

GROOM LAW GROUP

www.groom.com

Summary of Provisions in the Securing a Strong Retirement Act (H.R. 2954)

PUBLISHED: August 1, 2022

In June, the Senate committees with jurisdiction over retirement approved their versions of retirement reform legislation. The Senate bills are the *Enhancing American Retirement Now Act* (unnumbered, the “EARN Act”), which was approved by the Finance Committee on June 22, 2022, and the *Retirement Improvement and Savings Enhancement to Supplement Health Improvements for the Nest Egg Act* (S. 4353, the “RISE & SHINE Act”), which was approved by the Health, Education, Labor, and Pensions Committee on June 15, 2022. The Senate bills are companion legislation to the House-passed *Securing a Strong Retirement Act* (H.R. 2954, colloquially referred to as “SECURE 2.0”).

Staff on both sides of the Capitol are now working to negotiate a unified, bicameral version of retirement legislation that could potentially be included in a must-pass spending bill later this year.

The below chart compares the House and Senate bills and identifies differences among the bills.

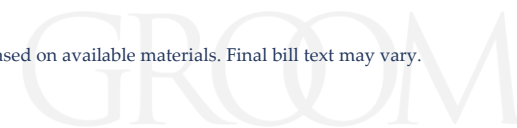
This publication is provided for educational and informational purposes only and does not contain legal advice. The information should in no way be taken as an indication of future legal results. Accordingly, you should not act on any information provided without consulting legal counsel. To comply with U.S. Treasury Regulations, we also inform you that, unless expressly stated otherwise, any tax advice contained in this communication is not intended to be used and cannot be used by any taxpayer to avoid penalties under the Internal Revenue Code, and such advice cannot be quoted or referenced to promote or market to another party any transaction or matter addressed in this communication.

SUMMARY OF PROVISIONS IN THE SECURING A STRONG RETIREMENT ACT (H.R. 2954)
as passed by the House of Representatives on March 29, 2022 compared to provisions in
THE ENHANCING AMERICAN RETIREMENT NOW (EARN) ACT
as approved by the Senate Finance Committee on June 22, 2022 and
THE RETIREMENT IMPROVEMENT AND SAVINGS ENHANCEMENT TO SUPPLEMENT HEALTHY INVESTMENTS FOR
THE NEST EGG (RISE & SHINE) ACT (S. 4353)
as approved by the Senate Health, Education, Labor, and Pensions Committee on June 15, 2022

TITLE I—EXPANDING COVERAGE AND INCREASING RETIREMENT SAVINGS

Bill Section	Current Law	House-Passed Bill	Senate Legislation ¹
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 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	Not included.

¹ As of this publication, only a conceptual summary of the EARN Act has been released; legislative text is not yet available. This comparison is based on available materials. Final bill text may vary.



TITLE I—EXPANDING COVERAGE AND INCREASING RETIREMENT SAVINGS

Bill Section	Current Law	House-Passed Bill	Senate Legislation ¹
		<p>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.</p> <p>Effective for plan years beginning after December 31, 2023.</p>	
<p>Sec. 102. Modification of credit for small employer pension plan start-up costs</p>	<p>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.</p>	<p>Increases credit to 100% of qualified start-up costs for employers with up to 50 employees.</p> <p>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.</p> <p>Effective for tax years beginning after 2022.</p>	<p>EARN Act Sec. F3 increases the existing credit percentage to 75% for employers with 25 or fewer employees.</p> <p>Effective for tax years beginning after December 31, 2023.</p>
<p>Sec. 103. Promotion of Saver’s Credit</p>	<p>Eligible taxpayers receive a nonrefundable income tax credit for contributions up to \$2,000 with respect to a percentage of their</p>	<p>Requires Treasury to take steps to increase public awareness of the Saver’s Credit and report to Congress within 90 days.</p> <p>Effective for tax years beginning after enactment.</p>	<p>Not included.</p>



TITLE I—EXPANDING COVERAGE AND INCREASING RETIREMENT SAVINGS

Bill Section	Current Law	House-Passed Bill	Senate Legislation ¹
	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 (\$48,000 for joint filers), at which point the credit phases out. Effective for tax years beginning after December 31, 2026.	EARN Act Sec. A2 modifies the existing Saver’s Credit to make it refundable and turn it into a direct government matching contribution to the taxpayer’s IRA or retirement plan. Like the House bill, it creates a single 50% credit percentage without tiers. It lowers the maximum AGI at which the credit begins to phase out to \$41,000 for joint filers (compared to \$48,000 in the House version) and extends the phase-out range. The credit is treated as a pre-tax contribution to the recipient’s plan or IRA, meaning it will be taxable when distributed. Effective for taxable years after 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	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).	EARN Act Sec. D1 includes a similar provision. Effective for amounts invested after the date of enactment.



TITLE I—EXPANDING COVERAGE AND INCREASING RETIREMENT SAVINGS

Bill Section	Current Law	House-Passed Bill	Senate Legislation ¹
	commingled in a group trust with any assets other than those of a regulated investment company.	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.	EARN Act Sec. B1 increases the RMD age from 72 to 75 in one step in 2032, rather than taking the House’s staggered approach. Effective for calendar years beginning after the date of enactment.
Sec. 107. Indexing IRA catch-up limit	Currently, annual IRA catch-up contributions for those who are age 50 or over are a flat \$1,000 and are not indexed for inflation.	Indexes IRA catch-up contributions in \$100 increments in the same manner as the indexing for regular IRA contributions. Effective for tax years beginning after December 31, 2023.	EARN Act Sec. A8 includes a similar provision. Effective for taxable years beginning after the date of enactment.
Sec. 108. Higher catch-up limit	Currently, individuals age 50 and over are allowed to make catch-	Increases the limit on catch-up contributions for individuals age 62-64 in non-SIMPLE plans to the lesser of i) \$10,000 (indexed for inflation); or (ii) the	EARN Act Sec. A9 includes a similar provision, although the age range for

TITLE I—EXPANDING COVERAGE AND INCREASING RETIREMENT SAVINGS

Bill Section	Current Law	House-Passed Bill	Senate Legislation ¹
to apply at age 62, 63, and 64	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.	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 (i) \$5,000 (indexed for inflation); or (ii) 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.	increased catch-up contributions is changed to 60-63 rather than 62-64. Effective for taxable years beginning after December 31, 2024.
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.	RISE & SHINE Act Sec. 104 includes the same provision. 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	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)	EARN Act Sec. D3 includes a similar provision. Effective for plan years beginning after the date of enactment.



