



# Super Seminar

## SECURE 2.0 ACT OF 2022 OVERVIEW

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## **Putting Education into Practice**

What I Learned	Clients Affected & Actions to Take

What I Learned	Clients Affected & Actions to Take

## Introduction

The SECURE 2.0 Act of 2022 was included as Division T of the Consolidated Appropriations Act, 2023, an omnibus bill to fund the government through September 30, 2023 that was signed by President Biden on December 29, 2022. It continues the retirement-related tax changes started with the SECURE Act, which became law in 2019.

This course covers the SECURE 2.0 provisions most likely to be seen in tax practice. Please see the Appendix for a comprehensive summary of all SECURE 2.0 Act of 2022 provisions.

This course will cover changes in six areas:

1. Increased retirement account contributions
2. Increased Roth account access
3. Revised required minimum distribution (RMD) rules
4. New and revised tax credits
5. New and revised 10% additional tax exceptions
6. New and increased tax-free income opportunities

## Increased Retirement Account Contributions

### Automatic Enrollment in Retirement Plans

Sec. 101 requires certain 401(k) and 403(b) plans to automatically enroll participants upon becoming eligible. This section applies to plan years beginning after December 31, 2024.

Exceptions to the requirement include:

- SIMPLE plans
- Plans established before December 29, 2022
- Businesses with 10 or fewer employees
- Businesses in existence less than three years
- Certain church and governmental plans

Existing §45T provides an auto-enrollment tax credit of \$500 per year for up to three tax years. An eligible employer that is required to auto-enroll employees under this provision may qualify for this tax credit. An eligible employer for §45T is one with no more than 100 employees who received at least \$5,000 of compensation from the employer for the preceding year.

### IRA Catch-up Contribution Indexing

Under current law, individuals can contribute an additional \$1,000 to an IRA beginning in the tax year they turn age 50.

Sec. 108 indexes the \$1,000 catchup amount to inflation in \$100 increments beginning in tax year 2024. This is effective for tax years beginning after December 31, 2023.

### Higher Catch-up Amounts

Under current law, employees who attain age 50 can make catch-up contributions under a retirement plan exceeding the normal contribution limits. For tax year 2023, the catch-up amount is \$7,500 for all defined contribution plans except for SIMPLEs, which is \$3,500.

Sec. 109 increases the catch-up amount for individuals who are aged 60, 61, 62, or 63. Starting in tax year 2025, the increased catch-up amount is the greater of \$10,000 (\$5,000 for SIMPLEs) or 150% of the normal catch-up amount. The higher amount is then inflation-indexed. This is effective for tax years beginning after December 31, 2024.

### Student Loan Payment Matching

Sec. 110 allows employers to make retirement matching contributions under a 401(k), 403(b), or SIMPLE IRA with respect to an employee's qualified student loan payments. This is effective for contributions made for plan years beginning after December 31, 2023.

### Nonelective SIMPLE Contributions

Employers with SIMPLE plans must make contributions to employees of either 2% of compensation or 3% of employee elective deferral contributions.

Sec. 116 permits employers to make additional contributions to employees in a uniform percentage which do not exceed the lesser of \$5,000 (indexed) or 10% of compensation. This is effective for tax years beginning after December 31, 2023.

### Elective SIMPLE Contributions

In tax year 2023, an employee can defer up to \$15,500 into a SIMPLE plan.

Sec. 117 makes two changes:

1. For employers with no more than 25 employees, the deferral increases to 110% of the unadjusted 2024 amount, and

2. For employers with 26 to 100 employees, higher deferrals are permitted if the employer provides either a 4% matching contribution or a 3% employer contribution.

This is effective for tax years beginning after December 31, 2023.

#### Domestic Employee Retirement Plan

Sec. 118 permits employers of household employees to provide retirement benefits under a SEP.

This is effective for tax years beginning after December 29, 2022.

#### Retroactive Sole Proprietor Deferrals

Under the original SECURE Act, an employer could establish a new 401(k) plan prior to the tax return filing date and elect to treat the plan as established on the last day of the tax year. Plans subject to this election could be funded by employer contributions up to the tax return filing date, but employee contributions were not permitted retroactively.

Sec. 317 allows an individual who owns an unincorporated business (including a single-member LLC) 401(k) plan and is the sole participant in the plan to make employee contributions up to the tax return filing date for the plan's initial year if the prior year election is made. This is effective for plan years beginning after December 29, 2022.

### **Increased Roth Account Access**

#### 529 Plan Rollovers to Roth IRAs

Sec. 126 authorizes tax-free and penalty-free rollovers from a 529 college savings plan to the beneficiary's Roth IRA in certain circumstances. There is a lifetime \$35,000 limit for the beneficiary. This is effective for distributions after December 31, 2023.

The 529 plan of a designated beneficiary must have been maintained for the 15-year period ending on the date of the distribution. Amounts contributed (and earnings attributable) in the five-year period ending on the distribution date cannot be transferred.

The rollover must be made in a direct trustee-to-trustee transfer. For Roth IRA purposes, the transfer is treated as a qualified rollover contribution, and subject to the annual IRA contribution limit. Any reduction in the maximum Roth IRA contribution due to MAGI is disregarded for this provision.

## SIMPLE and SEP Roth Contributions

Sec. 601 permits SIMPLE IRAs to accept Roth contributions, and SEP employee (SARSEP) and employer contributions can be Roth in whole or in part. Employer Roth contributions are taxable to employees. This is effective for tax years beginning after December 31, 2022.

## Roth Catch-up Contributions

Sec. 603 requires all catch-up contributions to qualified retirement plans to be Roth contributions for individuals whose wages in the preceding calendar year were more than \$145,000 (inflation-adjusted). This is effective for tax years beginning after December 31, 2023.

## Employer Roth Contributions

Under current law, employer contributions to a 401(k), 403(b), or governmental 457(b) are required to be pre-tax.

Sec. 604 allows defined contribution plans to allow participants to receive matching and/or non-elective contributions as Roth contributions included in the participant's gross income. This is effective for contributions made after December 29, 2022.

## Examples

*Example 1.* In tax year 2024, Theresa is age 30 with unused 529 plan funds. She is the beneficiary, and her parents opened the account in the year 2000. Theresa, who is married, makes the maximum \$1,000 Roth IRA contribution due to MAGI limitations.

Assuming all other requirements are met, including sufficient earned income, she can transfer \$5,500 from the 529 plan to the Roth IRA (assuming \$6,500 is the tax year 2024 IRA limit).

*Example 2.* In tax year 2024, Ursula is age 58 and a full-time employee. Her employer offers her a 401(k) plan, and she plans to contribute the maximum amount. In tax year 2023, her total wages were \$162,000.

Assuming the 2024 401(k) limits are the same as 2023, Ursula can contribute \$22,500 pre-tax; however, the \$7,500 catch-up amount must be a Roth contribution.

## Revised RMD Rules

### Increase in RMD Age

Retirement plan participants generally must begin taking required minimum distributions (RMD) in the tax year they reach a designated age. Prior to the SECURE Act, the age was 70.5. Starting on January 1, 2020, the age increased to 72.

Sec. 107 makes two additional changes:

1. Starting on January 1, 2023, the age increases to 73.
2. Starting on January 1, 2033, the age increases to 75.

This is effective for distributions required to be made after December 31, 2022, with respect to individuals who reach age 72 after December 31, 2022.

### Reduction in RMD Excise Tax

Under prior law, §4974 imposes a 50% excise tax on RMD amounts not taken by a taxpayer.

Sec. 302 makes two changes:

1. The excise tax is reduced to 25%, and
2. The excise tax is reduced to 10% if there is a distribution of the missed RMD within a specified timeframe.

This is effective for tax years beginning after December 29, 2022.

The correction window begins on the date the excise tax is imposed on the RMD amounts not taken. The correction window ends on the earlier of:

- Notice of deficiency mailing date for the RMD excise tax,
- The date the RMD excise tax is assessed, or
- The last day of the second tax year beginning after the end of the tax year in which the excise tax is imposed.

