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Summary of House-Passed SECURE 2.0 Legislation

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On March 29, the House overwhelmingly passed H.R. 2954, the Securing a Strong Retirement Act of 2021 ("SSRA"), by a vote of 414-5. The below alert (also contained in a PDF here) contains Groom's summary of the legislation as passed by the chamber.

The SSRA contains provisions from the version of the bill approved by the House Ways and Means Committee in May 2021 and from the Education and Labor Committee's RISE Act (H.R. 5891) approved in November 2021.

The SSRA takes the bulk of its provisions from the Ways and Means version of the bill, including:

- requiring automatic enrollment in new plans;
- phasing in an increase in the required minimum distribution age;
- allowing a higher catch-up limit; and
- facilitating matching contributions with respect to student loan repayments.

From the RISE Act, the legislation includes:

- increasing retirement plan access for part-time workers;
- allowing employers to offer small financial incentives, such as low-dollar gift cards, to increase plan participation; and
- changes to pooled employer plans.

Provisions specific to governmental and tax-exempt plans in the merged bill include:

- allowing 403(b) MEPs/PEPs;
- eliminating the "first day of the month" rule for 457(b) plans; and
- conforming the 403(b) hardship withdrawal rules to those of 401(k) rules.

The version passed by the House did contain a few notable changes from the bills approved by the committees last year, including:

- an expanded and simplified Saver's Credit;
- dropping the securities law amendment that would allow 403(b)s to invest in collective investment trusts; and
- a streamlined federal Retirement Savings Lost and Found online database.

The SSRA now heads to the Senate, where the Finance and Health, Education, Labor and Pensions ("HELP") Committees are working on their own legislation. Rather than accept the SSRA as sent over by the House, Finance and HELP Committee members will likely look to pull popular provisions from an assortment of retirement bills that have been introduced in the Senate, including measures by Finance Chairman Ron Wyden (D-OR), HELP Chairwoman Patty Murray (D-WA), and Senators Ben Cardin (D-MD) and Rob Portman (R-OH). The Finance Committee currently plans to hold a markup of its bill later this spring.

It is unclear whether the Senate will pass a retirement bill this year. As demonstrated by the SSRA's vote, however, there is clearly bipartisan support for many of the measures currently under consideration. Further, some key retirement champions have announced that they will retire at the end of the year, which may be an impetus for passage. As was the case in past efforts to enact retirement legislation, the best chance for enactment likely will be through hitching a ride on a must-pass, year-end package.

TITLE I—EXPANDING COVERAGE AND INCREASING RETIREMENT SAVINGS		
Bill Section	Current Law	House-Passed Text
Sec. 101. Expanding automatic enrollment in retirement plans	Automatic enrollment and automatic escalation may be used by 401(k) and 403(b) plans, but are not currently required.	New 401(k) and 403(b) plans must include automatic enrollment with a default rate of between 3% and 10%, as well as automatic escalation of 1% per year up to a maximum of at least 10%, but no more than 15%. Raises cap on permissible automatic escalation for safe harbor plans to 15%; cap for non-safe harbor plans raised to 10% in any

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		year ending before 2025 (and 15% for years ending in 2025 or after). Exemptions: governmental plans, church plans, small employers with 10 or fewer employees, SIMPLE 401(k) plans, new employers that have been in existence for less than 3 years. Existing plans established before the date of enactment are exempt, except grandfathering does not apply to employers adopting an existing multiple employer plan ("MEP") after the date of enactment. Effective for plan years beginning after December 31, 2023.
Sec. 102. Modification of credit for small employer pension plan start-up costs	Small employers with fewer than 100 employees may be eligible for a three-year start-up credit that is up to 50% of administrative costs, up to a maximum yearly cap of $5,000.	Increases credit to 100% of qualified start-up costs for employers with up to 50 employees. Provides for an additional credit for 5 years of up to $1,000 per employee equal to the applicable percentage of eligible employer contributions to an eligible employer plan (not including a defined benefit plan). This credit applies to employers with up to 50 employees and is phased out for employers with between 51 and 100 employees. Effective for tax years beginning after 2022.
Sec. 103. Promotion of Saver's Credit	Eligible taxpayers receive a nonrefundable income tax credit for contributions up to $2,000 with respect to a percentage of their	Requires Treasury to take steps to increase public awareness of the Saver's Credit and report to Congress within 90 days. Effective for tax years beginning after enactment.