TITLE I—EXPANDING COVERAGE AND INCREASING RETIREMENT SAVINGS

Bill Section	Current Law	House-Passed Bill	Senate Legislation ¹
	<p>being considered one plan for purposes ERISA. PEPs are not subject to the same DOL commonality requirements as closed MEPs. 403(b) plans were not included in these provisions in 2019.</p>	<p>MEPs/PEPs that satisfy rules similar to the qualified plan rules.</p> <p>Effective for plan years beginning after December 31, 2022.</p>	
<p>Sec. 111. Treatment of student loan payments as elective deferrals for purposes of matching contributions</p>	<p>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.</p>	<p>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.</p>	<p>EARN Act Sec. A4 includes a similar provision.</p> <p>Effective for plan years beginning after December 31, 2023.</p>

TITLE I—EXPANDING COVERAGE AND INCREASING RETIREMENT SAVINGS

Bill Section	Current Law	House-Passed Bill	Senate Legislation ¹
		Effective for plan years beginning after December 31, 2022.	
<p>Sec. 112. Application of credit for small employer pension plan startup costs to employers which join an existing plan</p>	<p>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 1 non-highly compensated employee.</p> <p>The credit applies for up to 3 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.</p>	<p>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 3 years in the MEP.</p> <p>Effective as if included in section 104 of the SECURE Act.</p>	<p>EARN Act Sec. F5 includes a similar provision.</p> <p>Applies to plans that become effective with respect to the eligible employer after the date of enactment.</p>



TITLE I—EXPANDING COVERAGE AND INCREASING RETIREMENT SAVINGS

Bill Section	Current Law	House-Passed Bill	Senate Legislation ¹
<p>Sec. 113. Military spouse retirement plan eligibility credit for small employers</p>	<p>N/A</p>	<p>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.</p> <p>Effective for taxable years beginning after the date of enactment.</p>	<p>EARN Act Sec. C includes a similar provision under which eligible small employers can receive a tax credit of \$200 per employee plus an enhanced credit of up to \$300 per employee for employer contributions, for up to 3 years.</p> <p>Effective for taxable years beginning after date of enactment.</p>
<p>Sec. 114. Small immediate financial incentives for contributing to a plan</p>	<p>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.</p>	<p>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 Internal Revenue Code and ERISA prohibited transaction rules.</p> <p>Effective for plan years beginning after the date of enactment.</p>	<p>EARN Act Sec. A7 includes a similar provision.</p> <p>Effective for plan years beginning after the date of enactment.</p>
<p>Sec. 115. Safe harbor for correction of employee elective deferral failures</p>	<p>The IRS’ Employee Plans Compliance Resolution System (EPCRS) contains rules allowing plans to correct errors, including with respect</p>	<p>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</p>	<p>EARN Act Sec. F6 includes a similar provision.</p> <p>Effective for any errors with respect to which the date that is 9½ months after the end of the plan year during which</p>

TITLE I—EXPANDING COVERAGE AND INCREASING RETIREMENT SAVINGS

Bill Section	Current Law	House-Passed Bill	Senate Legislation ¹
	to missed deferrals under automatic enrollment or automatic escalation features.	without discrimination 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 9½ months after the end of the plan year during which the error occurred is after the date of enactment.	the error occurred is after December 31, 2023.
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 3 consecutive years and has met the minimum age requirement (age 21) by the end of the three-consecutive-year period.	Reduces from 3 to 2 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).	EARN Act Sec. A3 and RISE & SHINE Act Sec. 109 include a similar provision. The EARN Act provision is 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).



TITLE I—EXPANDING COVERAGE AND INCREASING RETIREMENT SAVINGS

Bill Section	Current Law	House-Passed Bill	Senate Legislation ¹
<p>Sec. 117. Deferral of tax for certain sales of employer stock to employee stock ownership plan sponsored by S corporation</p>	<p>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 the sale, the ESOP must own at least 30% of the employer corporation’s stock.</p>	<p>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 plan years beginning after December 31, 2027.</p>	<p>EARN Act Sec. F15 includes a similar provision. Effective for sales after December 31, 2027.</p>
<p>Sec. 118. Certain securities treated as publicly traded</p>	<p>Current law specifies whether a security is a “publicly traded employer security” and “readily tradeable on</p>	<p>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 4 dealers on an SEC-regulated interdealer quotation system; is not a penny stock and is not</p>	<p>Not included.</p>

TITLE I—EXPANDING COVERAGE AND INCREASING RETIREMENT SAVINGS

Bill Section	Current Law	House-Passed Bill	Senate Legislation ¹
in case of employee stock ownership plans	an established securities market” for the purposes of ESOPs.	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 Bill	Senate Legislation
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 companies, which permits increases that meet an actuarial test. The current annuities	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.	EARN Act Sec. B3 includes a similar provision. Effective upon enactment.



TITLE II—PRESERVATION OF INCOME			
Bill Section	Current Law	House-Passed Bill	Senate Legislation
	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 \$145,000 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.	EARN Act Sec. B2 includes a similar provision and also directs Treasury to increase the premium limit to \$200,000, which would be indexed for inflation for years after enactment. 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	The investment assets held in the segregated asset account for a	Directs the Secretary of the Treasury to revise the regulations setting forth diversification requirements	EARN Act Sec. A20 includes a similar provision.

<i>TITLE II—PRESERVATION OF INCOME</i>			
Bill Section	Current Law	House-Passed Bill	Senate Legislation
exchange-traded funds (“ETF”)	variable annuity or life insurance contract must be adequately diversified. If the assets are not adequately diversified, the variable contract is not treated as an annuity or life insurance contract.	with respect to variable contracts to facilitate the use of ETFs. Effective for investments made on or after the date that is 7 years after the date of enactment.	Effective for investments made on or after the date that is 7 years after the date of enactment.

<i>TITLE III—SIMPLIFICATION AND CLARIFICATION OF RETIREMENT PLAN RULES</i>			
Bill Section	Current Law	House-Passed Bill	Senate Legislation
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	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.	EARN Act Sec. B7 includes a similar provision. RISE & SHINE Sec. 108 contains the corresponding ERISA provisions. Effective upon enactment with certain retroactive relief for prior good faith interpretations of existing guidance.

