

The Securing a Strong Retirement Act of 2021

Title I – Expanding Coverage and Increasing Retirement Savings

Section 101, Expanding automatic enrollment in retirement plans. One of the main reasons many Americans reach retirement age with little or no savings is that too few workers are offered an opportunity to save for retirement through their employers. However, even for those employees who are offered a retirement plan at work, many do not participate. But automatic enrollment in 401(k) plans – providing for people to participate in the plan unless they take the initiative to opt out – significantly increases participation. Since first defined and approved by Treasury in 1998, automatic enrollment has boosted participation by eligible employees generally, and particularly for Black, Latinx, and lower-wage employees. An early study found that adoption of auto-enrollment increased participation in a 401(k) plan by short-tenure Latinx employees from 19% to 75%. An Ariel Aon-Hewitt Study found that, in plans using auto-enrollment, “[t]he most dramatic increases in enrollment rates are among younger, lower-paid employees, and the racial gap in participation rates is nearly eliminated among employees subject to auto-enrollment.”

Section 101 requires 401(k) and 403(b) plans to automatically enroll participants in the plans upon becoming eligible (and the employees may opt out of coverage). The initial automatic enrollment amount is at least 3 percent but no more than 10 percent. And then each year that amount is increased by 1 percent until it reaches 10 percent. All current 401(k) and 403(b) plans are grandfathered. There is an exception for small businesses with 10 or fewer employees, new businesses (i.e., have been in business for less than 3 years), church plans, and governmental plans.

Section 102, Modification of credit for small employer pension plan startup costs. The three-year small business start-up credit is currently 50% of administrative costs, up to an annual cap of \$5,000. Section 102 makes changes to the credit by:

- Increasing the startup credit from 50% to 100% for employers with up to 50 employees.
- Except in the case of defined benefit plans, an additional credit would be provided. The amount of the new credit generally would be a percentage of the amount contributed by the employer on behalf of employees, up to a per-employee cap of \$1,000.
 - This full additional credit would be limited to employers with 50 or fewer employees and phased out for employers with between 51 and 100 employees.
 - The applicable percentage would be 100% in the first and second years, 75% in the third year, 50% in the fourth year, 25% in the fifth year – and no credit for tax years thereafter.

Section 103, Promotion of Saver’s Credit. This section directs the Internal Revenue Service to promote the Saver’s Credit to increase utilization.

Section 104, Enhancement of 403(b) plans. Under current law, 403(b) plan investments are generally limited to annuity contracts and mutual funds. This limitation cuts off 403(b) plan participants – generally employees of charities and public educational organizations – from

access to collective investment trusts, which are often used by 401(a) plans due to their lower fees.

Section 104 permits 403(b) custodial accounts to invest in collective investment trusts. Section 104 also amends the securities laws to treat 403(b) plans like 401(a) plans with respect to their ability to invest in collective investment trusts, provided that: (1) the plan is subject to ERISA, (2) the plan sponsor accepts fiduciary responsibility for selecting the investments that participants can select under the plan, (3) the plan is a governmental plan, or (4) the plan has a separate exemption from the securities rules. These changes would increase the availability of low-cost collective investment trust options for retirement savers and conform the securities law rules for 401(a) plans and 403(b) annuities.

Finally, the section also clarifies an existing securities law exemption for 403(b) custodial accounts.

Section 105, Increase in age for required beginning date for mandatory distributions.

Under current law, participants are generally required to begin taking distributions from their retirement plans at age 72. The policy behind this rule is to ensure that individuals spend their retirement savings during their lifetime and not use their retirement plans for estate planning purposes to transfer wealth to beneficiaries. The Setting Every Community Up for Retirement Enhancement Act of 2019 (SECURE Act)¹ generally increased the required minimum distribution age to 72. Section 105 increases the required minimum distribution age further to 73 starting on January 1, 2022 – and increases the age further to 74 starting on January 1, 2029 and 75 starting on January 1, 2032.

Section 106, Indexing IRA catch-up limit. Under current law, the limit on IRA contributions is increased by \$1,000 (not indexed) for individuals who have attained age 50. Section indexes such limit starting in 2023.

Section 107, Higher catch-up limit to apply at age 62, 63 and 64. Under current law, employees who have attained age 50 are permitted to make catch-up contributions under a retirement plan in excess of the otherwise applicable limits. The limit on catch-up contributions for 2021 is \$6,500, except in the case of SIMPLE plans for which the limit is \$3,000. Section 107 increases these limits to \$10,000 and \$5,000 (both indexed), respectively, for individuals who have attained ages 62, 63 and 64, but not age 65.