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	qualified retirement savings contributions.	
Sec. 104. Enhancement of Saver's Credit	The existing Saver's Credit employs a tiered percentage system ranging from 10-50% based on Adjusted Gross Income ("AGI") to determine the amount of the credit.	Enhances and simplifies the Saver's Credit by creating one credit percentage (with no tiers) of 50% for all savers below the AGI threshold (*e.g.*, $48,000 for joint filers), at which point the credit phases out. Effective for tax years beginning after December 31, 2026.
Sec. 105. Enhancement of 403(b) plans	403(b) plan investments are generally limited to annuity contracts and mutual funds. Assets of a 403(b) custodial account cannot be commingled in a group trust with any assets other than those of a regulated investment company.	Amends the Internal Revenue Code (but, unlike the prior version approved by the Ways and Means Committee, not the securities laws) to allow 403(b) plans with custodial accounts to invest in collective investment trusts (81-100 group trusts). Effective for amounts invested after December 31, 2022.
Sec. 106. Increase in age for required beginning date for mandatory distributions	Currently, as established by the 2019 SECURE Act, required minimum distributions generally must begin by age 72. Prior to January 1, 2020, the age at which required minimum distributions were required to begin was 70½.	Increases required minimum distribution age to 73 beginning in 2023, 74 beginning in 2030, and 75 beginning in 2033. Effective for distributions after December 31, 2022 for individuals attaining age 72 after that date.
Sec. 107. Indexing IRA catch-up limit	Currently, annual IRA catch-up contributions for those who are age	Indexes IRA catch-up contributions in $100 increments in the same manner as the indexing for regular IRA contributions.

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	50 or over are a flat $1,000 and are not indexed for inflation.	Effective for tax years beginning after December 31, 2023.
Sec. 108. Higher catch-up limit to apply at age 62, 63, and 64	Currently, individuals age 50 and over are allowed to make catch-up contributions to 401(k), 403(b), governmental 457(b), and SIMPLE plans, and the annual catch-up contribution limits are generally indexed for inflation. In 2022, the maximum catch-up contribution for non-SIMPLE plans is $6,500, and $3,000 for SIMPLEs.	Increases the limit on catch-up contributions for individuals age 62-64 in non-SIMPLE 401(k) plans to the lesser of: 1) $10,000 (indexed for inflation); or (2) the participant's compensation for the year reduced by any other elective deferrals of the participant for the year. Increases the limit on catch-up contributions for individuals age 62-64 in SIMPLEs to the lesser of (1) $5,000 (indexed for inflation); or (2) the participant's compensation for the year reduced by any other elective deferrals of the participant for the year. Effective for tax years beginning after December 31, 2023.
Sec. 109. Pooled employer plans modification	Current law requires that PEPs designate a bank trustee to collect contributions and implement written collection procedures.	A PEP may designate any named fiduciary (other than an employer in the plan) to collect contributions and implement written collection procedures. Effective for plan years beginning after December 31, 2022.
Sec. 110. Multiple employer 403(b) plans	The SECURE Act provided for the creation of PEPs, which allowed unrelated employers to join the same plan while still being considered one plan for purposes ERISA. PEPs are not subject to the same DOL commonality requirements as closed	Provides that 403(b) plans can be established and maintained as a MEP/PEP under rules similar to qualified plans. Provides that 403(b) and qualified plan MEPs operate under the same rules. Provides relief from the "one bad apple rule" for 403(b) MEPs/PEPs that satisfy rules similar to the qualified plan rules. Effective for plan years beginning after December 31, 2022.