TITLE III – SIMPLIFICATION AND CLARIFICATION OF RETIREMENT PLAN RULES

Bill Section	Current Law	House-Passed Bill	Senate Legislation
	<p>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.</p>	<p>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 (<i>e.g.</i>, no interest, must recover within 3 years).</p> <p>In certain cases, the overpayment is also treated as an eligible rollover distribution.</p> <p>Effective upon enactment with certain retroactive relief for prior good faith interpretations of existing guidance.</p>	
<p>Sec. 302. Reduction in excise tax on certain accumulations in qualified retirement plans</p>	<p>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</p>	<p>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.</p> <p>Effective for taxable years beginning after December 31, 2022.</p>	<p>EARN Act Sec. B5 includes a similar provision.</p> <p>Effective for taxable years beginning after the date of enactment.</p>



TITLE III – SIMPLIFICATION AND CLARIFICATION OF RETIREMENT PLAN RULES

Bill Section	Current Law	House-Passed Bill	Senate Legislation
	<p>required minimum distribution exceeds the actual distribution). (The excise tax may be abated under a reasonable cause exception or through a VCP submission.)</p>		
<p>Sec. 303. Performance benchmarks for asset allocation funds</p>	<p>Existing regulations require a plan fiduciary to supply certain performance and benchmark data to participants about their investment options.</p>	<p>Requires the Secretary of Labor to modify existing regulations within 1 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.</p> <p>Effective upon enactment.</p>	<p>RISE & SHINE Act Sec. 103 is similar, though it requires the Secretary to modify regulations within 2 years of enactment.</p>
<p>Sec. 304. Review and report to the Congress relating to reporting and disclosure requirements</p>	<p>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).</p>	<p>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 within 2 years of enactment addressing possible avenues for simplification, consolidation, or standardization.</p> <p>Effective upon enactment.</p>	<p>EARN Act Sec. G1 and RISE & SHINE Act Sec. 106 include similar provisions, though the RISE & SHINE Act requires a report within 3 years of enactment.</p>



TITLE III – SIMPLIFICATION AND CLARIFICATION OF RETIREMENT PLAN RULES

Bill Section	Current Law	House-Passed Bill	Senate Legislation
<p>Sec. 305. Eliminating unnecessary plan requirements related to unenrolled participants</p>	<p>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.</p>	<p>Amends the requirements under ERISA and the Internal Revenue Code for defined contribution 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).</p> <p>Effective for plan years beginning after December 31, 2022.</p>	<p>EARN Act Sec. G3 and RISE & SHINE Act Sec. 107 include similar provision.</p> <p>The EARN Act is effective for plan years beginning after the date of enactment. The RISE & SHINE Act is effective for plan years beginning after December 31, 2022.</p>
<p>Sec. 306. Retirement savings lost and found</p>	<p>N/A</p>	<p>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.</p> <p>This applies to tax-qualified defined benefit and defined contribution plans subject to ERISA vesting provisions.</p> <p>Imposes annual reporting requirements for plan sponsors and additional reporting changes.</p> <p>Database required within 2 years of enactment.</p>	<p>EARN Act Sec. B8 includes a similar provision.</p> <p>The EARN Act houses the registry at the Department of the Treasury (not Labor, as in the House version) and sets the cash-out at limit at \$6,000 (\$7,000 in the House version (Sec. 307, below)).</p> <p>The EARN Act also requires plans to transfer benefits of unresponsive participants if those amounts are under \$1,000.</p> <p>The EARN Act also includes annual reporting requirements for plan sponsors.</p>



TITLE III – SIMPLIFICATION AND CLARIFICATION OF RETIREMENT PLAN RULES

Bill Section	Current Law	House-Passed Bill	Senate Legislation
			Distribution and reporting requirements are generally effective with respect to plan years beginning after the second December 31 occurring after the date of the enactment.
Sec. 307. Updating dollar limit for mandatory distributions	Under current law, employers may immediately distribute without the consent of the participant and directly rollover former employees' retirement accounts from a workplace retirement plan into an IRA if their balances are no more than \$5,000.	Increases the involuntary cash-out limit to \$7,000 from \$5,000. Effective for distributions made after December 31, 2022.	Included without changes in the RISE & SHINE Act as Sec. 101. Effective for distributions made after December 31, 2023. (See also EARN Act Sec. B8 above.)
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	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 (i) allow custodians of IRAs to address eligible inadvertent failures, and (ii) add additional safe	EARN Act Sec. F4 includes a similar provision and requires that guidance be issued within 2 years. Effective upon enactment.

TITLE III – SIMPLIFICATION AND CLARIFICATION OF RETIREMENT PLAN RULES

Bill Section	Current Law	House-Passed Bill	Senate Legislation
	that are insignificant (or otherwise corrected within a three-year period).	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. Effective for taxable years beginning after enactment.	EARN Act Sec. A10 includes a similar provision. Effective for taxable years beginning after enactment.
Sec. 310. One-time election for qualified charitable distribution (QCD) to split-interest entity; increase in qualified	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	Allows individuals to make a one-time election of up to \$50,000 (indexed for inflation) 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 beginning in 2022.	EARN Act Sec. B10 includes a similar provision, with the index for inflation for taxable years beginning after 2023. Effective for distributions made in taxable years ending after the date of enactment.



TITLE III – SIMPLIFICATION AND CLARIFICATION OF RETIREMENT PLAN RULES

Bill Section	Current Law	House-Passed Bill	Senate Legislation
charitable distribution limitation	minimum required distribution purposes.	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.	EARN Act Sec. C2 includes a similar provision. Effective for distributions made after the date of enactment.
Sec. 312. Exclusion of certain disability-related first responder retirement payments	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. Effective for amounts received with respect to taxable years beginning after December 31, 2027.	EARN Act Sec. C3 includes a similar provision. (Note that this benefit does not extend to survivor payments.) Effective for amounts received with respect to taxable years beginning after December 31, 2027.
Sec. 313. Individual retirement plan	The Internal Revenue Code imposes excise taxes on excess	For purposes of any excise tax imposed on excess contributions or on certain accumulations in connection with an IRA (Code section 4973 and 4974),	Not included.

