

**American Retirement Association
Statement for the Record
House of Representatives Education and Labor's Health,
Employment, Labor, and Pensions (HELP) Subcommittee
Hearing on
"Improving Retirement Security and Access to Mental
Health Benefits"
March 15, 2022**

Thank you, Chairman DeSaulnier, Ranking Member Allen, and the other Members of the House Education and Labor's Health, Employment, Labor, and Pensions (HELP) Subcommittee for the opportunity to submit a statement for the record on behalf of the American Retirement Association (ARA) in connection with the Hearing entitled "Improving Retirement Security and Access to Mental Health Benefits."

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.

The 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 retirement savings plans are successful for those that have access to them. These plans provide long term economic growth and build financial security for the middle class. But more needs to be done.

ARA Supports the RISE Act

The ARA applauds the House Education and Labor Committee's unanimous action last year to approve the *Retirement Improvement and Savings Enhancement (RISE) Act*. That action represents a critical step forward in the process to continue the bipartisan retirement policy momentum jumpstarted in the last Congress with the enactment of the *Setting Every Community Up for Retirement Enhancement (SECURE) Act*. The RISE Act, along with its House Ways & Means Committee counterpart the *Securing a Strong Retirement Act*, makes a much-needed additional set of improvements to the retirement system. The ARA urges the full House of Representatives to take up these bipartisan commonsense measures and move them forward in short order.

Spousal Consent for Individual Account Plan Distributions Need Further Study

The ARA has deep concerns about a proposal included in both Section 3 of the *Women's Retirement Protection Act* and in the proposed discussion draft legislation that the House Education and Labor Committee could consider in the coming weeks. The proposal creates a new spousal consent requirement for nearly all distributions from individual account retirement plans, like 401(k) plans.

While the ARA support the policy goal behind this proposal, which is to protect the retirement security of a spouse, the proposal lacks sufficient research on whether it would do greater good to the retirement system than harm. Should the proposal be implemented, as is, it may have significant unintended consequences that damage those individuals the policy intends to protect. Below are some considerations that Congress should consider before moving forward with this proposal.

- With tens of millions of individual participants in 401(k) plans, this law would require an in-person notarized consent for most distributions, putting an immense burden on the recordkeeping system and imposing significant barriers for individuals to obtain consent to access funds they contributed.
- If an individual needs to take a hardship distribution due to a medical emergency, repair their home following a disaster, or some other immediate financial need, this law would delay access to needed funds by days or even weeks due to the onerous consent requirements.
- Currently, an employer only needs to know whether an employee is married if the employee is seeking to have their spouse covered under health insurance. Otherwise, marital status is not necessarily a data field that an employer shares with their plan administrator. The proposal would make the HR Department the potential arbiter of whether a marital relationship is strained if a participant seeks out one of the exceptions built into the proposal.
- Due to the exception requirements, an employer may unwillingly become aware of marital strain to disperse needed funds to an employee, or conversely, an employee may be unwilling to disclose a marital issue, preventing access to needed funds. An individual may be in an estranged relationship without the ability to contact their spouse (nor want to contact their spouse due to abuse) and would be unable to access their own funds without obtaining notarized consent from the estranged spouse. To obtain the funds, the individual would need to prove to the HR Representative that they cannot locate their spouse, an embarrassing situation that may simply prevent the individual from seeking this exception.
- The *Securing a Strong Retirement Act* has an important provision to protect victims of domestic abuse by allowing them to take a penalty-free distribution from their retirement account, financially enabling them to break free from an abusive relationship. Under this spousal consent provision, a victim of domestic abuse would need to obtain consent to access funds from the spouse that is potentially the abuser. Or it would require the employee to disclose to their company the abusive relationship, which is an embarrassing hurdle that could prevent the employee from accessing the funds.
- At this time, no study or data has been produced that shows how often a spouse uses 401(k) plan assets for non-retirement expenses without the knowledge of the other spouse. Is a blanket in-person notarized consent on all transactions the proper course of action?

At this time, due to a lack of analysis on the actual impact this provision will have on individual participants and the retirement system, it should be set aside and studied to better grasp the problem and achieve the best solution to solve the problem.

Conclusion

The ARA appreciates the House of Representatives Education and Labor 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.