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	MEPs. 403(b) plans were not included in these provisions in 2019.	
Sec. 111. Treatment of student loan payments as elective deferrals for purposes of matching contributions	Currently, a matching contribution cannot be made based on student loan repayments. The IRS has ruled (through a private letter ruling, and more general guidance is pending) that a plan design that provides for a nonelective employer contribution can be based on student loan repayments without violating the contingent benefit rule.	Employer contributions made on behalf of employees for "qualified student loan payments" are treated as matching contributions, so long as certain requirements are satisfied. Applies to 401(k), 403(b), and SIMPLE IRAs, and 457(b) plans. Notably, a plan may treat a qualified student loan payment as an elective deferral or an elective contribution (as applicable) for purposes of the matching contribution requirement under a basic safe harbor 401(k) plan or an automatic enrollment safe harbor 401(k) plan, as well as for purposes of the Section 401(m) safe harbors. Employers are permitted to apply the ADP test separately to employees who receive matching contributions on account of qualified student loan payments. Effective for plan years beginning after December 31, 2022.
Sec. 112. Application of credit for small employer pension plan startup costs to employers which join an existing plan	Present law provides a nonrefundable income tax credit equal to 50% of the qualified start-up costs paid or incurred during the taxable year by an employer with fewer than 100 employees that adopts a new eligible employer plan, provided that the plan covers at least one non-highly compensated employee.	Clarifies that the first credit year is the taxable year that includes the date that the eligible employer plan to which such costs relate becomes effective with respect to the eligible employer. This means that small employers that join a MEP are entitled to the start-up credit for their first three years in the MEP. Effective as if included in section 104 of the SECURE Act.

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	The credit applies for up to three years beginning with the year the plan is first effective, or, at the election of the employer, with the year preceding the first plan year.	
Sec. 113. Military spouse retirement plan eligibility credit for small employers	N/A	Creates a new, nonrefundable income tax credit for eligible small employers that employ military spouses and allow them to participate in the employer's defined contribution plan (subject to special rules). The credit is $250 per employee, plus up to $250 for contributions made by the employer, and applies for up to 3 years. Effective for taxable years beginning after the date of enactment.
Sec. 114. Small immediate financial incentives for contributing to a plan	The current law contingent benefit rule prohibits 401(k) and 403(b) plan participants from receiving financial incentives (other than matching contributions) for contributing to a plan.	Allows participants to receive de minimis financial incentives for contributing to a 401(k) or 403(b) plan by providing an exemption from the contingent benefit rule and providing relief from the Code and ERISA prohibited transaction rules. Effective for plan years beginning after the date of enactment.
Sec. 115. Safe harbor for correction of employee elective deferral failures	The IRS' Employee Plans Compliance Resolution System ("EPCRS") contains rules allowing plans to correct errors, including with respect to missed deferrals under automatic enrollment or automatic escalation features.	Creates a safe harbor that a plan will not fail to be a qualified plan merely because of a "reasonable administrative error" in administering automatic enrollment or automatic escalation features so long as that error is corrected within 9 ½ months of the end of the plan year in which the error occurred and is resolved favorably toward the participant and without discrimination

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		toward similarly situated participants. The safe harbor is available for 401(a), 403(b) and 457(b) plans and IRAs. Effective for any errors with respect to which the date that is nine and one-half months after the end of the plan year during which the error occurred is after the date of enactment.
Sec. 116. One-year reduction in period of service requirement for long-term, part-time workers	Under current law as amended by the SECURE Act, 401(k) plans generally must permit an employee to contribute to a plan if the employee worked at least 500 hours per year with the employer for at least three consecutive years and has met the minimum age requirement (age 21) by the end of the three-consecutive year period.	Reduces from three to two the required years of service before long-term, part-time workers are eligible to contribute to a plan. Also clarifies that pre-2021 service is disregarded for vesting of employer contributions. Generally effective for plan years beginning after December 31, 2022 (except for the clarification of pre-2021 service for vesting purposes that is effective as if included in the SECURE Act, so effective for plan years beginning after December 31, 2020).
Sec. 117. Deferral of tax for certain sales of employer stock to employee stock ownership plan sponsored by S corporation	Under current law, an individual owner of stock in a non-publicly traded C corporation that sponsors an 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	Expands the gain deferral provisions under existing law, with a 10% limit on the deferral, to sales of employer stock to S corporation ESOPs. Effective for deferrals made after December 31, 2027.

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	the sale, the ESOP must own at least 30% of the employer corporation's stock.	
Sec. 118. Certain securities treated as publicly traded in case of employee stock ownership plans	Current law specifies whether a security is a "publicly traded employer security" and "readily tradeable on an established securities market" for the purposes of ESOPs.	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 an SEC-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. Effective for plan years beginning after December 31, 2026.