TITLE III – SIMPLIFICATION AND CLARIFICATION OF RETIREMENT PLAN RULES

Bill Section	Current Law	House-Passed Bill	Senate Legislation
<p>statute of limitations for excise tax on excess contributions and certain accumulations</p>	<p>contributions made to IRAs (Section 4973), failures to distribute RMDs from plans and IRAs (Section 4974), and prohibited transactions involving plans and IRAs (Internal Revenue 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 3 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.</p>	<p>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 required to start the statute of limitations.</p> <p>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.</p> <p>Effective upon enactment.</p>	
<p>Sec. 314. Requirement to provide paper</p>	<p>ERISA requires plan administrators to periodically furnish</p>	<p>Modifies the pension benefit statements requirement to generally require that:</p>	<p>Not included.</p>



TITLE III – SIMPLIFICATION AND CLARIFICATION OF RETIREMENT PLAN RULES

Bill Section	Current Law	House-Passed Bill	Senate Legislation
statements in certain cases	<p>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 must generally be delivered at least once every 3 years.</p> <p>DOL disclosure regulations include various document delivery safe harbors. DOL updated the</p>	<ul style="list-style-type: none"> • for a defined contribution plan, at least 1 statement must be provided on paper in written form for each calendar year; and • for a defined benefit plan, at least 1 statement must be provided on paper every 3 years. <p>Exceptions allowed for plans that allow employees to opt in to e-delivery or plans that follow the 2002 safe harbor.</p> <p>It also directs the Secretary to make changes by December 31, 2022 to the e-delivery rules to include certain participant protections.</p> <p>Effective for plan years beginning after December 31, 2023.</p>	



TITLE III – SIMPLIFICATION AND CLARIFICATION OF RETIREMENT PLAN RULES

Bill Section	Current Law	House-Passed Bill	Senate Legislation
	<p>disclosure regulations in 2020 to add 2 new additional safe harbors: (i) 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 (ii) a 2020 safe harbor where the plan administrator complies with certain notice, access, and other requirements.</p>		



TITLE III – SIMPLIFICATION AND CLARIFICATION OF RETIREMENT PLAN RULES

Bill Section	Current Law	House-Passed Bill	Senate Legislation
<p>Sec. 315. Separate application of top heavy rules to defined contribution plans covering excludable employees</p>	<p>Generally, for a defined contribution plan, the top heavy minimum contribution is 3% 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 or benefits must be provided for non-key employees and, in some cases, faster vesting is required.</p>	<p>Allows a top-heavy plan that covers otherwise excludable employees (<i>e.g.</i>, the Internal Revenue Code's age and service eligibility rules – age 21 and 1 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.</p> <p>Effective for plan years beginning after date of enactment.</p>	<p>EARN Act Sec. F2 includes a similar provision.</p> <p>Effective for plan years beginning after date of enactment.</p>
<p>Sec. 316. Repayment of qualified birth or adoption</p>	<p>Following the SECURE Act, current law does not limit the period during which a</p>	<p>Requires qualified birth or adoption distributions to be recontributed within 3 years of the distribution in order to qualify as a rollover contribution. (This</p>	<p>EARN Act Sec. H1 includes a similar provision.</p>

TITLE III – SIMPLIFICATION AND CLARIFICATION OF RETIREMENT PLAN RULES

Bill Section	Current Law	House-Passed Bill	Senate Legislation
distribution limited to 3 years	qualified birth or adoption distribution (QBAD) may be repaid and qualify as a rollover contribution.	aligns the rule with similar disaster relief provisions and simplifies plan administration.) Effective as if included in section 113 of the SECURE Act.	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 a safe harbor event 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.	The provision in EARN Act Sec. A13 is similar, except that it adds a qualifier of unless the plan administrator has actual knowledge to the contrary. Effective for plan years beginning after the date of enactment.



TITLE III – SIMPLIFICATION AND CLARIFICATION OF RETIREMENT PLAN RULES

Bill Section	Current Law	House-Passed Bill	Senate Legislation
<p>Sec. 318. Penalty-free withdrawals from retirement plans for individuals in case of domestic abuse</p>	<p>N/A</p>	<p>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.</p> <p>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.)</p> <p>This also provides for an in-service distribution event for 401(k), 403(b), and governmental 457(b) plans.</p> <p>Effective for distributions made after the date of enactment.</p>	<p>EARN Act Sec. A14 includes a similar provision.</p> <p>Effective for distributions made after the date of enactment.</p>
<p>Sec. 319. Reform of family attribution rule</p>	<p>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</p>	<p>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.</p> <p>Effective for plan years beginning on or after the date of enactment.</p>	<p>EARN Act Sec. F7 includes a similar provision.</p> <p>Effective for plan years beginning on or after December 31, 2023.</p>

TITLE III – SIMPLIFICATION AND CLARIFICATION OF RETIREMENT PLAN RULES

Bill Section	Current Law	House-Passed Bill	Senate Legislation
	<p>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.</p>		
<p>Sec. 320. Amendments to increase benefit accruals under plan for previous plan year allowed until employer tax return due date</p>	<p>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.</p>	<p>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.</p> <p>This applies to stock bonus, pension, profit-sharing, or annuity plan to increase benefits for the preceding plan year (other than increasing matching contributions).</p> <p>Effective for amendments made in plan years beginning after December 31, 2023.</p>	<p>EARN Act Sec. A15 includes a similar provision.</p> <p>Effective for plan years beginning after the date of enactment.</p>
<p>Sec. 321. Retroactive first year elective</p>	<p>Under section 201 of the SECURE Act, a Section 401(k) plan of a</p>	<p>For a sole proprietor’s first plan year (if the owner is the only employee), allows elective deferrals to be</p>	<p>EARN Act Sec. A16 includes a similar provision.</p>



TITLE III – SIMPLIFICATION AND CLARIFICATION OF RETIREMENT PLAN RULES

Bill Section	Current Law	House-Passed Bill	Senate Legislation
deferrals for sole proprietors	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.	made by the tax filing due date (determined without regard to any extensions). Effective for plan years beginning after enactment.	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 owner or 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	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.	Not included.