Section 108, Multiple Employer 403(b) Plans. Multiple employer plans (MEPs) provide an opportunity for small employers to band together to obtain more favorable retirement plan investment results and more efficient and less expensive management services. The SECURE Act made MEPs more attractive by eliminating outdated barriers to the use of MEPs and improving the quality of MEP service providers. Section 108 allows 403(b) plans to participate in MEPs, including pooled employer plans (“PEPs”), generally under the SECURE Act rules, including relief from the one bad apple rule so that the violations of one employer do not affect the tax treatment of employees of compliant employers.

¹ Pub.L. 116-94, December 20, 2019.

Section 109, Treatment of student loan payments as elective deferrals for purposes of matching contributions. Section 109 permits an employer to make matching contributions under a 401(k) plan, 403(b) plan, or SIMPLE IRA with respect to “qualified student loan payments.” Qualified student loan payment is broadly defined under the bill as any indebtedness incurred by the employee solely to pay qualified higher education expenses of the employee. Governmental employers would also be permitted to make matching contributions in a section 457(b) plan or another plan with respect to such repayments.

This section is intended to assist employees who may not be able to save for retirement because they are overwhelmed with student debt, and thus are missing out on available matching contributions for retirement plans. Section 109 would allow such employees to receive those matching contributions by reason of repaying their loan. For purposes of the nondiscrimination test applicable to elective contributions, the bill permits a plan to test separately the employees who receive matching contributions on student loan repayments.

Section 110, Application of credit for small employer pension plan startup costs to employers which join an existing plan. Section 110 ensures the start up tax credit is available for three years for employers joining a MEP, regardless of how long the MEP has been in existence. Under both pre- and post-SECURE law, the startup tax credit only applies for the first three years that a plan is in existence. So, for example, if a small business joins a MEP that has already been in existence for three years, the startup credit is not available. If, for example, the MEP has been in existence for one or two years when a small business joins, the small business may be able to claim the credit for two or one years, respectively. Section 110 fixes this issue so that employers joining a MEP (which includes PEPs) would be eligible for the credit for all three years.

Section 111, Military spouse retirement plan eligibility credit for small employers. Military spouses often do not remain employed long enough to become eligible for their employer’s plan or to vest in employer contributions. Under section 111, small employers are eligible for a tax credit with respect to their defined contribution plans if they (1) make military spouses immediately eligible for plan participation within two months of hire, (2) upon plan eligibility, make the military spouse eligible for any matching or nonelective contribution that they would have been eligible for otherwise at two years of service, and (3) make the military spouse 100% immediately vested in all employer contributions. The tax credit would equal the sum of (1) \$250 per military spouse, and (2) 100% of all employer contributions (up to \$250) made on behalf of the military spouse, for a maximum tax credit of \$500. This credit would apply for three years with respect to each military spouse – and would apply to nonhighly compensated employees only. An employer may rely on an employee’s certification that such employee’s spouse is a member of the uniformed services.

Section 112, Small immediate financial incentives for contributing to a plan. Section 112 exempts de minimis financial incentives from section 401(k)(4)(A) and from the corresponding rule under section 403(b). Commentators have noted that individuals can be especially motivated by immediate financial incentives. So in addition to providing matching contributions as a long-term incentive for employees to contribute to a 401(k) plan, it might be helpful for employers to be able to offer small immediate incentives, like gift cards in small amounts. However, such

immediate incentives are prohibited by the rule in Code section 401(k)(4)(A) generally prohibiting any incentives other than matching contributions. Section 112 accordingly exempts de minimus financial incentives from 401(k)(4)(A).

Section 113, Safe harbor for corrections of employee elective deferral failures. Under current law, employers, including small employers, that adopt a retirement plan with automatic enrollment and automatic escalation features could be subject to significant penalties if even honest mistakes are made. Section 113 would ease these concerns by allowing for a grace period to correct, without penalty, reasonable errors in administering these automatic enrollment and automatic escalation features. The errors must be corrected prior to 9 ½ months after the end of the plan year in which the mistakes were made.