TITLE II—PRESERVATION OF INCOME		
Bill Section	Current Law	House-Passed Text
Sec. 201. Remove required minimum distribution ("RMD") barriers for life annuities	All annuity payments must be nonincreasing or only increase following the limited exceptions. One exception is for annuity contracts purchased from insurance	Amends the RMD rules to relax these rules and permits commercial annuities that are issued in connection with any eligible retirement plan to provide additional types of payments, such as certain lump sum payments and annual payment increases at a rate less than 5% annually. Effective upon enactment.

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	companies, which permits increases that meet an actuarial test. The current annuities actuarial test does not permit certain guarantees such as certain guaranteed annual increases, return of premium death benefits, and period certain guarantees for participating annuities.	
Sec. 202. Qualifying longevity annuity contracts ("QLACs")	Existing regulations limit the premiums an individual can pay for a QLAC to the lesser of $135,000 or 25% of the individual's account balance. It also provides for other restrictions on non-spouse death benefits.	Eliminates the 25% requirement. Clarifies that a divorce occurring after a QLAC is purchased but before payments begin will not affect the permissibility of the joint and survivor benefits under the contract. Further clarifies that employees may rescind a contract during the 90-day trial period ("short free look period"). Generally effective for contracts purchased on or after enactment. For joint and survivor annuity contracts and the short free look period, the provisions are effective for contracts purchased on or after July 2, 2014.
Sec. 203. Insurance-dedicated exchange-traded funds ("ETF")	The investment assets held in the segregated asset account for a variable annuity or life insurance contract must be adequately diversified. If the assets are not adequately diversified, the variable	Directs the Secretary of the Treasury to revise the regulations setting forth diversification requirements with respect to variable contracts to facilitate the use of ETFs. Effective for investments made on or after the date that is seven years after the date of enactment.

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	contract is not treated as an annuity or life insurance contract.	

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Sec. 301. Recovery of retirement plan overpayments	Fiduciaries for plans that have mistakenly overpaid a participant must take reasonable steps to recoup such overpayment, such as collecting the overpayment from the participant or employer in order to maintain the tax-qualified status of the plan and comply with ERISA. EPCRS includes various procedures for correcting overpayments made from defined benefit and defined contribution plans. The PBGC also has overpayment recoupment policies for terminating defined benefit plans.	A 401(a), 403(a), 403(b), and governmental plan (not including a 457(b) plan) will not fail to be a tax favored plan merely because the plan fails to recover an "inadvertent benefit overpayment" or otherwise amends the plan to permit this increased benefit. There is also fiduciary relief for failure to make the plan whole. However, the plan sponsor must still satisfy minimum funding requirements and prevent/restore an impermissible forfeiture. Alternatively, if the plan sponsor elects to offset future plan payments to recover the overpayment, restrictions will be imposed on the offset. Moreover, restrictions will be imposed on collection efforts from the participant (*e.g.*, no interest, must recover within 3 years, etc.). In certain cases, the overpayment is also treated as an eligible rollover distribution.

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		Effective upon enactment with certain retroactive relief for prior good faith interpretations of existing guidance.
Sec. 302. Reduction in excise tax on certain accumulations in qualified retirement plans	Existing law imposes an excise tax on an individual if the amount distributed to an individual during a taxable year is less than the RMD under the plan for that year. The excise tax is equal to 50% of the shortfall (that is, 50% of the amount by which the required minimum distribution exceeds the actual distribution). (The excise tax may be abated under a reasonable cause exception.)	Reduces the excise tax for failure to take RMDs from 50% of the shortfall to 25%. Further reduces the excise tax to 10% if the individual corrects the shortfall during a two-year correction window. Effective for taxable years beginning after December 31, 2022.
Sec. 303. Performance benchmarks for asset allocation funds	Existing regulations require a plan fiduciary to supply certain performance and benchmark data to participants about their investment options.	Requires the Secretary of Labor to modify existing regulations within one year of enactment to provide that, in the case of a designated investment alternative which contains a mix of asset classes, a plan administrator may, but is not required to, use a benchmark which is a blend of different broad-based securities market indices. Effective upon enactment.
Sec. 304. Review and report to the Congress relating to reporting and	Plans are currently required to file reports with federal agencies (*e.g.*, Form 5500) and provide numerous notices to participants (*e.g.*, Summary Plan Description).	Requires the Secretaries of Labor and the Treasury and the Director of the Pension Benefit Guaranty Corporation ("PBGC") to study the disclosure and reporting requirements on plan sponsors and submit a report to Congress addressing possible avenues for simplification, consolidation, or standardization.