TITLE III – SIMPLIFICATION AND CLARIFICATION OF RETIREMENT PLAN RULES

Bill Section	Current Law	House-Passed Bill	Senate Legislation
	year the fair market value of all of the assets in the account.		
Sec. 323. Review of pension risk transfer interpretive bulletin	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 1 year of enactment.	RISE & SHINE Act Sec. 105 contains a similar provision.

TITLE IV – TECHNICAL AMENDMENTS

Bill Section	Current Law	House-Passed Bill	Senate Legislation
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 5% owner) to take into account the period after age 70½ in which the employee was not receiving any benefits under the plan.	Amendments to SECURE are included as Sec. H2 in the EARN Act, though they differ some from the House bill. 1. Clarifies that an automatic enrollment 401(m) safe harbor plan must follow notice requirements regardless of whether safe harbor match or safe harbor nonelective contributions are made. 2. Regarding long-term, part-time workers, clarifies that an employer

<i>TITLE IV – TECHNICAL AMENDMENTS</i>			
Bill Section	Current Law	House-Passed Bill	Senate Legislation
		<p>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.</p> <p>3. Corrects a cross-reference relating to QBADs distributed from 403(b) plans.</p> <p>4. Clarifies the rules for meeting safe harbor contributions (including QACAs) via other plans, including the applicable notice requirement for safe harbor matching contributions.</p> <p>5. Clarifies that long-term part-time workers satisfying the 500 hours per year requirement can be excluded from safe harbor matching contributions.</p> <p>Effective as if included in the section of the SECURE Act to which the amendment relates.</p>	<p>may exclude such an employee from 401(m) safe harbor nondiscrimination rules; that vesting rules apply to the plan and not only the cash or deferred arrangement; and that such an employee ceases to be a long-term, part-time worker when they meet the age/service requirements of a full-time employee.</p> <p>3. Clarifies that the excise tax on excess contributions to an IRA generally does not apply to difficulty of care payments contributed to an IRA.</p>

<i>TITLE V – ADMINISTRATIVE PROVISIONS</i>			
Bill Section	Current Law	House-Passed Bill	Senate Legislation
Sec. 501. Provisions relating to plan amendments	Current law generally requires plan amendments to reflect legal changes to be	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	EARN Act Sec. I1 includes a similar provision. RISE & SHINE Act Sec. 701 includes a similar provision, though it only applies

	<p>made by the tax filing deadline for the employer’s taxable year in which the change in law occurs (including extensions).</p> <p>The Internal Revenue Code and ERISA provide that, in general, accrued benefits cannot be reduced by a plan amendment (the “anti-cut-back rule”).</p> <p>Individually designed plans have the Required Amendment List that provides some additional time for amendments.</p>	<p>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).</p> <p>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.</p> <p>Effective upon enactment.</p>	<p>to RISE & SHINE Act provisions. Includes an amendment deadline of the last day of the first plan year beginning on or after January 1, 2025.</p> <p>Effective upon enactment.</p>
--	---	---	--

<i>TITLE VI – REVENUE PROVISIONS</i>			
Bill Section	Current Law	House-Passed Bill	Senate Legislation
Sec. 601. Simple and SEP Roth IRAs	Unlike 401(k), 403(b), and governmental 457(b) plans, SIMPLE IRAs and SEPs are not	Under the proposal, a SEP and a SIMPLE IRA are permitted to be designated as Roth IRAs (and the	EARN Act Sec. K1 includes a similar provision.

TITLE VI – REVENUE PROVISIONS

Bill Section	Current Law	House-Passed Bill	Senate Legislation
	permitted to offer a Roth option. Instead, all contributions must be pre-tax.	Roth IRA contribution limits are adjusted accordingly). Effective for taxable years beginning after December 31, 2022.	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.	EARN Act Sec. D2 includes a similar provision. Effective for plan years beginning after enactment.
Sec. 603. Elective	Section 401(k), 403(b), and governmental	Requires a Section 401(a) qualified plan, Section 403(b) plan, and governmental Section 457(b) plan	EARN Act Sec. K2 includes a similar provision.

TITLE VI – REVENUE PROVISIONS

Bill Section	Current Law	House-Passed Bill	Senate Legislation
<p>deferrals generally limited to regular contribution limit</p>	<p>457(b) plans may permit employees to make catch-up contributions (if age 50 or older), subject to certain limitations.</p>	<p>that permits catch-up contributions to designate the catch-up contributions as Roth contributions. The proposal does not apply to SIMPLE IRAs or SEP plans.</p> <p>Effective for taxable years beginning after December 31, 2022.</p>	<p>Effective for taxable years beginning after December 31, 2023.</p>
<p>Sec. 604. Optional treatment of employer matching contributions as Roth contributions</p>	<p>Current law does not permit employer matching contributions to be made on a Roth basis.</p>	<p>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.</p> <p>Effective for contributions made after enactment.</p>	<p>EARN Act Sec. K3 includes a similar provision, but allows fully vested employees to designate matching contributions and nonelective contributions as designated Roth contributions. Matching contributions or nonelective contributions designated as Roth contributions are not excludable from the employee’s income.</p> <p>Effective for contributions made after December 31, 2022.</p>



PROVISIONS IN THE EARN ACT WITHOUT AN EQUIVALENT IN THE HOUSE BILL

Bill Section	Current Law	EARN Act
<p>Sec. A1. Secure deferral arrangements</p> <p><i>And</i></p> <p>Sec. F1. Credit for employers with respect to modified safe harbor requirements</p>	<p>Current law grants a safe harbor for automatic enrollment plans with a minimum contribution level of 3% and automatic escalation up to 6%.</p>	<p>Increases the minimum automatic enrollment floor to 6% with 1% annual automatic escalation in subsequent years up to 10%. An employer could set the default first year enrollment at no more than 10%.</p> <p>The provision also requires employers to make matching contributions of (i) 100% of the first 2% of deferred compensation, (ii) 50% of the next 4% deferred, and (iii) 20% of the next 4% deferred. Under this formula, the maximum required match for a 10% contribution rate would be 4.8%.</p> <p>Provides a nonrefundable tax credit to employers with under 100 employees that utilize the new safe harbor. The credit would be available for 5 years in an amount equal to the employer’s matching contribution up to 2% of a participant’s contributions. The credit would not be available for highly compensated employees.</p> <p>Effective for plan years beginning after December 31, 2023.</p>
<p>Sec. A5. Withdrawals for certain emergency expenses</p>	<p>Current law imposes a 10% penalty on early withdrawals before normal retirement age from tax-preferred retirement accounts.</p>	<p>Allows 1 penalty-free withdrawal of up to \$1,000 per year for “unforeseeable or immediate financial needs relating to personal or family emergency expenses.” The withdrawal may be repaid within 3 years. Only 1 withdrawal per 3-year repayment period is permitted if the first withdrawal has not been repaid.</p> <p>Effective for distributions made after December 31, 2023.</p>

PROVISIONS IN THE EARN ACT WITHOUT AN EQUIVALENT IN THE HOUSE BILL

Bill Section	Current Law	EARN Act
Sec. A6. Allow additional nonelective contributions to SIMPLE plans	Present law requires employers with SIMPLE plans to make employer contributions to employees of either 2% of compensation or 3% of employee elective deferral contributions.	Allows an employer to make additional contributions to each employee of the plan in a uniform manner, provided that the contribution does not exceed the lesser of 10% of compensation or \$5,000 (indexed for inflation). Effective for taxable years beginning after December 31, 2023.
Sec. A11. Tax treatment of certain non-trade or business SEP contributions	Current law imposes a 10% excise tax on an employer for making nondeductible contributions to a plan. An exception exists for certain contributions that are deemed nondeductible solely because they are not made in conjunction with a trade or business (<i>e.g.</i> , contributions to an IRA for a household employee).	Allows contributions to SEP IRAs which are not deductible solely because they are not in conjunction with a trade or business to be excluded from the 10% excise tax. Effective for taxable years beginning after the date of enactment.
Sec. A12. Elimination of additional tax on corrective distributions of excess contributions	Current law requires a corrective distribution of an excess contribution to an IRA, along with any earnings on the excess contribution. The distribution is subject to the 10% early withdrawal penalty.	Exempts corrective distributions and corresponding earnings from the 10% early withdrawal penalty. Effective for any determination of, or affecting, liability for taxes, interest or penalties that is made on or after the date of enactment (without regard to whether the act or failure to act upon which the determination is based occurred before the date of enactment).
Sec. A17. Treasury guidance on rollovers	N/A	Requires the Secretary of the Treasury to develop and release sample forms for (i) direct rollovers of eligible rollover distributions from employer-sponsored retirement plans to another such plan or IRA, and (ii) trustee-to-



PROVISIONS IN THE EARN ACT WITHOUT AN EQUIVALENT IN THE HOUSE BILL

Bill Section	Current Law	EARN Act
		<p>trustee transfers of amounts from an IRA to another IRA or retirement plan, no later than January 1, 2025.</p> <p>Effective upon enactment.</p>
<p>Sec. A18. Exemption for automatic portability transactions</p> <p><i>And</i></p> <p>Sec. F11. Credit for small employers that adopt an automatic portability arrangement</p>	<p>Under present 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). For such involuntary distributions, present law requires an employer to roll over the distribution into an IRA if the account balance is at least \$1,000 and the participant does not affirmatively elect otherwise.</p> <p>The Department of Labor issued a prohibited transaction exemption (“PTE”) to allow an IRA provider to automatically transfer amounts involuntarily distributed from an IRA into a participant’s active retirement plan account unless the participant affirmatively elects not to transfer his/her account.</p>	<p>Codifies a class PTE to allow for the automated transfer of a participant’s involuntarily distributed account from an IRA to an active 401(k) account, subject to advanced notice and certain other conditions.</p> <p>The Secretary must issue interim final rules on specified topics no later than July 1, 2023. The PTE is effective for transactions occurring after December 31, 2023.</p> <p>Sec. F11 establishes a \$500 credit for small employers with 100 or fewer employees that adopt automatic portability.</p> <p>Credit effective for taxable years beginning after the date of enactment.</p>
<p>Sec. A19. Application of section 415 limit for certain employees of</p>	<p>Internal Revenue Code section 415 generally limits the amount that may be paid by a defined benefit plan in annual benefits to a participant to the lesser of \$245,000 (2022) or 100% of the participant’s average compensation.</p>	<p>Exempts an employee who is a participant in an eligible rural electric cooperative plan from the defined benefit plan compensation limitation, if the employee is a qualified non-highly compensated employee.</p> <p>Effective for limitation years ending after the date of enactment.</p>



PROVISIONS IN THE EARN ACT WITHOUT AN EQUIVALENT IN THE HOUSE BILL

Bill Section	Current Law	EARN Act
rural electric cooperatives		
Sec. B4. Eliminating a penalty on partial annuitization	If a tax-preferred retirement account also holds an annuity, present 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.	Directs the Secretary of the Treasury to amend the required minimum distribution rules for defined contribution plans so that partial annuity payments could be taken into account for purposes of satisfying the required distribution rules for those plans. Effective upon enactment.
Sec. B6. Clarification of substantially equal periodic payment rule	Present law imposes a 10% tax penalty 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 if certain criteria are met.	Clarifies that the substantial equal periodic payment exception continues to apply after certain rollovers and for certain annuities. Effective upon enactment.
Sec. B9. Roth plan distribution rules	Under current law, Roth IRAs – but not Roth amounts in plans – are exempt from pre-death RMD rules.	Extends the pre-death RMD exemption to Roth amounts in plans. Effective generally for taxable years beginning after December 31, 2023.
Sec. B11. Exception to penalty on early distributions	Present law imposes a 10% tax penalty on early distributions from tax-preferred retirement accounts unless certain exceptions apply.	Creates an exception to the 10% early withdrawal penalty for distributions to individuals whose physician certifies that they have an illness or condition that is reasonably expected to result in death in 84 months or less. Effective upon enactment.