Section 114, One-year reduction in period of service requirement for long-term, part-time workers. The SECURE Act requires employers to allow long-term, part-time workers to participate in their 401(k) plans. As women are more likely to work part-time than men, this provision is particularly important for women in the workforce. The SECURE Act provision provides that except in the case of collectively bargained plans, employers maintaining a 401(k) plan must have a dual eligibility requirement under which an employee must complete either a one year of service requirement (with the 1,000-hour rule) or *three* consecutive years of service where the employee completes at least 500 hours of service. Section 114 reduces the three-year rule to two years. The section also provides that pre-2021 service is disregarded for vesting purposes, just as such service is disregarded for eligibility purposes under current law.

Section 115, Findings relating to S Corporation ESOPs. Section 115 includes findings relating to S Corporation ESOPs, including stating that it is the goal of Congress to preserve and foster employee ownership of S Corporations through ESOPs.

Title II – Preservation of Income

Section 201, Remove required minimum distribution barriers for life annuities. Section 201 eliminates certain barriers to the availability of life annuities in qualified plans and IRAs that arise under current law due to an actuarial test in the required minimum distribution regulations (Q&A-14(c) of Treas. Reg. § 1.401(a)(9)-6). The test is intended to limit tax deferral by precluding commercial annuities from providing payments that start out small and increase excessively over time. In operation, however, the test commonly prohibits many important guarantees that provide only modest benefit increases under life annuities. For example, guaranteed annual increases of only 1 or 2%, return of premium death benefits, and period certain guarantees for participating annuities are commonly prohibited by this test. Without these types of guarantees, many individuals are unwilling to elect a life annuity under a defined contribution plan or IRA.

Section 202, Qualifying longevity annuity contracts.

In 2014, the Treasury Department published final regulations on qualifying longevity annuity contracts (“QLACs”). QLACs are generally deferred annuities that begin payment at the end of an individual’s life expectancy. Because payments start so late, QLACs are an inexpensive way for retirees to hedge the risk of outliving their savings in defined contribution plans and IRAs.

The minimum distribution rules were an impediment to the growth of QLACs in DC plans and IRAs because those rules generally require payments to commence at age 72, before QLACs begin payments. The 2014 regulations generally exempted QLACs from the minimum distribution rules until payments commence. However, due to a lack of statutory authority to provide a full exemption, the regulations imposed certain limits on the exemption that have prevented QLACs from achieving their intended purpose in providing longevity protection.

Section 202 would address these limitations by repealing the 25% limit. The section also would facilitate the sales of QLACs with spousal survival rights – and clarify that free-look periods are permitted up to 90 days.

Section 203, Insurance-dedicated exchange-traded funds. Exchange-traded funds (ETFs) are pooled investment vehicles that are traded on stock exchanges. They are similar to mutual funds, except the shares can be traded throughout the day on the stock market, rather than having to be held until after the market closes. ETFs are widely available through retirement plans, IRAs, and taxable investment accounts. However, outdated Treasury regulations have prevented ETFs from being widely available through individual variable annuities. Simply because the regulations were written before ETFs existed, ETFs cannot satisfy the regulatory requirements to be “insurance-dedicated.”

Section 203 directs the Treasury Department to update the regulations to reflect the ETF structure. The update would provide that ownership of an ETF’s shares by certain types of institutions that are necessary to the ETF’s structure would not preclude look-through treatment for the ETF, as long as it otherwise satisfies the current-law requirements for look-through treatment. This essentially would facilitate the creation of a new type of ETF that is “insurance-dedicated.”

Title III – Simplification and Clarification of Retirement Plan Rules

Section 301, Recovery of retirement plan overpayments. Sometimes retirees mistakenly receive more money than they are owed under their retirement plans. These mistakes cause problems when they occur over time, and plan fiduciaries later seek to recover the overpayments from unsuspecting retirees. When an overpayment has lasted for years, plans often compel retirees to repay the amount of the overpayment, plus interest, which can be substantial. Even small overpayment amounts can create a hardship for a retiree living on a fixed income. Section 301 would allow retirement plan fiduciaries the latitude to decide not to recoup overpayments that were mistakenly made to retirees. If plan fiduciaries choose to recoup overpayments, limitations and protections apply to safeguard innocent retirees. This protects

both the benefits of future retirees and the benefits of current retirees. In addition, rollovers of the overpayments would remain valid, which is another important protection for participants.

Section 302, Reduction in excise tax on certain accumulations in qualified retirement plans.

Section 302 reduces the penalty for failure to take required minimum distributions from 50 to 25 percent. If a failure to take a required minimum distribution from an IRA is corrected in a timely manner (as defined under the bill), the excise tax on the failure is further reduced from 25 percent to 10 percent.