SECURE 2.0 did not change §4974(d), which allows the IRS to waive the RMD excise tax if the RMD shortfall was due to reasonable error, and reasonable steps are being taken to remedy the shortfall. The IRS has not provided guidance on how it will implement the waiver process considering these changes.

## RMD Excise Tax Statute of Limitations

Under current law, the statute of limitations on the excise tax owed on excess contributions under §4973 and failure to take the proper RMD amount under §4974 only begins to run when Form 5329, *Additional Taxes on Qualified Plans (including IRAs) and Other Tax-Favored Accounts*, is filed by the taxpayer.

Sec. 313 provides for the following limitation periods:

- For the §4973 excise tax, six years from the Form 1040 filing date (except for bargain sale to the IRA), and
- For the §4974 excise tax, three years from the Form 1040 filing date.

For both taxes, if an individual is not required to file Form 1040, the limitation period starts on the Form 1040 unextended due date.

This is effective on December 29, 2022.

## Roth RMD Rules for Employer Plans

There are no RMDs for a Roth IRA prior to the owner's death.

Sec. 325 eliminates the pre-death distribution requirement for Roth accounts in employer plans. This is effective for tax years beginning after December 31, 2023, but not to distributions required for years beginning before January 1, 2024 that are permitted to be paid on or after such date.

## Surviving Spouse Election

Sec. 327 allows a surviving spouse to elect to be treated as the deceased account owner for purposes of the RMD rules. A surviving spouse who makes this election would begin RMDs no earlier than the required beginning date of the deceased person. This is effective for calendar years beginning after December 31, 2023.

## Examples

*Example 3.* Opal and Robert are married. Opal turned age 72 on December 21, 2022, and Robert turned age 72 on January 3, 2023:

- Opal's first RMD is for tax year 2022. The amount is based on her December 31, 2021 account balance. She must take the RMD no later than April 1, 2023.
- Robert's first RMD is for tax year 2024. The amount is based on his December 31, 2023 account balance. He must take the RMD no later than April 1, 2025.

*Example 4.* In tax year 2023, Janice fails to take her RMD of \$4,100 from her IRA. Assuming no NOD is issued, or excise tax is assessed, the correction period ends on December 31, 2025:

- If Janice takes a \$4,100 corrective distribution during the correction period, the 10% excise tax is \$410.
- If Janice does not take a corrective distribution during the correction period, the 25% excise tax is \$1,025.

*Example 5.* Same situation as Example 4. Assume Janice does not take a corrective distribution within the correction period. Janice is liable for the 25% excise tax of \$1,025.

If Janice filed her 2023 Form 1040 prior to April 15, 2024, the IRS has until April 15, 2027 to assess the additional tax.

## New & Revised Tax Credits

### Retirement Plan Startup Credit

Existing §45E provides a 50% tax credit for certain retirement plan startup expenses up to \$5,000 per year. The credit is available for up to three tax years. An eligible employer has no more than 100 employees who received at least \$5,000 of compensation during the tax year preceding the first credit year.

A creditable expense does **not** include any expense in connection with a plan that does not have at least one employee eligible to participate who is **not** a highly compensated employee. This credit is part of the §38 general business credit.

Sec. 102 makes two credit enhancements:

1. 100% credit for employers with up to 50 employees, and
2. Additional credit for employer contributions (not to defined benefit plans) up to \$1,000 per employee: 100% credit in years one and two, 75% in year three, 50% in year four, 25% in year five, and no credit in year six and later, and this component phases out for employers with 51 to 100 employees.

This is effective for tax years beginning after December 31, 2022.

### Saver's Match

Under current law, existing §25B provides a nonrefundable personal credit for retirement account contributions.

Sec. 103 repeals §25B and adds §6433 to provide a refundable saver's match that will be directly deposited into a retirement account. This is effective for tax years beginning after December 31, 2026.

The match amount is 50% of IRA or retirement plan contributions up to \$2,000 per individual and phases out based on modified adjusted gross income (MAGI):

- \$41,000 to \$71,000 for married filing joint and surviving spouses,
- \$30,750 to \$53,250 for head of household, and
- \$20,500 to \$35,500 for single and married filing separately.

MAGI is AGI plus the §911, §931, and §933 exclusions as well as qualified retirement savings deductions. A taxpayer with a match of less than \$100 can elect to receive a refundable credit on the tax return. Individuals under age 18, dependents claimed on another taxpayer's return, full-time students, and nonresident aliens are ineligible.

### Military Spouse Retirement Credit

Sec. 112 creates new §45AA to incentivize small employers to give military spouses early retirement plan access. The tax credit is part of the §38 general business credit. This is effective for tax years beginning after December 29, 2022.

To qualify, an eligible small employer must:

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.

An eligible small employer is one with no more than 100 employees who received at least \$5,000 of employer compensation in the preceding tax year. The credit is \$200 per military spouse plus 100% of all employer contributions (up to \$300) made on behalf of the military spouse, for a maximum tax credit of \$500. This credit applies for three years for each military spouse that is not a highly compensated employee.

### Examples

*Example 6.* In tax year 2024, Orange Corp., an S corporation, is an eligible small employer and hires a qualifying military spouse. They contribute \$600 to the military spouse's retirement plan. Orange Corp. passes through a \$500 credit, as part of the general business credit, to its shareholders:

- \$200 base credit, plus
- \$300 maximum credit based on employer contribution.

## **New & Revised 10% Additional Tax Exceptions**

### Substantially Equal Periodic Payments Revision

Current law provides for an exception from the 10% additional tax on early withdrawals if made as part of a plan of substantially equal periodic payments.

Sec. 323 provides that the exception applies in the case of an account rollover, an exchange of an annuity providing the payments, or an annuity satisfying the RMD rules. This is effective for transfers, rollovers, and exchanges occurring after December 31, 2023, and annuity payments commencing on or after December 29, 2022.

### Qualified Public Safety Employee Distribution Revisions

Under current law, qualified public safety employees are exempt from the 10% early withdrawal additional tax if the employee terminates employment after attaining the age of 50. The SECURE 2.0 Act of 2022 makes several changes to this exclusion. These are effective for distributions made after December 29, 2022.

Sec. 308 adds service as a private-sector firefighter to the definition of a qualified public safety employee.

Sec. 330 adds services as a corrections officer or as a forensic security employee providing for the care, custody, and control of forensic patients to the definition of a qualified public safety employee.

Sec. 329 extends the exemption to distributions made after attaining the earlier of age 50 or 25 years of service.

### Qualified Birth and Adoption Distribution Revision

The SECURE Act added a new 10% early withdrawal additional tax exception for qualified birth or adoption distributions. A qualified birth or adoption distribution is one made within the one-year period beginning on the date a child is born or legally adopted. The aggregate amount allowed per taxpayer per child born or adopted is \$5,000.

Sec. 311 clarifies that the repayment period for a qualified birth or adoption distribution is the three-year period beginning on the day after the distribution was received. This is effective for distributions made after December 29, 2022; however, distributions made on or before December 29, 2022 can be repaid before January 1, 2026.

### Emergency Personal Expense Distributions

Sec. 115 adds a new 10% early withdrawal penalty exception for emergency personal expense distributions. An individual can treat up to \$1,000 in any calendar year as an

emergency personal expense distribution. This is effective for distributions made after December 31, 2023.

An emergency personal expense distribution is any distribution from an applicable eligible retirement plan to an individual for purposes of meeting unforeseeable or immediate financial needs relating to necessary personal or family emergency expenses. An administrator can rely on an employee's written certification that they meet the requirements.

An emergency personal expense distribution may be repaid within three years of the date after the date of receipt. If a taxpayer claims an emergency personal expense distribution in a calendar year, they cannot treat another distribution in the immediately following three calendar years as one unless the previous one is repaid, or the employee makes total later contributions exceeding the distribution amount.

#### Domestic Abuse Victim Distributions

Sec. 314 adds a new 10% early withdrawal penalty exception for distributions to a domestic abuse victim. The maximum amount is the lesser of \$10,000 (inflation-adjusted) or 50% of the vested account balance. The distribution may be repaid within three years of the date after the date of receipt. This provision applies to distributions made after December 31, 2023.