PROVISIONS IN THE EARN ACT WITHOUT AN EQUIVALENT IN THE HOUSE BILL

Bill Section	Current Law	EARN Act
from qualified plans for individuals with a terminal illness		
Sec. B12. Surviving spouse election to be treated as employee	Current law allows a spousal beneficiary to treat a deceased IRA owner’s IRA as their own for purposes of RMD rules.	Extends the post-death spousal IRA RMD rules to plans. Effective for calendar years beginning after December 31, 2023.
B13. Long-term care contracts purchased with retirement plan distributions	Plans may only make distributions for approved reasons. Existing law provides favorable tax treatment for various forms of health and disability insurance. Existing law also imposes a 10% tax penalty on early distributions from tax-preferred retirement accounts unless certain exceptions apply.	Permits retirement plans to distribute up to \$2,500 per year for certain long-term care insurance contracts. Distributions from plans and IRAs would be exempt from the 10% penalty on early distributions if used to pay premiums for high quality long term care insurance. Effective for distributions after 3 years after the date of enactment.
Sec. C4. Repeal of direct payment requirement on exclusion from gross	Current law provides an exclusion from gross income for up to \$3,000 for distributions made by governmental retirement plans to pay for health insurance premiums of certain eligible retired public safety officers, provided the premiums are paid directly by the plan.	Allows the plan to distribute funds to pay for qualified health insurance premiums directly to the participant and not the insurer. The plan is permitted to rely on the participant’s self-certification that funds were used for premiums.

PROVISIONS IN THE EARN ACT WITHOUT AN EQUIVALENT IN THE HOUSE BILL

Bill Section	Current Law	EARN Act
<p>income of distributions from governmental plans for health and long-term care insurance</p>		<p>Effective upon enactment.</p>
<p>Sec. C5. Modification of eligible age for exemption from early withdrawal penalty <i>And</i> Sec. C6. Exemption from early withdrawal penalty for certain state and local government</p>	<p>Qualified public safety employees may receive distributions from governmental plans after separating from service after attaining age 50 without being subject to the 10% early withdrawal penalty.</p>	<p>Extends the age 50 exception to those qualified public safety employees who have separated from service and have attained age 50 or 25 years of service, whichever comes first.</p> <p>Expands the definition of qualified public safety employee to include certain corrections officers, thus making them eligible for the age 50 early distribution penalty exception.</p> <p>Effective upon enactment.</p>



PROVISIONS IN THE EARN ACT WITHOUT AN EQUIVALENT IN THE HOUSE BILL

Bill Section	Current Law	EARN Act
corrections employees		
E1. Special rules for the use of retirement funds in connection with qualified federally declared disasters	In recent years, Congress has eased plan distribution and loan rules in cases of disaster on a case-by-case basis.	<p>Permits certain emergency plan distribution and loan rules to go into effect automatically in cases of a federally declared disaster.</p> <ul style="list-style-type: none"> • Up to \$22,000 may be distributed to a participant per disaster <ul style="list-style-type: none"> ○ Amount is exempt from the 10% early withdrawal fee ○ Taken into account in gross income over 3 years • Allows home purchase amounts to be recontributed to a plan or account if those funds were to be used to purchase a home in a disaster area and were not so used because of the disaster • Increases the maximum loan amount for qualified individuals and extends the repayment period <p>Effective for disasters occurring on or after January 26, 2021.</p>
F8. Contribution limit for SIMPLE IRAs	Under present 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	Increases the annual deferral limit to \$16,500 (indexed for inflation) and the catch-up contribution at age 50 to \$4,750 (indexed for inflation) in the case of an employer with no more than 25 employees. An employer with 26 to 100

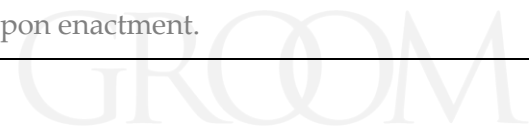
PROVISIONS IN THE EARN ACT WITHOUT AN EQUIVALENT IN THE HOUSE BILL

Bill Section	Current Law	EARN Act
	<p>be sponsored by a small employer (100 or fewer employees), and the employer is required to either make matching contributions of the first 3% of compensation deferred or an employer contribution of 2% of compensation (regardless of whether the employee elects to make contributions).</p>	<p>employees would be permitted to provide these higher deferral limits, but only if the employer either provides a 4% matching contribution or a 3% employer contribution. The proposal would make similar changes to the contribution limits for SIMPLE 401(k) plans.</p> <p>Effective for taxable years beginning after December 31, 2023.</p>
<p>F9. Employers allowed to replace SIMPLE retirement accounts with safe harbor 401(k) plans during a year</p>	<p>Current law limits employers' ability to replace Simple IRA with a 401(k) plan mid-year.</p>	<p>Permits an employer to elect to replace a SIMPLE IRA with a 401(k) plan at any time during the year, provided certain criteria are met.</p> <p>Effective for plan years beginning after December 31, 2023.</p>
<p>F10. Starter 401(k) plans for employers with no retirement plan</p>	<p>N/A</p>	<p>Creates 2 new plan designs: a "starter 401(k) deferral-only arrangement" and a "safe harbor 403(b) plan." These plans would generally require that all employees be enrolled in the plan with a deferral rate of 3% to 15% of compensation. The limit on annual deferrals would be the same as the IRA contribution limit.</p> <p>Effective for plan years beginning after December 31, 2023.</p>



PROVISIONS IN THE EARN ACT WITHOUT AN EQUIVALENT IN THE HOUSE BILL

Bill Section	Current Law	EARN Act
<p>F12. Reenrollment credit</p>	<p>N/A</p>	<p>Creates a \$500 nonrefundable credit for up to 3 years for employers with 100 or fewer employees to adopt a reenrollment feature in a plan that already offers automatic enrollment. The reenrollment feature requires the employer to periodically reenroll employees (at least every 3 years) at the default contribution rate if the employee has elected a lower contribution rate in a prior year (although the employee may affirmatively select a different rate again). Effective for taxable years beginning after December 31, 2023.</p>
<p>F13. Corrections of mortality tables</p>	<p>Minimum funding rules apply to defined benefit plans, and those rules use mortality tables to determine appropriate funding.</p>	<p>Directs the Secretary of the Treasury to amend minimum funding regulations to state that a pension plan is not required to assume mortality improvements at any age greater than 0.78%. Effective upon enactment.</p>
<p>F14. Enhancing retiree health benefits in pension plans</p>	<p>Present law permits an employer to use assets from an overfunded pension plan to pay retiree health and life insurance benefits. These rules sunset at the end of 2025.</p>	<p>Extends the sunset date of existing overfunding rules 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% of plan assets and the plan is at least 110% funded. Similar provision included in the RISE & SHINE Act Sec. 603. Effective upon enactment.</p>



PROVISIONS IN THE EARN ACT WITHOUT AN EQUIVALENT IN THE HOUSE BILL

Bill Section	Current Law	EARN Act
G2. 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.	Requires the Government Accountability Office to issue a report to Congress on the effectiveness of section 402(f) notices. Report is due no later than 18 months after enactment.
H3. Modification of required minimum distribution rules for special needs trusts	Current law places 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.	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. Effective upon enactment.
Chairman’s Mark Sec. B2. Modification of age requirement for qualified ABLE programs	Section 529A provides for a tax-favored savings program intended to benefit disabled individuals, known as a qualified ABLE program. Eligibility is limited to individuals who become blind or disabled before age 26.	Increases the ABLE account eligibility age to age 46. Effective for taxable years beginning after December 31, 2025.



PROVISIONS IN THE RISE & SHINE ACT WITHOUT AN EQUIVALENT IN THE HOUSE BILL

Bill Section	Current Law	RISE & SHINE Act
Sec. 102. Multiple employer 403(b) plans	Current law prohibits 403(b) plans from participating in MEPs, including PEPs.	Enables 403(b) plans to participate in MEPs. Effective for plan years beginning after December 31, 2022.
Sec. 202. Emergency savings accounts linked to defined contribution plans	Current law does not explicitly permit for short-term emergency savings accounts to be offered by employers and administered in tandem with ERISA-covered plans.	Permits employers to offer an ERISA-covered retirement savings account that automatically enrolls employees at a rate of no more than 3% of pay. Account balances may not exceed \$2,500. The accounts are subject to special notice and disclosure rules, and contributions are not tax preferred. Effective after December 31, 2023.
Sec. 301. Defined contribution plan fee disclosure improvements	In July 2021, the Government Accountability Office issued a report entitled, “401(k) Retirement Plans: Many Participants Do Not Understand Fee Information, but DOL Could Take Additional Steps to Help Them.” The Government Accountability Office made 5 specific recommendations to DOL.	Builds on the Government Accountability Office report to require the Secretary of Labor to review guidance on fiduciary requirements for disclosure in participant-directed individual account plans, weigh potential improvements, and report to Congress. Report due within 3 years of enactment.
Sec. 302. Consolidation of defined contribution plan notices	ERISA and the Internal Revenue Code require a number of individually mandatory plan notices.	Directs the Secretaries of the Treasury and Labor to adopt regulations allowing plan sponsors to consolidate 2 or more mandatory notices under ERISA sections 404(c)(5)(B) and 514(e)(3) and Internal Revenue Code sections 401(k)(12)(D), 401(k)(13)(E), and 414(w)(4).



PROVISIONS IN THE RISE & SHINE ACT WITHOUT AN EQUIVALENT IN THE HOUSE BILL

Bill Section	Current Law	RISE & SHINE Act
		Regulations must be promulgated within 2 years of enactment.
Sec. 303. Information Needed for Financial Options Risk Mitigation (INFORM) Act	Under present law, defined benefit plans are permitted to offer lump-sum buy-outs to plan participants in lieu of future lifetime payments. A 2015 Government Accountability Office report found that participants need better information before making such a decision.	<p>Requires plan sponsors to provide beneficiaries with certain information regarding lump-sum offers 90 days before a decision period, including how to compare lump-sum offers to the value of lifetime benefits, details about the election period, and other information.</p> <p>Requires Departments of Labor and the Treasury to issue joint regulations within 1 year of enactment. Such regulations will require plan sponsor compliance within no more than 1 year of the issuance of a final rule.</p>
Sec. 304. Defined benefit annual funding notices	Administrators of all defined benefit plans that are subject to title IV of ERISA are required to provide an annual funding notice to the Pension Benefit Guaranty Corporation, to each plan participant and beneficiary, to each labor organization representing such participants or beneficiaries, and, in the case of a multiemployer plan, to each employer that has an obligation to contribute to the plan. An annual funding notice must include, among other things, the plan's funding percentage, a statement of the value of the plan's assets and liabilities and a description of how the plan's assets are invested as of specific dates, and a description of the benefits under the plan that are eligible to be guaranteed by the PBGC.	<p>Amends existing defined benefit plan notices to require additional information regarding plan funding status.</p> <p>Effective for plan years beginning after December 31, 2023.</p>



PROVISIONS IN THE RISE & SHINE ACT WITHOUT AN EQUIVALENT IN THE HOUSE BILL

Bill Section	Current Law	RISE & SHINE Act
<p>Sec. 401. Automatic reenrollment under qualified automatic contribution arrangements and eligible automatic contribution arrangements</p>	<p>Current law provides a fiduciary safe harbor for employers that automatically enroll employees into a defined contribution retirement plan.</p>	<p>Amends the existing fiduciary safe harbor to require employers to automatically reenroll employees who have opted out at least once every 3 years.</p> <p>Effective for arrangements taking effect after December 31, 2024.</p>
<p>Sec. 402. Incidental plan expenses</p>	<p>Current law limits which plan expenses can be billed to the plan to those relating to plan administration and investments. Settlor functions, such as decisions relating to the formation, design, and termination of a plan, cannot be billed to the plan.</p>	<p>Amends ERISA to permit “incidental expenses solely for the benefit of the participants and their beneficiaries” to be billed to the plan (<i>e.g.</i>, inquiries regarding automatic enrollment and reenrollment and automatic escalation.)</p> <p>Effective upon enactment.</p>
<p>Sec. 501. Report on pooled employer plans</p>	<p>N/A</p>	<p>Requires the Department of Labor to study PEPs, including the number of PEPs, the number of participants, fees, disclosure, enforcement actions, and other items. Report must be published within 5 years of enactment and every 5 years thereafter.</p>



PROVISIONS IN THE RISE & SHINE ACT WITHOUT AN EQUIVALENT IN THE HOUSE BILL

Bill Section	Current Law	RISE & SHINE Act
Sec. 502. 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 presented fairly. However, no such opinion is required with respect to a plan covering fewer than 100 participants. Proposed regulations would require both a plan-level and a trust-level audit.	Clarifies that a trust-level audit is not required and that only plans with 100 or more participants are required to undergo an audit. Effective upon enactment.
Sec. 601. Cash balance	Cash balance and other “hybrid” plans are subject to numerous technical rules that make it difficult to offer market-based designs.	Clarifies the application of Internal Revenue Code and ERISA rules, such as anti-backloading rules, as they relate to hybrid plans that credit variable interest. