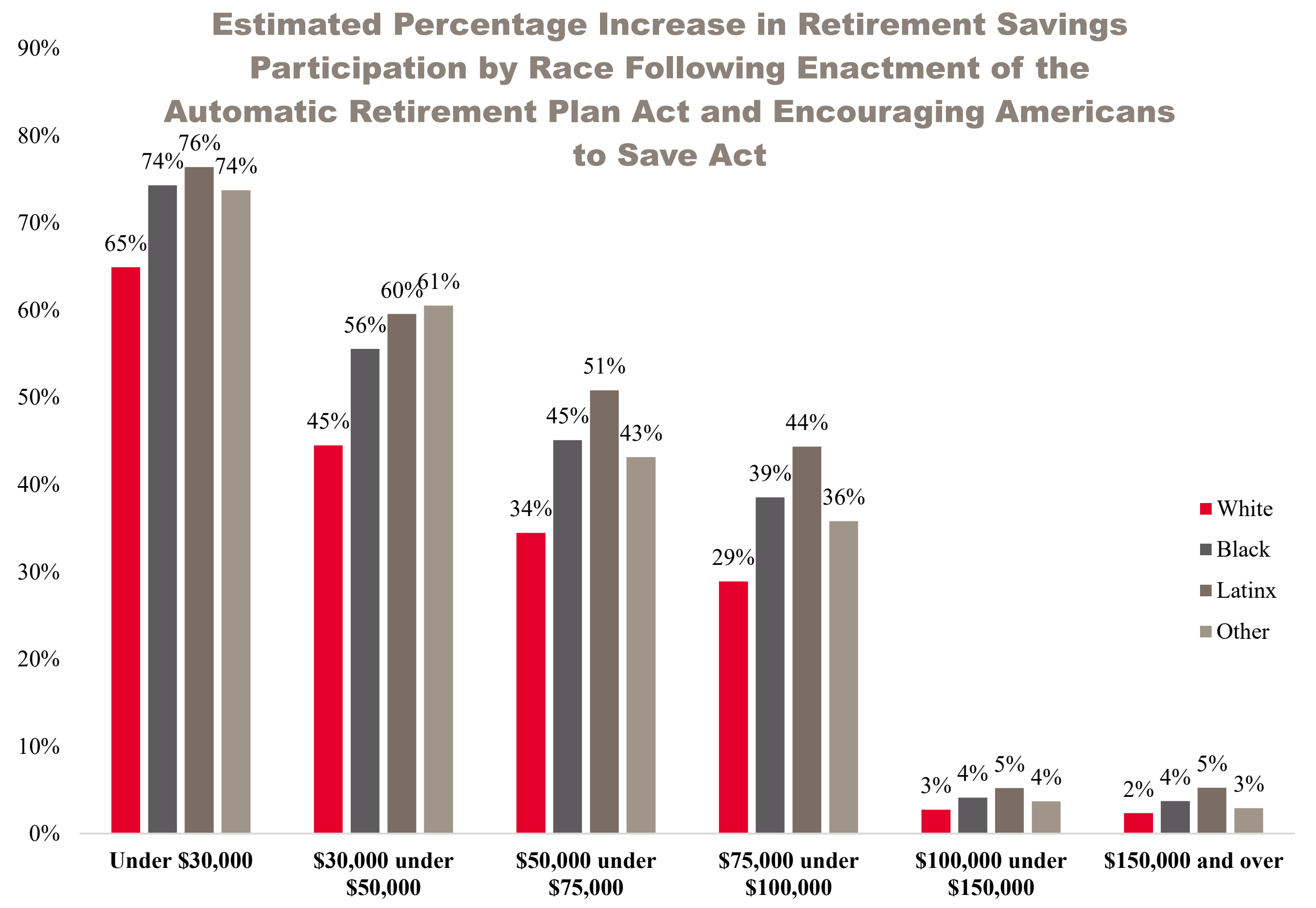
The potential results of Congress tackling the two biggest challenges in the retirement savings policy space – closing the retirement coverage gap and directly contributing to and incentivizing the retirement savings of moderate-income workers – are extraordinary. Estimates show that enactment of the combination of the *Automatic IRA Act* and the *Encouraging Americans to Save Act* would create **51 million** new individuals now saving for retirement[14] and would add an additional **$6.2 trillion** in

[13]Estimates prepared by Judy Xanthopoulos, PhD of Quantria Strategies, based on IRS, SOI W-2 Data
[14]*Ibid.*

retirement savings over a 10-year period.[15] Nearly all – 98 percent – of these 51 million new savers earn less than $100,000 per year.[16]

Closing the Racial Wealth Gap through Retirement Savings

Moreover, these two vital retirement savings proposals would greatly benefit the Black and Latinx communities, creating 5.8 million new Black retirement savers and 8.4 million new Latinx savers that earn less than $100,000 per year.[17] For Black and Latinx Americans earning under $30,000, this includes a 74 percent and a 76 percent increase in retirement plan participation rates, respectively. For those Black and Latinx Americans earning between $30,000 and $50,000, the increases are 56 percent and 60 percent, respectively.[18]



Why is retirement savings important? Retirement savings allows for a cushion against unexpected financial shocks. Retirement savings opens doors for small business creation. Retirement savings is

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[15] Employee Benefit Research Institute's Retirement Security Projection Model – version 3671
[16] Estimates prepared by Judy Xanthopoulos, PhD of Quantria Strategies, based on IRS, SOI W-2 Data
[17] *Ibid.*
[18] *Ibid.*

accumulated wealth which leads to generational wealth. Ultimately, retirement savings is an essential piece to closing the racial wealth gap.

I encourage the Senate Finance Committee, and, ultimately, Congress, to implement into law the *Automatic IRA Act* and the *Encouraging Americans to Save Act*. Besides these two important policies, other legislative items have been introduced that would support and expand the workplace retirement savings system.

Student Loan Retirement Matching Program

The ARA strongly supports Chairman Wyden's *Retirement Parity for Student Loans Act* (S. 1443, 117th Congress) which allows plan sponsors to make an employer contribution to the retirement plan account that matches a percentage of an employee's student loan payments. The latest version of this legislation addresses a concern that the ARA identified regarding how this new retirement plan design feature could negatively impact the average deferral percentage (ADP) test that 401(k) plans must satisfy. Since that problem has been addressed, small and medium-sized businesses will now not have to worry that this new and innovative retirement benefit puts their retirement plan testing at risk.

Emergency Savings in Retirement Plans

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[19], a situation that has likely grown worse for significant portions of the population due to the economic impact of the COVID-19 pandemic.

The ARA supports proposals – like Senator Lankford's and Senator Bennet's *Enhancing Emergency and Retirement Savings Act* (S. 1870, 117th Congress) – to create a new category of retirement plan distribution that would allow workers who have a balance in these accounts to readily access their money in the case of a personal financial emergency without tax penalty and a minimal amount of paperwork.

This proposal leverages the existing workplace defined contribution retirement plan system to address emergency savings shortfalls. This would encourage increased participation in retirement plans especially among moderate income workers since those workers will know that they can access a portion of their savings in the case of a financial emergency.

This approach is simple (no new or separate accounts), includes a tax benefit to encourage saving, and does not undermine long-term retirement savings. Employers are already familiar with processing such requests since 401(k) plans have built in rules allowing access to savings on account of hardships - and these funds are protected through the Employee Retirement Income Security Act (ERISA).

The legislation would allow for one emergency distribution per calendar year of up to $1,000 from the individual's account balance in the plan and requires that the withdrawn funds be paid back to the plan before an additional emergency distribution from that same plan is allowed. The amount can be recontributed within a three-year period to any eligible plan to which a rollover contribution can be made.

The ARA and its members have 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 not only undermine retirement savings, but create an

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

unnecessary administrative burden for employers, and would potentially expose the employer to more liability.

Small Employer Retirement Plan Tax Credit Enhancements

The 2019 SECURE Act significantly increased the small business pension plan startup tax credit to a maximum annual cap of $5,000, but still limited it to 50% of any administrative expenses incurred in the first three tax years of a new retirement plan.

Section 102 of House Ways and Means Committee Chairman Neal's and Ranking Member Brady's *Securing a Strong Retirement Act* (H.R. 2954) (a.k.a. SECURE 2.0) increases the existing small employer pension plan start-up credit for employers with 50 or fewer employees to 100% of administrative retirement plan expenses for the first three tax years of a new retirement plan. The dollar cap would continue to apply.

Section 102 also adds a new tax credit to subsidize employer contributions made to a new retirement plan (other than a defined benefit plan). The Employer Contribution Credit is equal to the applicable percentage of the amount contributed by the employer up to a per-employee cap of $1,000. The applicable percentage is equal to 100% in the first tax year for a new plan, 75% in the second year, 50% in the third year, 25% in the fourth year. The full additional Employer Contribution Credit is limited to employers with 50 or fewer employees and phased out for employers with between 51 and 100 employees.

The ARA supports these commonsense incentives that will encourage small businesses to adopt a robust retirement benefit for their workers.

Pooled Employer Plans

Another key provision in the 2019 SECURE Act allows two or more unrelated employers to join a multiple or pooled employer plan. The provision includes important consumer protection safeguards requiring the service provider of such an arrangement to take responsibility for the proper operation of the pooled plan. Allowing unrelated employers to pool their assets into one plan creates economies of scale that can reduce administrative burdens and lower both employer and plan participant cost, making this type of arrangement attractive for small business owners who might otherwise not consider offering a program.

Senator Grassley's, Senator Hassan's, and Senator Lankford's *Improving Access to Retirement Savings Act* (S. 1703, 117th Congress) has thoughtfully included two provisions that address technical issues with respect to these so-called "open" pooled employer plans, building upon the improvements made to these arrangements in the 2019 SECURE Act. The first provision would allow 403(b) plans that are generally sponsored by charities and public educational organizations, to participate in open multiple employer plans as corporate plans can currently. This provision includes important language requiring the Department of Treasury and the Department of Labor to educate non-profit plan sponsors on their fiduciary obligations. The second provision would allow employers who wish to join an existing multiple employer plan to receive the small employer pension plan startup credit. These provisions would improve access to high-quality low-cost retirement plans for the benefit of small business rank-and-file workers.

Other Useful Retirement Plan Tools and Rule Fixes

New Required Beginning Dates for Required Minimum Distributions

The 2019 SECURE Act provided greater flexibility in retirement planning by moving back the age that individuals are required to begin taking distributions from their tax favored retirement accounts from age 70 ½ to age 72. The 2021 SECURE 2.0 Act moves back those ages even further to age 73 starting on January 1, 2022, to age 74 starting on January 1, 2029, and to age 75 starting on January 1, 2032. A similar provision is also included in Senator Cardin's and Senator Portman's *Retirement Security and Savings Act* (S. 1770, 117th Congress). These new required beginning dates will allow individuals to hold on to their retirement assets longer should they wish to account for a longer expected lifespan in retirement.

Family Attribution Rule Fixes

The ARA strongly supports Congressman Panetta's and Congressman Arrington's *Family Attribution Modernization Act* (H.R. 2796, 117th Congress) that is also included in the 2021 SECURE 2.0 Act. This critical modification updates old tax rules to not only reflect the modern economy, but it removes needless barriers to small business retirement plan formation, particularly for women business owners. Specifically, the legislation addresses two inequities in the stock attribution rules that impact certain tests a retirement plan must complete each year to remain qualified: 1) it removes attribution for spouses with separate and unrelated businesses who reside in community property states, and 2) it removes attribution between parents with separate and unrelated business who have minor children.

Discretionary Amendments

Senator Grassley's, Senator Hassan's, and Senator Lankford's *Improving Access to Retirement Savings Act* (S. 1703, 117th Congress) includes an important provision – also contained in the 2021 SECURE 2.0 Act – that gives employers more time to adopt beneficial discretionary retirement plan amendments - specifically up until the due date of the employer's tax return. This new deadline to adopt a beneficial discretionary amendment is consistent with the deadline to adopt a new retirement plan that was provided for in the 2019 SECURE Act and gives employers with existing retirement plans the flexibility to make their retirement plans more generous to rank and files workers after the end of the year.

Financial Factors in Selecting Retirement Plan Investments

The ARA has long believed that retirement plan participants and beneficiaries are best served when the Employee Retirement Income Security Act (ERISA) principles governing the selection of retirement plan investments by plan fiduciaries are clear. ERISA fiduciaries' obligations of prudence and exclusive purpose are at the heart of ERISA's protections of retirement plans and participants, including plan investment selection. The ARA believes that ERISA requirements for fiduciaries selecting plan investments should neither promote the sacrifice of investment returns or assumption of greater investment risks as a means of promoting collateral social policy goals - nor should they preclude consideration of benefits other than investment return.

To that end, the ARA supports Senator Smith's *Financial Factors in Selecting Retirement Plan Investments Act* (S. 1762, 117th Congress). This legislation clarifies ERISA fiduciary obligations to make it clear that a plan fiduciary may consider environmental, social, and governance (ESG) factors in the selection of retirement plan investments and provides that ESG investments are permitted as qualified default investment alternatives in ERISA-covered retirement plans. It establishes the principle in ERISA that ESG investments should not be discouraged or treated differently than other retirement plan investment options.

Federally Declared Disaster Distributions

Every year tens of thousands of Americans are victims of disasters from floods, tornadoes, hurricanes, forest fires, or more recently a global health pandemic. But because there are not permanent rules on the use of retirement funds by individuals impacted by these situations, victims are dependent upon Congressional action after the occurrence of each disaster. The ARA strongly supports permanent retirement plan tax relief measures that would automatically apply once a Presidential disaster declaration is issued. ARA applauds and supports Senators Menendez and Cassidy's legislation that would make eligibility for these distributions in these circumstances permanent.

Electronic Disclosure

The ARA strongly believes that electronic disclosure be the default method of communication with retirement plan participants and beneficiaries. Electronic delivery encourages participants to engage with their investments, which results in better outcomes, including higher deferral rates and improved retirement preparedness. According to the Investment Company Institute's survey of a cross section of 401(k) recordkeepers conducted in the winter of 2017-2018, the average contribution rate of participants who interacts with their plan website averaged 7.8% of salary versus just 5.8% of salary for those who did not interact with the plan's website. However, we are aware of legislation in the House of Representatives developed in response to a Department of Labor regulation released in 2020. The legislation is counter to the DOL regulation and would only serve to further complicate plan sponsors' ability to efficiently operate a retirement plan. We propose a compromise that would streamline all existing regulatory rules on the mechanics behind who receives disclosures and how an individual receives disclosures, but the default would be electronic except for one paper benefit statement provided annually. We would like to work with Congress and other stakeholder groups on this proposal in order to provide plan sponsors and participants certainty on how disclosures are distributed in the future.

Conclusion

The ARA appreciates the Senate Finance 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 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.