A distribution is eligible if made during the one-year period beginning on any date on which an individual is a victim of domestic violence by a spouse or domestic partner. Domestic abuse means physical, psychological, sexual, emotional, or economic abuse, including efforts to control, isolate, humiliate, or intimidate the victim, or to undermine the victim's ability to reason independently, including by means of abuse of the victim's child or another family member living in the household.

#### Terminal Illness Distributions

Sec. 326 adds a new 10% additional tax exception for early withdrawals for distributions to a terminally ill individual. This is effective for distributions made after December 29, 2022.

A terminally ill individual who has been certified by a physician as having an illness or physical condition which can reasonably be expected to result in death in 84 months or less after the date of the certification. The distribution may be repaid within three years of the date after the date of receipt.

#### Qualified Disaster Recovery Distributions

Sec. 331 provides permanent special tax treatment for retirement distributions in a federal disaster area. A taxpayer may treat up to \$22,000 per qualified disaster as a

qualified disaster recovery distribution. This is effective for disasters occurring on or after January 26, 2021.

A qualified disaster distribution receives three tax benefits:

1. No 10% additional tax for early withdrawals,
2. The taxable income is included ratably over three tax year period unless the taxpayer elects to include the entire amount in the distribution year, and
3. The distribution may be repaid within three years from the day after the date of receipt.

There are two requirements for a qualified disaster recovery distribution:

1. The distribution is made during the qualified disaster distribution period, and
2. The distribution is made to someone whose principal place of abode is located in the qualified disaster area and who sustained an economic loss due to the qualified disaster.

The qualified disaster distribution period for a qualified disaster will begin on the date the disaster begins and will end 179 days after whichever of the following occurs the latest:<sup>1</sup>

- The disaster beginning date,
- The disaster declaration date, or
- December 29, 2022.

Sec. 331 also has two additional disaster-related benefits:

1. Repayment is permitted for qualified first-time homebuyer distributions not used due to the qualified disaster if the distribution was received between 180 days before and 30 days after the first day of the incident period, and
2. The maximum retirement plan loan increases to \$100,000, with delayed repayment terms.

#### Corrective Distributions of Excess Contributions

Sec. 333 exempts distributions of corrective distributions and earnings allocable to the excess contributions from the 10% additional tax on early distributions. This is effective for any determination of tax, interest, or penalties made on or after December 29, 2022, regardless if the act on which the determination is made occurred before such date.

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<sup>1</sup> 2022 Form 8915-F Instructions, p.4.

## Qualified Long-Term Care Distributions

Sec. 334 permits retirement plans to distribute up to \$2,500 per year to pay certain long-term care insurance contracts. These distributions are exempt from the 10% additional tax on early distributions. This is effective for distributions made after December 30, 2025.

### Examples

*Example 7.* Mosley was eligible for qualified 2022 disaster distributions for the Virginia Severe Winter Storm and Snowstorm disaster (DR-4644-VA) (beginning date January 2, 2022). Qualified disaster distributions can be made through June 26, 2023 for that disaster, which is exactly 179 days after December 29, 2022.<sup>2</sup>

*Example 8.* Sam was eligible for qualified 2023 disaster distributions for the Georgia Severe Weather disaster (DR-4685-GA) (beginning date January 12, 2023 and declaration date January 16, 2023). Qualified disaster distributions can be made for this disaster through July 14, 2023, which is exactly 179 days after January 16, 2023.<sup>3</sup>

*Example 9.* In January 2023, Iris was certified by a physician as having an illness that can reasonably be expected to result in her death within 84 months. On March 10, 2023, Iris took a \$44,000 distribution from her traditional IRA. Iris must include the \$44,000 in income for tax year 2023, but it is exempt from the 10% additional tax.

Fast forward to tax year 2025: Iris has fully recovered from her illness. She decides to repay \$30,000 to her traditional IRA. Iris can amend her 2023 Form 1040 to remove the \$30,000 repayment amount from her gross income. Iris has until March 11, 2026 to repay the remaining \$14,000 from the terminal illness distribution.

## **Increased Tax-Free Income Opportunities**

### Expanded Qualified Charitable Distributions

Sec. 307(a) permits a one-time election in a tax year to distribute up to \$50,000 to charities indirectly through charitable gift annuities, charitable remainder unitrusts, or charitable remainder annuity trusts.

Sec. 307(b) indexes the annual \$100,000 qualified charitable distribution limit to inflation starting in tax year 2024.

This is effective for distributions made in tax years beginning after December 29, 2022.

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<sup>2</sup> Ibid.

<sup>3</sup> Ibid.

### Expanded Access to ABLE Accounts

Distributions from qualified ABLE accounts are tax-free to the extent designated beneficiaries pay for qualified disability expenses. Sec. 124 expands eligibility to individuals whose qualifying disability occurred before attaining age 46 instead of age 26. This is effective for tax years beginning after December 31, 2025.

### New First Responder Retirement Exclusion

Sec. 309 adds new §139C to exclude from gross income service-connected disability amounts related to service as a law enforcement officer, firefighter, paramedic, or emergency medical technician. This is effective for amounts received with respect to tax years beginning after December 31, 2026.

### Revised Public Safety Officer Health Insurance Exclusion

Current law provides for a \$3,000 exclusion for a distribution from a governmental retirement plan to a public safety officer to pay for health insurance premiums. Sec. 328 repeals the requirement that the plan directly pays the insurance premiums. This is effective for distributions made after December 29, 2022.

## Appendix

### Senate Finance Committee Summary

This document provides a description of every provision in the SECURE 2.0 Act of 2022.

## SECURE 2.0 Act of 2022

### As included in Division T of the “Consolidated Appropriations Act, 2023”

#### 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 the Treasury Department 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 automatic enrollment increased participation in a 401(k) plan by short-tenure Latinx employees from 19 percent to 75 percent. An Ariel/Aon-Hewitt study found that, in plans using automatic 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 respective plans upon becoming eligible (and the employees may opt out of coverage). The initial automatic enrollment amount is at least 3 percent but not more than 10 percent. Each year thereafter that amount is increased by 1 percent until it reaches at least 10 percent, but not more than 15 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., those that have been in business for less than 3 years), church plans, and governmental plans. Section 101 is effective for plan years beginning after December 31, 2024.

**Section 102, Modification of credit for small employer pension plan startup costs.** The 3-year small business startup credit is currently 50 percent 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 percent to 100 percent for employers with up to 50 employees. Except in the case of defined benefit plans, an additional credit is provided. The amount of the additional credit generally will 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 is limited to employers with 50 or fewer employees and phased out for employers with between 51 and 100 employees. The applicable percentage is 100 percent in the first and second years, 75 percent in the third year, 50 percent in the fourth year, 25 percent in the fifth year – and no credit for tax years thereafter. Section 102 is effective for taxable years beginning after December 31, 2022.

**Section 103, Saver’s Match.** Current law provides for a nonrefundable credit for certain individuals who make contributions to individual retirement accounts (“IRAs”), employer retirement plans (such as 401(k) plans), and ABLE accounts. Section 103 repeals and replaces the credit with respect to IRA and retirement plan contributions, changing it from a credit paid in cash as part of a tax refund into a federal matching contribution that must be deposited into a taxpayer’s IRA or retirement plan. The match is 50 percent of IRA or retirement plan contributions up to \$2,000 per individual. The match phases out between \$41,000 and \$71,000 in the case of taxpayers filing a joint return (\$20,500 to \$35,500 for single taxpayers and married filing separate; \$30,750

to \$53,250 for head of household filers). Section 103 is effective for taxable years beginning after December 31, 2026.

**Section 104, Promotion of Saver’s Match.** Section 104 directs the Treasury Department to increase public awareness of the Saver’s Match to increase use of the match by low and moderate income taxpayers. The promotion will make clear that the Saver’s Match cannot be withdrawn without incurring penalties, including repayment to the Treasury Department in some cases where the Saver’s Match is withdrawn from an individual retirement account before retirement. Taxpayers will have an election to designate a retirement account to receive the repaid Saver’s Match. The Treasury Secretary must report to Congress on the Treasury Department’s anticipated promotion efforts no later than July 1, 2026.