Section 303, Performance benchmarks for asset allocation funds. The Labor Department's participant disclosure regulation requires that each designated investment alternative's historical performance be compared to an appropriate broad-based securities market index. Thus, for example, if the plan offers an equity fund on its menu, the plan will show participants the 1-, 5-, and 10-year returns of the equity fund and the returns of an appropriate index like the S&P 500, because the S&P 500 represents an index of the same asset class. Unfortunately, the rule does not adequately address increasingly popular investments like target date funds that include a *mix* of asset classes.

Section 303 directs the Department of Labor to modify its regulations so that an investment that uses a mix of asset classes can be benchmarked against a blend of broad-based securities market indices, provided (a) the index blend reasonably matches the fund's asset allocation over time, (b) the index blend is reset at least once a year, and (c) the underlying indices are appropriate for the investment's component asset classes and otherwise meet the rule's conditions for index benchmarks. This change in the disclosure rule would allow better comparisons and aid participant decision-making.

Section 304, Review and report to the Congress relating to reporting and disclosure requirements. Section 304 directs the Treasury Department, Labor Department, and PBGC to review the current ERISA and Code reporting and disclosure requirements and make recommendations to Congress to consolidate, simplify, standardize and improve such requirements.

Section 305, Eliminating unnecessary plan requirements related to unenrolled participants.

Under current law, employees eligible to participate in a retirement plan are required to receive a broad array of notices that are intended to inform them of their various options and rights under the plan. In the case of eligible employees who have not elected to participate in the plan ("unenrolled participants"), these notices, such as notices regarding the different investment options available under the plan, are generally unnecessary, and can even have adverse effects on savings and coverage.

Under the legislation, defined contribution plans would cease to be required to provide intermittent ERISA or Internal Revenue Code notices to unenrolled participants. However, to further encourage participation of unenrolled participants, the plan would still be required to send (1) an annual reminder notice of the participant's eligibility to participate in the plan and any applicable election deadlines, and (2) any otherwise required document requested at any time by the participant. This rule would only apply with respect to an unenrolled participant who

received all required notices, including the summary plan description, in connection with initial eligibility under the plan.

Section 306, Retirement savings lost and found. Every year, thousands of people approach retirement but are unable to find and receive the benefits that they earned often because the company they worked for moved, changed its name, or merged with a different company. Similarly, every year there are employers around the country ready to pay benefits to retirees, but they are unable to find the retirees because the former employees changed their names or addresses. Section 306 creates a national, online, lost and found for Americans' retirement plans. The section also directs the Department of Labor, in consultation with Treasury, to issue regulations on what plan fiduciaries need to do to satisfy their fiduciary duties in trying to find missing participants.

Section 307, Expansion of Employee Plans Compliance Resolution System. Because of the ever growing complexity of retirement plan administration, the legislation would expand the Employee Plans Compliance Resolution System (EPCRS) to (1) allow more types of errors to be corrected internally through self-correction, (2) apply to inadvertent IRA errors, and (3) exempt certain failures to make required minimum distributions from the otherwise applicable excise tax. For example, the bill would allow for correction of many plan loan errors through self-correction. These are a frequent area of error and it can be burdensome to go to the IRS to correct a single loan error.

Section 308, Eliminate the “first day of the month” requirement for governmental section 457(b) plans. Under current law, participants in a governmental 457(b) plan must request changes in their deferral rate prior to the beginning of the month in which the deferral will be made. This rule does not exist for other defined contribution plans. Section 308 would allow such elections to be made at any time prior to the date that the compensation being deferred is available.

Section 309, One-time election for qualified charitable distribution to split-interest entity. Section 309 expands the IRA charitable distribution provision to allow for a one-time, \$50,000 distribution to charities through charitable gift annuities, charitable remainder unitrusts, and charitable remainder annuity trusts. The section also would index for inflation the annual IRA charitable distribution limit of \$100,000.

Section 310, Distributions to firefighters. Under current law, if an employee terminates employment after age 55 and takes a distribution from a retirement plan, the 10% early distribution tax does not apply. However, there is a special rule for “qualified public safety employees” in governmental plans, under which age 50 is substituted for age 55 for purposes of this exception from the 10% tax. This exemption applies to public sector firefighters, but not private sector firefighters. Section 310 extends the age 50 rule to private sector firefighters, who merit the same treatment.

Section 311, Exclusion of certain disability-related first responder retirement payments. Section 311 permits first responders to exclude service-connected disability pension payments from gross income after reaching retirement age.

Section 312, Individual retirement plan statute of limitations for excise tax on excess contributions and certain accumulations. Under current law, the statute of limitations for taxes for prohibited transactions, excess contributions, or required minimum distribution failures starts as of the date that a return is filed for the violation. Section 312 provides instead that the statute of limitations starts when the taxpayer files an individual tax return for the year of the violation. This provides relief from the statute of limitations for violations of which taxpayers were not aware and thus did not file a return.

Section 313, Requirement to provide paper statements in certain cases. Section 313 amends ERISA to generally provide that with respect to defined contribution plans, unless a participant elects otherwise, the plan is required to provide a paper benefit statement at least once annually. The other three quarterly statements required under ERISA are not subject to this rule (i.e., they can be provided electronically). For defined benefit plans, unless a participant elects otherwise, the statement that must be provided once every three years under ERISA must be a paper statement.

Section 314, Separate application of top heavy rules to defined contribution plans covering excludible employees. Under current law, qualified retirement plans must pass the top-heavy test, in addition to other nondiscrimination tests. Plans that are deemed top-heavy are required to provide employees with a minimum of a 3% of pay nonelective contribution, which is a significant cost to small businesses. Other nondiscrimination tests that apply to 401(k) plans allow an employer to test otherwise excludable employees (e.g., those who are under age 21 and have less than one year of service) separately. This was intended to encourage plan sponsors to permit employees to defer earlier than the minimum age and service conditions permitted under the law because it reduces the situations where plans would fail the nondiscrimination tests if these employees were included when performing the test. However, this separate testing is not allowed for the top-heavy test.

Small business retirement plans often do not cover excludable employees because if the plan is or becomes top heavy, the employer may be required to contribute a top-heavy employer contribution for all employees who are eligible to participate in the plan, straining the budget for these small businesses.

Section 314 allows an employer to perform the top-heavy test separately on the non-excludable and excludable employees. This would remove the financial incentive to exclude employees from the 401(k) plan and increase retirement plan coverage to more workers.

Section 315, Repayment of qualified birth or adoption distribution (“QBAD”) limited to 3 years. The SECURE Act included a provision that allows individuals to receive distributions from their retirement plan in the case of birth or adoption without paying the 10% additional tax under Code Section 72(t). The distributions can be recontributed to a retirement plan at any time and are treated as rollovers. The problem with current law is the allowance of recontributions at any time. Code Section 6511 prevents a refund from being provided to a taxpayer after the period of limitations for the return has closed, which is generally a 3-year period. Thus, there would not be a mechanism under the Code allowing someone who took a birth/adoption distribution to recontribute the distribution more than 3 years later and amend his/her return to

receive a refund for the taxes that were paid in the year of the withdrawal. Therefore, section 315 amends the QBAD provision to restrict the recontribution period to 3 years.

Section 316, Employer may rely on employee certifying that hardship distribution conditions are met. Section 316 provides that, under certain circumstances, employees will be permitted to self-certify that they have had an event that constitutes a hardship for purposes of taking a hardship withdrawal. This is a logical step in light of the success of the coronavirus-related distribution self-certification rules and the current hardship regulations that already permit employees to self-certify that they don't have other funds available to address a hardship.

Section 317, Penalty-free withdrawals from retirement plans for individuals in case of domestic abuse. A domestic abuse survivor may need money to escape an unsafe situation. Section 317 would allow retirement plans to permit participants that self-certify that they experienced domestic abuse to withdraw a small amount of money (the lesser of \$10,000 and 50 percent of the participant's account). A distribution made under this provision would not be subject to a 10 percent tax on early distributions. Additionally, a participant would have the opportunity to repay the withdrawn money to the retirement plan over 3 years and would be refunded for income taxes on money that is repaid.

Section 318, Reform of family attribution rule. Under the tax code, certain related businesses must be aggregated when performing the coverage and nondiscrimination tests. The aggregation rules are generally based on the degree of common ownership of the businesses. For example, if an individual owns 100% of two separate businesses, they must be aggregated for purposes of the tests. In determining the level of ownership in a business, the tax laws have certain attribution rules whereby an individual is deemed to own stock held by other individuals or entities. Section 318 would update two of the stock attribution rules.

Section 319, Amendments to increase benefit accruals under plan for previous plan year allowed until employer tax return due date. Section 201 of the SECURE Act permits an employer to adopt a new retirement plan by the due date of the employer's tax return for the fiscal year in which the plan is effective. Current law, however, provides that plan amendments to an existing plan must generally be adopted by the last day of the plan year in which the amendment is effective. This precludes an employer from adding plan provisions that may be beneficial to participants. Section 319 amends these provisions to allow discretionary amendments that increase participants' benefits to be adopted by the due date of the employer's tax return.

Section 320, Retroactive first year elective deferrals for sole proprietors. Under the SECURE Act, an employer may establish a new 401(k) plan after the end of the taxable year, but before the employer's tax filing date and treat the plan as having been established on the last day of the taxable year. Such plans may be funded by employer contributions up to the employer's tax filing date. Section 320 allows these plans, when they are sponsored by sole proprietors or single-member LLCs, to receive employee contributions up to the date of the employee's tax return filing date for the initial year.

Section 321, Limiting cessation of IRA treatment to portion of account involved in a prohibited transaction. When an individual engages in a prohibited transaction with respect to his or her IRA, the IRA is disqualified and treated as distributed to the individual, irrespective of the size of the prohibited transaction. Under section 321, only the portion of the IRA account used in a prohibited transaction is treated as distributed.

Title IV – Technical Amendments

Section 401, Technical amendments relating to Setting Every Community Up for Retirement Enhancement Act of 2019. The bill includes three technical corrections to the SECURE Act.

First, the bill clarifies that all defined benefit plan participants (other than 5% owners) who retire after the year that they turn 70 ½ are entitled to an actuarial adjustment for the post-70 ½ period for which they are not receiving distributions.

The second technical correction relates to Section 116 of the SECURE Act, which amended Code section 408(o) to increase the amount that may be contributed to an IRA to include difficulty of care payments. However, no corresponding change was made to section 4973, which is the excise tax on excess contributions to an IRA, to account for this increase in contribution limits. The legislation makes this corresponding change to Code section 4973 in line with the intent of the provision.

Third, Section 113 of the SECURE Act revised Code section 72(t)(2)(H)(vi)(IV) to provide that any qualified birth or adoption distribution shall be treated as meeting the requirements of section 403(b)(7)(A)(ii). The cite should actually be to 403(b)(7)(A)(i) and the legislation fixes that error.

Title V – Administrative Provisions

Section 501, Provision relating to plan amendments. Section 501 allows plan amendments made pursuant to this bill to be made by the end of 2023 (2025 in the case of governmental plans) as long as the plan operates in accordance with such amendments as of the effective date of a bill requirement or amendment. The bill also conforms the plan amendment dates under the SECURE Act, the CARES Act, and the Taxpayer Certainty and Disaster Tax Relief Act of 2020 to these new dates (instead of 2022 and 2024).

Title VI – Revenue Provisions

Section 601, SIMPLE and SEP Roth IRAs. Generally all plans that allow pre-tax employee contributions also are permitted to accept Roth contributions with one exception – SIMPLE IRAs. 401(k), 403(b), and governmental 457(b) plans are allowed to accept Roth employee contributions. Section 601 would allow SIMPLE IRAs to accept Roth contributions as well.

In addition, aside from grandfathered salaried reduction simplified employee pension plans, under current law, simplified employee pension plans (“SEPs”) can only accept employer money

and not on a Roth basis. Section 601 would allow employers to offer employees the ability to treat employee and employer SEP contributions as Roth (in whole or in part).

Section 602, Hardship rules for 403(b) plans. Under current law, the distribution rules for 401(k) and 403(b) are different in certain ways that are historical anomalies for varied reasons. For example, for 401(k) plans, all amounts are available for a hardship distribution. For 403(b) plans, in some cases, only employee contributions (without earnings) are available for hardship distributions. The legislation would conform the 403(b) rules to the 401(k) rules.

Section 603, Certain retirement plan catch-up contributions required to be Roth contributions. Under current law, catch-up contributions to a qualified retirement plan can be made on a pre-tax or Roth basis (if permitted by the plan sponsor). Section 603 provides that effective January 1, 2022, all catch-up contributions to qualified retirement plans would be subject to Roth tax treatment.

Section 604, Optional treatment of employer matching contributions as Roth contributions. Under current law, plan sponsors are not permitted to provide employer matching contributions in their 401(k), 403(b) and governmental 457(b) plans on a Roth basis. Matching contributions must be on a pre-tax basis only. Section 604 allows defined contribution plans to provide participants with the option of receiving matching contributions on a Roth basis.