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disclosure requirements		Effective upon enactment.
Sec. 305. Eliminating unnecessary plan requirements related to unenrolled participants	Under current rules, employees who choose not to participate in an employer-sponsored plan ("unenrolled participants") are required to receive numerous communications from the plan sponsor.	Amends the requirements for plan sponsor notices to unenrolled participants to consist solely of an annual notice of eligibility to participate during the annual enrollment period (and providing any document so entitled upon request). Effective for plan years beginning after December 31, 2022.
Sec. 306. Retirement savings lost and found	N/A	Directs the Department of Labor to create an online searchable "Lost and Found" database to collect information on benefits owed to missing, lost or non-responsive participants and beneficiaries in tax-qualified retirement plans and to assist such plan participants and beneficiaries in locating those benefits. This applies to tax-qualified defined benefit and defined contribution plans subject to ERISA vesting provisions. Imposes annual reporting requirements for plan sponsors and additional reporting changes. Database required within two years of enactment.
Sec. 307. Updating	Under current law, employers may immediately distribute with the consent of	Increases the involuntary cashout limit to $7,000 from $5,000. Effective for distributions made after December 31, 2022.

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dollar limit for mandatory distributions	the participant and directly rollover former employees' retirement accounts from a workplace retirement plan into an IRA if their balances are between $1,000 and $5,000.	
Sec. 308. Expansion of Employee Plans Compliance Resolution System ("EPCRS")	Under existing rules, employer sponsors of qualified plans have certain opportunities to self-correct plan errors under EPCRS. This generally involves operational failures that are insignificant (or otherwise corrected within a two year period).	Allows any eligible inadvertent failure (as defined in the bill) to be self-corrected under EPCRS (subject to any IRS imposed restrictions). This covers 401(a), 403(a), 403(b), 408(p) (SIMPLE IRAs) and 408(k) ("SEPs"). It also directs the Secretary to expand EPCRS to (1) allow custodians of IRAs to address eligible inadvertent failures, and (2) add additional safe harbors for correcting such inadvertent failures (including earnings calculations). Effective upon enactment.
Sec. 309. Eliminate the "first day of the month" requirement for governmental Section 457(b) plans	Currently, participants in a 457(b) plan generally may only defer compensation if an agreement providing for the deferral has been entered into before the first day of the month in which the compensation is paid or made available.	Conforms rule for governmental 457(b) plans to rule for 401(k) and 403(b) plans by allowing participants of governmental 457(b) plans to change their deferral rate at any time before the compensation is available to the individual. For a tax-exempt 457(b) plans, participants may defer compensation for any calendar month only if an agreement providing for such deferral has been entered into before the beginning of such month.

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		Effective for taxable years beginning after enactment.
Sec. 310. One-time election for qualified charitable distribution ("QCD") to split-interest entity; increase in qualified charitable distribution limitation	Under current law, certain charitable IRA distributions (called qualified charitable distributions) up to $100,000 are excluded from gross income of the individual. QCDs also count for minimum required distribution purposes.	Allows individuals to make a one-time election of up to $50,000 (indexed) for qualifying charitable distributions to certain split-interest entities, including charitable remainder annuity trusts, charitable remainder unitrusts, and charitable gift annuity. Indexes the $100,000 limit and new, one-time $50,000 limit to inflation. Effective for distributions made in taxable years ending after the date of enactment.
Sec. 311. Distributions to firefighters	Current law permits "qualified public safety employees" in a governmental plan to take retirement withdrawals beginning at age 50 after separation from service without incurring a 10% early withdrawal penalty.	Extends the age 50 early withdrawal exception for qualified public safety employees to also apply to private sector firefighters receiving distributions from a qualified retirement plan or 403(b) plan. Effective for distributions made after December 31, 2022.
Sec. 312. Exclusion of certain disability-related first responder	Disability-related retirement plan payments are typically included in the recipient's taxable income.	For first responders, excludes service-connected, disability pension payments (from a 401(a), 403(a), governmental 457(b), or 403(b) plan) from gross income after reaching retirement age up to an annualized excludable disability amount.

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retirement payments		Effective for amounts received with respect to taxable years beginning after December 31, 2027.
Sec. 313. Individual retirement plan statute of limitations for excise tax on excess contributions and certain accumulations	The Code imposes excise taxes on excess contributions made to IRAs (Section 4973), failures to distribute RMDs from plans and IRAs (Section 4974), and prohibited transactions involving plans and IRAs (Code Section 4975). The statute of limitations with respect to a tax liability for excess retirement contributions or other accumulations generally starts to run within three years after the tax return (or Form 5329 in certain cases) is filed, but if a return is never filed, the statute does not begin to run.	For purposes of any excise tax imposed on excess contributions or on certain accumulations in connection with an IRA, provides that the applicable return to start the statute of limitation is the income tax return filed by the person on whom the tax is imposed for the year in which the act (or failure to act) giving rise to the liability for such tax occurred. The filing of Form 5329 is generally no longer be required to start the statute of limitations. For a person not required to file a return for that year, the statute of limitations begins on the date that the return would have been required to be filed. Effective upon enactment.
Sec. 314. Requirement to provide paper statements in certain cases	ERISA requires plan administrators to periodically furnish participants and beneficiaries with statements describing the individual's benefit under the plan. In defined contribution plans, benefit statements must be provided at least once each calendar quarter, if the participant has the right to direct investments, and at least once each calendar year in other cases. In defined benefit plans, benefit statements	Modifies the pension benefit statements requirement to generally require that: - for a defined contribution plan, at least one statement must be provided on paper in written form for each calendar year; and - for a defined benefit plan, at least one statement must be provided on paper every three years. Exceptions allowed for plans that allow employees to opt in to e-delivery or plans that follow the 2002 safe harbor.

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	must generally be delivered at least once every three years. DOL disclosure regulations include various document delivery safe harbors. DOL updated the disclosure regulations in 2020 to add two new additional safe harbors: (1) a 2002 safe harbor that applies only to individuals who generally either (a) have the ability to effectively access electronic documents at work, where such access is an integral part of the individual's duties; or (b) have consented to receiving documents electronically; and (2) a 2020 safe harbor where the plan administrator complies with certain notice, access, and other requirements.	It also directs the Secretary to make changes by December 31, 2022 to the e-delivery rules to include certain participant protections. Effective for plan years beginning after December 31, 2023.
Sec. 315. Separate application of top heavy rules to defined contribution plans covering	Generally, for a defined contribution plan, the top heavy minimum contribution is three percent of the participant's compensation. A defined contribution plan is top-heavy if the aggregate of accounts for key employees exceeds 60 percent of the aggregate accounts for all employees. If a plan is top-heavy, minimum contributions	Allows a top-heavy plan that covers otherwise excludable employees (*e.g.*, the Code's age and service eligibility rules -- age 21 and one year of service) and which meet the top-heavy minimum contribution rules testing only this group, to disregard this group from the top-heavy minimum contribution testing. Effective for plan years beginning after date of enactment.

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excludable employees	or benefits must be provided for non-key employees and, in some cases, faster vesting is required.	
Sec. 316. Repayment of qualified birth or adoption distribution limited to 3 years	Following the SECURE Act, current law does not limit the period during which a qualified birth or adoption distribution ("QBAD") may be repaid and qualify as a rollover contribution.	Requires qualified birth or adoption distributions to be recontributed within three years of the distribution in order to qualify as a rollover contribution. (This aligns the rule with similar disaster relief provisions and simplifies plan administration.) Effective as if included in section 113 of the SECURE Act.
Sec. 317. Employer may rely on employee certifying that deemed hardship distribution conditions are met	Applicable Treasury regulations provide that hardship distributions may be made on account of an immediate and heavy financial need or an unforeseeable emergency. These needs are evaluated using facts and circumstances. (There is a streamlined hardship documentation approach that uses a self-certification process if certain requirements are met.)	Allows employees to self-certify that they have had one of the safe harbor events that constitutes a deemed hardship for purposes of taking a hardship withdrawal from a 401(k) plan or a 403(b) plan. The administrator can also rely on the employee's certification that the distribution is not in excess of the amount required to satisfy the financial need. A similar rule applies for purposes of unforeseeable emergency distributions from governmental Section 457(b) plans. Effective for plan years beginning after December 31, 2022.
Sec. 318. Penalty-free withdrawals	N/A	Permits certain penalty-free early withdrawals in the case of domestic abuse in an amount not to exceed the lesser of $10,000 or 50% of the value of the employee's account under the plan.

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from retirement plans for individuals in case of domestic abuse		In addition, such eligible distributions to a domestic abuse victim (defined in the bill) may be recontributed to applicable eligible retirement plans, subject to certain requirements. (This is similar to the QBAD provision.) This also provides for an in-service distribution event for 401(k), 403(b), and governmental 457(b) plans. Effective for distributions made after the date of enactment.
Sec. 319. Reform of family attribution rule	Current law provides family attribution rules to address scenarios in which a person, such as a family member, is treated as having an ownership interest in a business. These rules take into account the laws on familial property ownership in a community property state. These rules are important for determining who is the employer and in the controlled group/affiliated service group for various testing and distribution rights.	Adds special rules to address family attribution and to disregard community property laws for purposes of determining ownership of a business. To the extent these changes result in changes to the controlled group or affiliated service group, the Section 410(b)(6)(C) transition relief is available. Effective for plan years beginning on or after the date of enactment.
Sec. 320. Amendments to increase benefit accruals under plan for previous plan year allowed	Current law provides a remedial amendment period for plans to meet qualification requirements. In general, a discretionary plan amendment (which would include an increase in benefit accruals) must be adopted by the end of the plan year in which it is effective.	Allows plans to make discretionary plan amendments to increase benefits until the employer's tax filing deadline (including extensions) for the taxable year in which the amendment is effective. This applies to stock bonus, pension, profit-sharing, or annuity plan to increase benefits for the preceding plan year (other than increasing matching contributions).

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until employer tax return due date		Effective for amendments made in plan years beginning after December 31, 2023.
Sec. 321. Retroactive first year elective deferrals for sole proprietors	Under section 201 of the SECURE Act, a Section 401(k) plan of a sole proprietor can be funded with employer contributions as of the due date for the business's return, but the elective deferrals must be made as of December 31 of the prior year.	For a sole proprietor's first plan year (if the owner is the only employee), allows elective deferrals to be made by the tax filing due date (determined without regard to any extensions). Effective for plan years beginning after enactment.
Sec. 322. Limiting cessation of IRA treatment to portion of account involved in a prohibited transaction	If an IRA beneficiary engages in a prohibited transaction with respect to the IRA, the IRA loses its tax-favored status and ceases to be an IRA as of the first day of the taxable year in which the prohibited transaction occurs. As a result, the IRA is treated as distributing to the individual on the first day of that taxable year the fair market value of all of the assets in the account.	Modifies the disqualification rule that applies when an IRA owner or beneficiary engages in a prohibited transaction so that only the portion of the IRA that is used in the prohibited transaction is treated as distributed to the individual. Effective for taxable years beginning after enactment.
Sec. 323. Review of pension risk transfer	DOL Interpretive Bulletin 95-1 provides guidance for employers selecting an annuity provider for a defined benefit plan.	Requires DOL to review Interpretive Bulletin 95-1 regarding pension risk transfers to determine whether amendments are warranted and to report to Congress its findings within one year of enactment.

TITLE III—SIMPLIFICATION AND CLARIFICATION OF RETIREMENT PLAN RULES		
Bill Section	Current Law	House-Passed Text
interpretive bulletin		

TITLE IV—TECHNICAL AMENDMENTS		
Bill Section	Current Law	House-Passed Text
Sec. 401. Amendments relating to Setting Every Community Up for Retirement Enhancement Act of 2019		1. Clarifies that the increase in the age on which the required beginning date for required minimum distributions is based (to age 72) does not change the general requirement to actuarially increase the accrued benefit of an employee who retires in a calendar year after the year the employee attains age 70½ (other than a five-percent owner) to take into account the period after age 70½ in which the employee was not receiving any benefits under the plan. 2. Clarifies that the excise tax on excess contributions to an IRA generally does not apply to difficulty of care payments contributed to an IRA. 3. Corrects a cross-reference relating to QBADs distributed from 403(b) plans. 4. Clarifies the rules for meeting safe harbor contributions (including QACAs) via other plans, including the applicable notice requirement for safe harbor matching contributions. 5. Clarifies that long-term part-time workers satisfying the 500 hours per year requirement can be excluded from safe harbor matching contributions.

TITLE IV—TECHNICAL AMENDMENTS		
Bill Section	Current Law	House-Passed Text
		Effective as if included in the section of the SECURE Act to which the amendment relates.

TITLE V—ADMINISTRATIVE PROVISIONS		
Bill Section	Current Law	House-Passed Text
Sec. 501. Provisions relating to plan amendments	Current law generally requires plan amendments to reflect legal changes to be made by the tax filing deadline for the employer's taxable year in which the change in law occurs (including extensions). The Code and ERISA provide that, in general, accrued benefits cannot be reduced by a plan amendment (the "anti-cut-back rule"). Individually designed plans have the Required Amendment List that provides some additional time for amendments.	Allows plan amendments made pursuant to this bill to be made by the end of the 2024 plan year (2026 plan year in the case of governmental plans and collectively bargained plans) as long as the plan operates in accordance with such amendments as of the effective date of a bill requirement or amendment. If a plan operates as such and meets the amendment timeline and requirements of this bill, then the plan will be treated as being operated in accordance with its terms, and the amendment will not violate the anti-cutback rule (unless so designated by the Secretary). Extends the plan amendment deadlines under the SECURE Act, CARES Act, and Taxpayer Certainty and Disaster Relief Act of 2020 to these new remedial amendment period dates. Effective upon enactment.

TITLE VI—REVENUE PROVISIONS		
Bill Section	Current Law	House-Passed Text
Sec. 601. Simple and SEP Roth IRAs	Unlike 401(k), 403(b), and governmental 457(b) plans, SIMPLE IRAs and SEPs are not permitted to offer a Roth option. Instead, all contributions must be pre-tax.	Under the proposal, a SEP and a SIMPLE IRA are permitted to be designated as Roth IRAs (and the Roth IRA contribution limits are adjusted accordingly). Effective for taxable years beginning after December 31, 2022.
Sec. 602. Hardship withdrawal rules for 403(b) plans	Prior to the Bipartisan Budget Act of 2018 ("BBA"), the hardship rules for 401(k) plans and 403(b) plans were generally the same. The BBA created some differences, primarily allowing 401(k) plans to make hardship distributions from more contribution sources, such as qualified nonelective contributions ("QNECs"), and earnings on elective deferrals instead of just from employee deferrals.	Conforms the hardship distribution rules for Section 403(b) plans to those of Section 401(k) plans. Therefore, a 403(b) plan may distribute QNECs, qualified matching contributions, and earnings on any of these contributions (including elective deferrals). Also confirms that distributions from a 403(b) plan are not treated as failing to be made upon hardship solely because the employee does not take available loans. Effective for plan years beginning after December 31, 2022.
Sec. 603. Elective deferrals generally	Section 401(k), 403(b), and governmental 457(b) plans may permit employees to	Requires a Section 401(a) qualified plan, Section 403(b) plan, and governmental Section 457(b) plan that permits catch-up contributions to

TITLE VI—REVENUE PROVISIONS		
Bill Section	Current Law	House-Passed Text
limited to regular contribution limit	make catch-up contributions (if age 50 or older), subject to certain limitations.	designate the catch-up contributions as Roth contributions. The proposal does not apply to SIMPLE IRAs or SEP plans. Effective for taxable years beginning after December 31, 2022.
Sec. 604. Optional treatment of employer matching contributions as Roth contributions	Current law does not permit employer matching contributions to be made on a Roth basis.	Allows a Section 401(a) qualified plan, a Section 403(b) plan, or a governmental 457(b) plan to permit employees to designate matching contributions as Roth contributions. Student loan matching contributions may also be designated as Roth contributions. Matching contributions designated as Roth contributions are not excludable from the employee's income. Effective for contributions made after enactment.

If you have any questions, please do not hesitate to contact your regular Groom attorney or the authors listed below:

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