**Section 105, Pooled employer plan modification.** Section 105 clarifies that a pooled employer plan (“PEP”) may designate a named fiduciary (other than an employer in the plan) to collect contributions to the plan. Such fiduciary would be required to implement written contribution collection procedures that are reasonable, diligent, and systematic. Section 105 is effective for plan years beginning after December 31, 2022.

**Section 106, 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 Setting Every Community Up for Retirement Enhancement Act of 2019 (“SECURE Act”) made MEPs more attractive by eliminating outdated barriers to the use of MEPs and improving the quality of MEP service providers. Section 106 allows 403(b) plans, which are generally sponsored by charities, educational institutions, and non-profits, to participate in MEPs and PEPs, 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. Section 106 is effective for plan years beginning after December 31, 2022.

**Section 107, 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 SECURE Act of 2019 increased the required minimum distribution age to 72. Section 107 further increases the required minimum distribution age further to 73 starting on January 1, 2023 – and increases the age further to 75 starting on January 1, 2033.

**Section 108, 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 108 indexes such limit and is effective for taxable years beginning after December 31, 2023.

**Section 109, Higher catch-up limit to apply at age 60, 61, 62, and 63.** 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 109 increases these limits to the greater of \$10,000 or 50 percent more than the regular catch-up amount in 2025 for individuals who have attained ages 60, 61, 62 and 63. The increased amounts are indexed for inflation after 2025. Section 109 is effective for taxable years beginning after December 31, 2024.

**Section 110, Treatment of student loan payments as elective deferrals for purposes of matching contributions.** Section 110 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 110 allows such employees to receive those matching contributions by reason of repaying their student loans. Section 110 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.” A qualified student loan payment is broadly defined as any indebtedness incurred by the employee solely to pay qualified higher education expenses of the employee. Governmental employers are also permitted to make matching contributions in a section 457(b) plan or another plan with respect to such repayments. For purposes of the nondiscrimination test applicable to elective contributions, Section 110 permits a plan to test separately the employees who receive matching contributions on student loan repayments. Section 110 is effective for contributions made for plan years beginning after December 31, 2023.

**Section 111, Application of credit for small employer pension plan startup costs to employers which join an existing plan.** Section 111 ensures the startup tax credit is available for 3 years for employers joining a MEP, regardless of how long the MEP has been in existence. Under both pre- and post-SECURE Act law, the startup tax credit only applies for the first 3 years that a plan is in existence. For example, if a small business joins a MEP that has already been in existence for 3 years, the startup credit is not available. If, for example, the MEP has been existence for 1 or 2 years when a small business joins, the small business may be able to claim the credit for 1 or 2 years, respectively. Section 111 fixes this issue so that employers joining a MEP (which includes PEPs) are eligible for the credit for all 3 years. Section 111 is effective retroactively for taxable years beginning after December 31, 2019.

**Section 112, 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 retirement plan or to vest in employer contributions. Section 112 provides small employers 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 2 years of service, and (3) make the military spouse 100 percent immediately vested in all employer contributions. The tax credit equals the sum of (1) \$200 per military spouse, and (2) 100 percent of all employer contributions (up to \$300) made on behalf of the military spouse, for a maximum tax credit of \$500. This credit applies for 3 years with respect to each military spouse – and does not apply to highly compensated employees. An employer may rely on an employee’s certification that such employee’s spouse is a member of the uniformed services. Section 112 is effective for taxable years beginning after the date of enactment of this Act.

**Section 113, Small immediate financial incentives for contributing to a plan.** Under current law, employers may provide matching contributions as a long-term incentive for employees to contribute to a 401(k) plan. However, immediate financial incentives (like gift cards in small amounts) are prohibited even though individuals may be especially motivated by them to join their employers’ retirement plans. Section 113 enables employers to offer de minimis financial incentives, not paid for with plan assets, such as low-dollar gift cards, to boost employee participation in workplace retirement plans by exempting de minimis financial incentives from

section 401(k)(4)(A) and from the corresponding rule under section 403(b). Section 113 is effective for plan years beginning after the date of enactment of this Act.

**Section 114, Deferral of tax for certain sales of employer stock to employee stock ownership plan sponsored by S corporation.** Under section 1042 of the Internal Revenue Code (“Code”), an individual owner of stock in a non-publicly traded C corporation that sponsors an employee stock ownership plan (“ESOP”) may elect to defer the recognition of gain from the sale of such stock to the ESOP if the seller reinvests the sales proceeds into qualified replacement property, such as stock or other securities issued by a U.S. operating corporation. After the sale, the ESOP must own at least 30 percent of the employer corporation’s stock. Section 114 expands the gain deferral provisions of Code section 1042 with a 10 percent limit on the deferral to sales of employer stock to S corporation ESOPs. Section 114 is effective for sales made after December 31, 2027.

**Section 115, Withdrawals for certain emergency expenses.** Generally, an additional 10 percent tax applies to early distributions from tax-preferred retirement accounts, such as 401(k) plans and IRAs, unless an exception applies. Section 115 provides an exception for certain distributions used for emergency expenses, which are unforeseeable or immediate financial needs relating to personal or family emergency expenses. Only one distribution is permissible per year of up to \$1,000, and a taxpayer has the option to repay the distribution within 3 years. No further emergency distributions are permissible during the 3 year repayment period unless repayment occurs. Section 115 is effective for distributions made after December 31, 2023.

**Section 116, Allow additional nonelective contributions to SIMPLE plans.** Current law requires employers with SIMPLE plans to make employer contributions to employees of either 2 percent of compensation or 3 percent of employee elective deferral contributions. Section 116 permits an employer to make additional contributions to each employee of the plan in a uniform manner, provided that the contribution may not exceed the lesser of up to 10 percent of compensation or \$5,000 (indexed). Section 116 is effective for taxable years beginning after December 31, 2023.

**Section 117, Contribution limit for SIMPLE plans.** Under current law, the annual contribution limit for employee elective deferral contributions to a SIMPLE IRA plan is \$14,000 (2022) and the catch-up contribution limit beginning at age 50 is \$3,000. A SIMPLE IRA plan may only be sponsored by a small employer (100 or fewer employees), and the employer is required to either make matching contributions on the first 3 percent of compensation deferred or an employer contribution of 2 percent of compensation (regardless of whether the employee elects to make contributions). Section 117 increases the annual deferral limit and the catch-up contribution at age 50 by 10 percent, as compared to the limit that would otherwise apply in the first year this change is effective, in the case of an employer with no more than 25 employees. An employer with 26 to 100 employees would be permitted to provide higher deferral limits, but only if the employer either provides a 4 percent matching contribution or a 3 percent employer contribution. Section 117 makes similar changes to the contribution limits for SIMPLE 401(k) plans. Section 117 is effective for taxable years beginning after December 31, 2023. The Secretary of Treasury shall report to Congress on data related to SIMPLE IRAs by December 31, 2024, and annually thereafter.

**Section 118, Tax treatment of certain nontrade or business SEP contributions.** Section 118 permits employers of domestic employees (e.g., nannies) to provide retirement benefits for such employees under a Simplified Employee Pension (“SEP”). Section 118 is effective for taxable years beginning after date of enactment of this Act.

**Section 119, Application of section 415 limit for certain employees of rural electric cooperatives.** Under current law, section 415 generally limits the amount that may be paid by a pension plan in annual benefits to a participant to the lesser of \$245,000 (2022) or 100 percent of the participant’s average compensation. Section 119 eliminates the compensation-based limit for participants who are non-highly compensated employees and participate in a rural electric cooperative retirement plan. Section 119 is effective for limitation years ending after the date of enactment of this Act.

**Section 120, Exemption for certain automatic portability transactions.** Under current law, an employer is permitted to distribute a participant’s account balance without participant consent if the balance is under \$5,000 and the balance is immediately distributable (e.g., after a termination of employment). Current law also requires an employer to roll over this distribution into a default IRA if the account balance is at least \$1,000 and the participant does not affirmatively elect otherwise. Section 120 permits a retirement plan service provider to provide employer plans with automatic portability services. Such services involve the automatic transfer of a participant’s default IRA (established in connection with a distribution from a former employer’s plan) into the participant’s new employer’s retirement plan, unless the participant affirmatively elects otherwise. Section 120 is effective for transactions occurring on or after the date which is 12 months after the date of enactment of this Act.

**Section 121, Starter 401(k) plans for employers with no retirement plan.** Section 121 permits an employer that does not sponsor a retirement plan to offer a starter 401(k) plan (or safe harbor 403(b) plan). A starter 401(k) plan (or safe harbor 403(b) plan) would generally require that all employees be default enrolled in the plan at a 3 to 15 percent of compensation deferral rate. The limit on annual deferrals would be the same as the IRA contribution limit, which for 2022 is \$6,000 with an additional \$1,000 in catch-up contributions beginning at age 50. Section 121 is effective for plan years beginning after December 31, 2023.

**Section 122, Assist States in locating owners of applicable savings bonds.** To facilitate efforts to locate the owners of matured and unredeemed savings bonds, Section 122 requires the Treasury Secretary to share certain relevant information with a state that relates to an applicable savings bond registered to an owner with a last known or registered address in that state. The state is permitted to use that information to locate the registered owner in accordance with the state’s standards for recovery of abandoned property. Section 122 further requires the Treasury Secretary to develop guidance as may be necessary to carry out the proper disclosure and protection of such information. The Treasury Secretary also is required to submit to the Senate Appropriations and Finance Committees and House Appropriations and Ways and Means Committees an annual report assessing its efforts to provide states with information on unclaimed savings bonds. Section 122 is effective on the date of enactment of this Act.

**Section 123, Certain securities treated as publicly traded in case of employee stock ownership plans.** Section 123 updates certain ESOP rules related to whether a security is a “publicly traded employer security” and “readily tradeable on an established securities market.” Section 123 allows certain non-exchange traded securities to qualify as “publicly traded employer securities” so long as the security is subject to priced quotations by at least four dealers on a Securities and Exchange Commission-regulated interdealer quotation system, is not a penny stock and is not issued by a shell company, and has a public float of at least 10 percent of outstanding shares. For securities issued by domestic corporations, the issuer must publish annual audited financial statements.

Securities issued by foreign corporations are subject to additional depository and reporting requirements. The updated definitions in Section 123 will allow highly regulated companies with liquid securities that are quoted on non-exchange markets to treat their stock as “public” for ESOP purposes, thus making it easier for these companies to offer ESOPs to their U.S. employees. Section 123 is effective for plan years beginning after December 31, 2027.

**Section 124, Modification of age requirement for qualified ABLE programs.** Current law allows states to create qualified ABLE programs, which are tax-advantaged savings programs for certain people with disabilities. Distributions from an ABLE account are tax-free if used for qualified disability expenses of the account’s designated beneficiary. Section 124 increases the age by which blindness or disability must occur for an individual to be an eligible individual by reason of such blindness or disability for an ABLE program. Section 124 is effective for taxable years beginning after December 31, 2025.

**Section 125, Improving coverage for part-time workers.** The SECURE Act requires employers to allow long-term, part-time workers to participate in the employers’ 401(k) plans. 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 1 year of service (with the 1,000-hour rule) or 3 consecutive years of service (where the employee completes at least 500 hours of service). Section 125 reduces the 3 year rule to 2 years, effective for plan years beginning after December 31, 2024. Section 125 also provides that pre-2021 service is disregarded for vesting purposes, just as such service is disregarded for eligibility purposes under current law, effective as if included in the SECURE Act to which the amendment relates. This provision also extends the long-term part-time coverage rules to 403(b) plans that are subject to ERISA.

**Section 126, Special rules for certain distributions from long-term qualified tuition programs to Roth IRAs.** Section 126 amends the Internal Revenue Code to allow for tax and penalty free rollovers from 529 accounts to Roth IRAs, under certain conditions. Beneficiaries of 529 college savings accounts would be permitted to rollover up to \$35,000 over the course of their lifetime from any 529 account in their name to their Roth IRA. These rollovers are also subject to Roth IRA annual contribution limits, and the 529 account must have been open for more than 15 years.

Families and students have concerns about leftover funds being trapped in 529 accounts unless they take a non-qualified withdrawal and assume a penalty. This has led to hesitating, delaying, or declining to fund 529s to levels needed to pay for the rising costs of education. Section 126 eliminates this concern by providing families and students with the option to avoid the penalty, resulting in families putting more into their 529 account. Families who sacrifice and save in 529 accounts should not be punished with tax and penalty years later if the beneficiary has found an alternative way to pay for their education. They should be able to retain their savings and begin their retirement account on a positive note. Section 126 is effective with respect to distributions after December 31, 2023.

**Section 127, Emergency savings accounts linked to individual account plans.** Though individuals can save on their own, far too many fail to do so. According to a report by the Federal Reserve, almost half of Americans would struggle to cover an unexpected \$400 expense. Many

are forced to tap into their retirement savings. A recent study found that, in the past year, almost 60 percent of retirement account participants who lack emergency savings tapped into their long-term retirement savings, compared to only 9 percent of those who had at least a month of emergency savings on hand. Separating emergency savings from one's retirement savings account will provide participants a better understanding that one account is for short-term emergency needs and the other is for long-term retirement savings, thus empowering employees to handle unexpected financial shocks without jeopardizing their long-term financial security in retirement through emergency hardship withdrawals.

Section 127 provides employers the option to offer to their non-highly compensated employees pension-linked emergency savings accounts. Employers may automatically opt employees into these accounts at no more than 3 percent of their salary, and the portion of an account attributable to the employee's contribution is capped at \$2,500 (or lower as set by the employer). Once the cap is reached, the additional contributions can be directed to the employee's Roth defined contribution plan (if they have one) or stopped until the balance attributable to contributions falls below the cap. Contributions are made on a Roth-like basis and are treated as elective deferrals for purposes of retirement matching contributions with an annual matching cap set at the maximum account balance – i.e., \$2,500 or lower as set by the plan sponsor. The first four withdrawals from the account each plan year may not be subject to any fees or charges solely on the basis of such withdrawals. At separation from service, employees may take their emergency savings accounts as cash or roll it into their Roth defined contribution plan (if they have one) or IRA.

**Section 128, Enhancement of 403(b) plans.** Under current law, 403(b) plan investments are generally limited to annuity contracts and publicly traded mutual funds. This limitation cuts off 403(b) plan participants – generally, employees of charities and public schools, colleges, and universities – from access to collective investment trusts, which are often used by 401(a) plans to expand investment options for plan participants at a lower overall cost. Section 128 would permit 403(b) custodial accounts to participate in group trusts with other tax-preferred savings plans and IRAs, and would be effective after date of enactment.

## Title II – Preservation of Income

**Section 201, Remove required minimum distribution barriers of 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. 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 percent, 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 201 is effective for calendar years ending after the date of enactment of this Act.

**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 defined contribution 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 addresses these limitations by repealing the 25 percent limit and allowing up to \$200,000 (indexed) to be used from an account balance to purchase a QLAC. Section 202 also facilitates the sales of QLACs with spousal survival rights – and clarifies that free-look periods are permitted up to 90 days with respect to contracts purchased or received in an exchange on or after July 2, 2014. Section 202 is effective for contracts purchased or received in an exchange on the date of enactment of this Act, and the Treasury Secretary must update the relevant regulations within 18 months of the date of enactment of this Act.

**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 Department 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 to 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.” Section 203 is effective for segregated asset account investments made on or after 7 years after the date of enactment of this Act, and directs the Treasury Secretary to update the relevant regulations by that time.

**Section 204, Eliminating a penalty on partial annuitization.** If a tax-preferred retirement account also holds an annuity, current law requires that the account be bifurcated between the portion of the account holding the annuity and the rest of the account for purposes of applying the required minimum distribution rules. This treatment may result in higher minimum distributions than would have been required if the account did not hold an annuity. Section 204 permits the account owner to elect to aggregate distributions from both portions of the account for purposes of determining minimum distributions and is effective on the date of enactment of this Act. The Treasury Secretary is to update the relevant regulations accordingly.

### **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

allows 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. Rollovers of the overpayments also remain valid. Section 301 is effective on the date of enactment of this Act, and further outlines how plan fiduciaries may proceed with respect to determinations made prior to the date of enactment of this Act to seek or not to seek recovery of overpayments.

**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. Further, if a failure to take a required minimum distribution from an IRA is corrected in a timely manner, as defined under this Act, the excise tax on the failure is further reduced from 25 percent to 10 percent. Section 302 is effective for taxable years beginning after the date of enactment of this Act.

**Section 303, 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 303 creates a national online searchable lost and found database for Americans' retirement plans at the Department of Labor ("DOL"). The database will enable retirement savers, who might have lost track of their pension or 401(k) plan, to search for the contact information of their plan administrator. Section 303 directs the creation of the database no later than 2 years after the date of enactment of this Act.

**Section 304, Updating dollar limit for mandatory distributions.** Under current law, employers may transfer former employees' retirement accounts from a workplace retirement plan into an IRA if their balances are between \$1,000 and \$5,000. Section 307 increases the limit from \$5,000 to \$7,000, effective for distributions made after December 31, 2023.

**Section 305, Expansion of Employee Plans Compliance Resolution System.** Because of the ever growing complexity of retirement plan administration, Section 305 expands 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, Section 305 allows for correction of many plan loan errors through self-correction, which are a frequent area of error and can be burdensome to correct a single loan error through the Internal Revenue Service. Section 305 is effective on the date of enactment of this Act. Any guidance or revision of guidance required by Section 305 shall be promulgated no later than 2 years after the date of enactment of this Act. Revenue Procedure 2021-30 (or any successor guidance) shall be updated to take into account the provisions of this section no later than 2 years after the date of enactment of this Act.

**Section 306, 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 306 allows such elections to be

made at any time prior to the date that the compensation being deferred is available. Section 306 is effective for taxable years beginning after the date of enactment of this Act.

**Section 307, One-time election for qualified charitable distribution to split-interest entity; increase in qualified charitable distribution limitation.** Section 307 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, effective for distributions made in taxable years beginning after the date of enactment of this Act. Section 307 also indexes for inflation the annual IRA charitable distribution limit of \$100,000, effective for distributions made in taxable years ending after the date of enactment of this Act.

**Section 308, Distribution to firefighters.** Under current law, if an employee terminates employment after age 55 and takes a distribution from a retirement plan, the 10 percent 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 percent tax. This exemption applies to public sector firefighters, but not private sector firefighters. Section 308 extends the age 50 rule to private sector firefighters, who merit the same treatment for distributions. Section 308 is effective for distributions made after the date of enactment of this Act.

**Section 309, Exclusion of certain disability-related first responder treatment payments.** Section 309 permits first responders to exclude service-connected disability pension payments from gross income after reaching retirement age. Section 309 is effective for amounts received in taxable years beginning after December 31, 2026.

**Section 310, Application of top heavy rules to defined contribution plans covering excludable 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 percent 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 1 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 310 allows an employer to perform the top-heavy test separately on the non-excludable and excludable employees. This removes the financial incentive to exclude employees from the 401(k) plan and increase retirement plan coverage to more workers. Section 310 is effective for plan years beginning after December 31, 2023.

**Section 311, Repayment of qualified birth or adoption distribution 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 percent additional tax under Code section 72(t) (known as a qualified birth or adoption distribution, or “QBAD”). 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 their return to receive a refund for the taxes that were paid in the year of the withdrawal. Section 311 amends the QBAD provision to restrict the recontribution period to 3 years. Section 311 is effective to distributions made after the date of the enactment of this Act and retroactively to the 3 year period beginning on the day after the date on which such distribution was received.

**Section 312, Employer may rely on employee certifying that deemed hardship distribution conditions are met.** Section 312 provides that, under certain circumstances, employees are 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 do not have other funds available to address a hardship. Section 312 is effective for plan years beginning after the date of enactment of this Act.

**Section 313, Individual retirement plan statute of limitations for excise tax on excess contributions and certain accumulations.** Under current law, the statute of limitations for excise taxes imposed on excess contributions, or required minimum distribution failures start running as of the date that a specific excise tax return (Form 5329) is filed for the violation. Individuals often are not aware of the requirement to file Form 5329, and this can lead to an indefinite period of limitations that can cause hardship for taxpayers due to the accumulation of interest and penalties (see *Paschall v. C.I.R.*, 137 T.C. 8 (2011)). In order to provide finality for taxpayers in the administration of these excise taxes, Section 313 provides that a 3 year period of limitations begins when the taxpayer files an individual tax return (Form 1040) for the year of the violation, except in the case of excess contributions, in which case the period of limitations runs 6 years from the date Form 1040 is filed. There is a further exception from this 6 year rule for taxes that arise out of a bargain sale to the IRA. In general, these changes are intended to ensure that there is a reasonable period of limitations for violations of which taxpayers were not aware and thus did not file an excise tax return, while retaining existing law in fact scenarios that involve a bargain sale. Section 313 is effective on the date of enactment of this Act.

**Section 314, Penalty-free withdrawal from retirement plans for individual case of domestic abuse.** A domestic abuse survivor may need to access his or her money in their retirement account for various reasons, such as escaping an unsafe situation. Section 314 allows 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, indexed for inflation, or 50 percent of the participant's account). A distribution made under Section 314 is not subject to the 10 percent tax on early distributions. Additionally, a participant has the opportunity to repay the withdrawn money from the retirement plan over 3 years and will be refunded for income taxes on money that is repaid. Section 314 is effective for distributions made after December 31, 2023.

**Section 315, Reform of family attribution rule.** Under the 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. 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 315 updates two stock attribution rules. The first update addresses inequities where spouses with separate businesses reside in a community property state when compared to spouses who reside in separate property states. The second update modifies the attribution of stock between parents and minor children. Section 315 is effective for plan years beginning after December 31, 2023.

**Section 316, Amendments to increase benefit accruals under plan for previous plan year allowed until employer tax return due date.** 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 316 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 316 is effective for plan years beginning after December 31, 2023.

**Section 317, 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 317 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 317 is effective for plan years beginning after the date of enactment of this Act.

**Section 318, Performance benchmarks for asset allocation funds.** The DOL's participant disclosure regulation requires that each designated investment alternative's historical performance be compared to an appropriate broad-based securities market index. However, the rule does not adequately address increasingly popular investments like target date funds that include a mix of asset classes. Section 318 directs the Labor Secretary to update the DOL's 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 allows better comparisons and aids participant decision-making. The DOL is to update its regulations no later than two years after enactment of this Act. Section 318 also requires DOL to report to Congress on the effectiveness of its benchmarking requirements no later than 3 years after the applicability date of the regulations.

**Section 319, Review and report to Congress relating to reporting and disclosure requirements.** Section 319 directs the Treasury Department, DOL, and Pension Benefit Guaranty Corporation to review reporting and disclosure requirements for pension plans as soon as practicable after enactment of this Act. Section 319 further directs the agencies to make recommendations to Congress to consolidate, simplify, standardize, and improve such requirements no later than 3 years after the date of enactment of this Act.

**Section 320, 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.

Section 320 no longer requires employers provide certain intermittent ERISA or Code notices to unenrolled participants who have not elected to participate in a workplace retirement plan. However, to further encourage participation of unenrolled participants, the plan is 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 applies only with respect to an unenrolled participant who received the summary plan description, in connection with initial eligibility under the plan, and any other notices related to eligibility under the plan required to be furnished. Section 320 is effective for plan years beginning after December 31, 2022.

**Section 321, Review of pension risk transfer interpretive bulletin.** Section 321 requires the DOL to review the current interpretive bulletin governing pension risk transfers to determine whether amendments are warranted and to report to Congress its finding, including an assessment of any risk to participant, no later than 1 year after enactment of this Act.

**Section 322, Tax treatment of IRA involved in a prohibited transaction.** When an individual engages in a prohibited transaction with respect to their IRA, the IRA is disqualified and treated as distributed to the individual, irrespective of the size of the prohibited transaction. Section 322 clarifies that if an individual has multiple IRAs, only the IRA with respect to which the prohibited transaction occurred will be disqualified. Section 322 is effective for taxable years beginning after the date of enactment of this Act.

**Section 323, Clarification of substantially equal periodic payment rule.** Current law imposes a 10 percent additional tax on early distributions from tax-preferred retirement accounts, but an exception applies to substantially equal periodic payments that are made over the account owner’s life expectancy. Section 323 provides that the exception continues to apply in the case of a rollover of the account, an exchange of an annuity providing the payments, or an annuity that satisfies the required minimum distribution rules. Section 323 is effective for transfers, rollovers, exchanges after December 31, 2023 and effective for annuity distributions on or after the date of enactment of this Act.

**Section 324, Treasury guidance on rollovers.** Section 324 requires the Treasury Secretary to simplify and standardize the rollover process by issuing sample forms for direct rollovers that may be used by both the incoming and outgoing retirement plan or IRA. Development and release of the sample forms must be completed no later than January 1, 2025.

**Section 325, Roth plan distribution rules.** Under current law, required minimum distributions are not required to begin prior to the death of the owner of a Roth IRA. However, pre-death distributions are required in the case of the owner of a Roth designated account in an employer retirement plan (e.g., 401(k) plan). Section 325 eliminates the pre-death distribution requirement for Roth accounts in employer plans, effective for taxable years beginning after December 31, 2023. Section 325 does not apply to distributions which are required with respect to years beginning before January 1, 2024, but are permitted to be paid on or after such date.

**Section 326, Exception to penalty on early distributions from qualified plans for individuals with a terminal illness.** Under current law, an additional 10 percent tax applies to early distributions from tax-preferred retirement accounts. Section 326 provides an exception to the tax in the case of a distribution to a terminally ill individual and would be effective for distributions made after the date of enactment of this Act.

**Section 327, Surviving spouse election to be treated as employee.** Section 327 allows a surviving spouse to elect to be treated as the deceased employee for purposes of the required minimum distribution rules. Section 327 is effective for calendar years beginning after December 31, 2023.

**Section 328, Repeal of direct payment requirement on exclusion from gross income of distributions from governmental plans for health and long-term care insurance.** Current law provides an exclusion from gross income (\$3,000) for a distribution from a governmental retirement plan to a public safety officer to pay for their health insurance premiums. The exclusion requires that the plan directly pay the insurance premiums. Section 328 repeals the direct payment requirement and is effective for distributions made after the date of enactment of this Act.

**Section 329, Modification of eligible age for exemption from early withdrawal penalty.** The 10 percent additional tax on early distributions from tax preferred retirement savings plans does not apply to a distribution from a governmental plan to a public safety officer who is at least age 50. Section 329 extends the exception to public safety officers with at least 25 years of service with the employer sponsoring the plan and is effective for distributions made after the date of enactment of this Act.

**Section 330, Exemption from early withdrawal penalty for certain State and local government corrections employees.** Section 330 extends the public safety officer exception to the 10 percent early distribution tax to corrections officers who are employees of state and local governments, effective for distributions made after the date of enactment of this Act.

**Section 331, Special rules for use of retirement funds in connection with qualified federally declared disasters.** Section 331 provides permanent rules relating to the use of retirement funds in the case of a federally declared disaster. The permanent rules allow up to \$22,000 to be distributed from employer retirement plans or IRAs for affected individuals. Such distributions are not subject to the 10 percent additional tax and are taken into account as gross income over 3 years. Distributions can be repaid to a tax preferred retirement account. Additionally, amounts distributed prior to the disaster to purchase a home can be recontributed, and an employer is permitted to provide for a larger amount to be borrowed from a plan by affected individuals and for additional time for repayment of plan loans owed by affected individuals. Section 331 is effective for disasters occurring on or after January 26, 2021.

**Section 332, Employers allowed to replace SIMPLE retirement accounts with safe harbor 401(k) plans during a year.** Section 332 allows an employer to replace a SIMPLE IRA plan with a SIMPLE 401(k) plan or other 401(k) plan that requires mandatory employer contributions during a plan year, and is effective for plan years beginning after December 31, 2023.

**Section 333, Elimination of additional tax on corrective distributions of excess contributions.** Current law requires a distribution if too much is contributed to an IRA. The corrective distribution includes the excessive contribution and any earnings allocable to that contribution. Section 333

exempts the excess contribution and earnings allocable to the excess contribution from the 10 percent additional tax on early distributions, and is effective for any determination of, or affecting, liability for taxes, interest, or penalties which is made on or after the date of enactment of this Act, without regard to whether the act (or failure to act) upon which the determination is based occurred before such date of enactment.

**Section 334, Long-term care contracts purchased with retirement plan distributions.** Section 334 permits retirement plans to distribute up to \$2,500 per year for the payment of premiums for certain specified long term care insurance contracts. Distributions from plans to pay such premiums are exempt from the additional 10 percent tax on early distributions. Only a policy that provides for high quality coverage is eligible for early distribution and waiver of the 10 percent tax. Section 334 is effective 3 years after date of enactment of this Act.

**Section 335, Corrections of mortality tables.** Section 335 generally requires that for purposes of the minimum funding rules, a pension plan is not required to assume beyond the plan's valuation date future mortality improvements at any age greater than 0.78 percent. The Treasury Secretary shall amend the relevant regulation on the matter within 18 months, though Section 335 shall be deemed to take effect on the date of enactment of this Act.

**Section 336, Report to Congress on section 402(f) notices.** Section 402(f) notices are given by employer retirement plans in the case of a distribution to a participant that is eligible for rollover to another tax preferred retirement account and describes distribution options and tax consequences. Section 336 requires the Government Accountability Office to issue a report to Congress on the effectiveness of section 402(f) notices within 18 months after the date of enactment of this Act.

**Section 337, Modification of required minimum distribution rules for special needs trust.** The SECURE Act placed limits on the ability of beneficiaries of defined contribution retirement plans and IRAs to receive lifetime distributions after the account owner's death. Special rules apply in the case of certain beneficiaries, such as those with a disability. Section 337 clarifies that, in the case of a special needs trust established for a beneficiary with a disability, the trust may provide for a charitable organization as the remainder beneficiary. Section 337 is effective for calendar years beginning after the date of enactment of this Act.

**Section 338, Requirement to provider paper statements in certain cases.** Section 338 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 3 years under ERISA must be a paper statement. The Labor Secretary must update the relevant sections of their regulations and corresponding guidance by December 31, 2024, and the annual paper statement is effective for plan years beginning after December 31, 2025.

**Section 339, Recognition of tribal government domestic relations orders.** Section 339 adds Tribal courts to the list of courts authorized under federal law to issue qualified domestic relations orders. Section 339 is effective to domestic relations orders received by plan administrators after December 31, 2022, including any such order which is submitted for reconsideration after such date.

**Section 340, Defined contribution plan fee disclosure improvements.** Section 340 builds on recommendations recently made to the DOL by the Government Accountability Office, and requires the agency to review its fiduciary disclosure requirements in participant-directed individual account plan regulations. A report must be submitted to Congress within 3 years on such findings, including recommendations for legislative changes.

**Section 341, Consolidation of defined contribution plan notices.** Current law requires certain retirement plan notices to be provided to participants as individual notices. Section 341 directs the Treasury and DOL Secretaries within 2 years to amend regulations to permit a plan to consolidate certain required plan notices.

**Section 342, Information needed for financial options risk mitigation act.** Section 342 requires pension plan administrators to provide plan participants and retirees with critical information that would allow people considering what is best for their financial futures to compare between benefits offered under the plan and the lump sum, and would explain how the lump sum was calculated, the ramifications of accepting a lump sum, such as the loss of certain federal protections, details about the election period, where to follow up with questions, and other information. The DOL Secretary must issue regulations implementing this provision not earlier 1 year after enactment. Such regulations must be applicable not earlier than the issuance of a final rule and not later than 1 year after issuance of a final rule.

**Section 343, Defined benefit annual funding notices.** Section 343 aims identify defined benefit pension plan funding issues more clearly on a plan's annual funding notice. Section 343 is effective for plan years beginning after December 31, 2023.

**Section 344, Report on pooled employer plans.** Section 344 requires the DOL Secretary to conduct a study on the new and growing pooled employer plan industry. A report on the findings of the study must be completed within 5 years, with subsequent reports completed every 5 years thereafter.

**Section 345, Annual audits for group of plans.** Under current law, generally, a Form 5500 for a defined contribution plan must contain an opinion from an independent qualified public accountant as to whether the plan's financial statements and schedules are fairly presented. However, no such opinion is required with respect to a plan covering fewer than 100 participants. Section 345 clarifies that plans filing under a Group of Plans need only to submit an audit opinion if they have 100 participants or more. In other words, DOL and Treasury would continue to receive full audit information on at least the number of plans as under current law. Section 345 is effective on the date of enactment of this Act.

**Section 346, Worker Ownership, Readiness, and Knowledge (WORK) Act.** Section 346 boosts employee ownership programs through the DOL, which may make grants to promote employee ownership through existing and new programs. Funds are authorized to be appropriated for the purpose of making grants for fiscal years 2025 to 2029.

**Section 347, Report by the Secretary of Labor in the impact of inflation on retirement savings.** Section 347 directs the DOL Secretary, in consultation with the Treasury Secretary, to study the impact of inflation on retirement savings and submit a report to Congress within 90 days on the findings of the study.

**Section 348, Cash balance.** Section 348 clarifies the application of the Code and ERISA's rules, prohibiting the backloading of benefit accruals, as they relate to hybrid plans that credit variable interest. Specifically, Section 348 clarifies that, for purposes of the applicable Code and ERISA rules, the interest crediting rate that is treated as in effect and as the projected interest crediting rate is a reasonable projection of such variable interest rate, subject to a maximum of 6 percent. This clarification will allow plan sponsors to provide larger pay credits for older longer service workers. Section 348 is effective for plan years beginning after the date of enactment of this Act.

**Section 349, Termination of variable rate premium indexing.** Section 349 removes the "applicable dollar amount" language in the rules for determining the premium fund target for purposes of unfunded vested benefits and replaces it with a flat \$52 for each \$1,000 of unfunded vested benefits. Section 349 is effective on the date of enactment of this Act.

**Section 350, Safe harbor for corrections of employee elective deferral failures.** Under current law, 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. The Internal Revenue Service has issued guidance on the correction of failures relating to default enrollment of employees into retirement plans. This guidance includes a safe harbor, which expires December 31, 2023, that permits correction if notice is given to the affected employee, correct deferrals commence within certain specified time periods, and the employer provides the employee with any matching contributions that would have been made if the failure had not occurred. Employers are concerned about the lapse of the safe harbor at the end of 2023. Section 350 eases these concerns by allowing for a grace period to correct, without penalty, reasonable errors in administering these automatic enrollment and automatic escalation features. Errors must be corrected prior to 9 ½ months after the end of the plan year in which the mistakes were made. Section 350 is effective to errors after December 31, 2023.

## **Title IV – Technical Amendments**

**Section 401, Amendments relating to Setting Every Community Up for Retirement Enhancement Act of 2019.** Section 401 includes three technical and five clerical amendments to the SECURE Act. These amendments are effective as if included in the section of the SECURE Act to which the amendment relates.

## **Title V – Administrative Provisions**

**Section 501, Provisions relating to plan amendments.** Section 501 allows plan amendments made pursuant to this Act to be made on or before the last day of the first plan year beginning on or after January 1, 2025 (2027 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. Section 501 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 2025).

## **Title VI – Revenue Provisions**

**Section 601, SIMPLE and SEP Roth IRAs.** Generally, all plans that allow pre-tax employee contributions 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 allows SIMPLE IRAs to accept Roth contributions too. 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 allows employers to offer employees the ability to treat employee and employer SEP contributions as Roth (in whole or in part). The provisions in Section 601 are effective for taxable years beginning after December 31, 2022.

**Section 602, Hardship withdrawal 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. Section 602 conforms the 403(b) rules to the 401(k) rules, effective for plan years beginning after December 31, 2023.

**Section 603, Elective deferrals generally limited to regular contribution limit.** 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 all catch-up contributions to qualified retirement plans are subject to Roth tax treatment, effective for taxable years beginning after December 31, 2023. An exception is provided for employees with compensation of \$145,000 or less (indexed).

**Section 604, Optional treatment of employer matching or nonelective 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, effective on the date of enactment of this Act.

**Section 605, Charitable conservation easements.** The tax deduction for charitable contributions of conservation easements has long played a crucial role in incentivizing the preservation of critical habitat, open spaces, and historically important areas and structures. However, since 2016 IRS has identified certain syndicated conservation easement transactions involving pass-through entities as “listed transactions” carrying a high potential for abusive tax avoidance. Section 605 disallows a charitable deduction for a qualified conservation contribution if the deduction claimed exceeds two and one half times the sum of each partner’s relevant basis in the contributing partnership, unless the contribution meets a 3 year holding period test, substantially all of the contributing partnership is owned by members of a family, or the contribution relates to the preservation of a certified historic structure. In the case of a contribution for the preservation of a certified historic structure, a new reporting requirement applies. Section 605 also provides taxpayers the opportunity to correct certain defects in an easement deed (excluding easements involved in abusive transactions) and makes certain changes to statute of limitations and penalty provisions. Section 605 is generally effective for contributions made after the date of enactment of this Act.

**Section 606, Enhancing retiree health benefits in pension plans.** Under current law, an employer may use assets from an overfunded pension plan to pay retiree health and life insurance benefits. These rules sunset at the end of 2025. Section 606 extends the sunset date to the end of

2032 and would permit transfers to pay retiree health and life insurance benefits provided the transfer is no more than 1.75 percent of plan assets and the plan is at least 110 percent funded. Section 606 is effective for transfers made on or after the date of enactment of this Act.

## **Title VII – Tax Court Retirement Provisions**

**Section 701, Provisions relating to judges of the Tax Court.** Under current law, Tax Court judges are allowed to contribute to the Thrift Savings Plan (“TSP”), but Tax Court judges are prevented from receiving TSP automatic or matching contributions. Other federal judges, in contrast, may receive automatic and matching contributions if they are not covered by a judicial retirement plan. If those judges later elect to receive judicial retirement benefits, their retired pay is offset by an amount designed to recapture those TSP automatic and matching contributions. Section 701 provides parity between other federal judges and Tax Court judges by extending the same TSP matching contributions policy to Tax Court judges. Additionally, Tax Court judges may elect to participate in a plan providing benefits for the judge’s surviving spouse and dependent children. Benefits currently vest only after the judge has performed at least 5 years of service and made contributions for at least 5 years of service. In contrast, other federal judges vest after 18 months of service, and the 18-month period is waived if the judge is assassinated. Section 701 provides parity between other federal judges and Tax Court judges by applying the 18-month vesting period and assassination waiver to Tax Court judges. Lastly, Section 701 provides that compensation earned by retired Tax Court judges (i.e., those who are disabled or meet the recall requirements) for teaching is not treated as outside earned income for purposes of limitations under the Ethics in Government Act of 1978, and makes technical amendments to coordinate Tax Court judicial retirement with the Federal Employees Retirement System (“FERS”) and the retirement and survivors’ annuities plans. Section 701 is effective on the date of enactment of this Act, unless otherwise stated.

**Section 702, Provisions relating to special trial judges of the Tax Court.** Special trial judges of the Tax Court are the only judicial officers who do not have an option to participate in a judicial retirement program. Section 702 establishes a retirement plan under which a special trial judge may elect to receive retired pay in a manner and under rules similar to the regular judges of the Court. The provision provides parity between special trial judges of the Tax Court and other federal judges. Eligible special trial judges are permitted to elect to receive retired pay 180 days after enactment of this Act, including special trial judges who retire on or after the date of enactment and before the date that is 180 days afterwards.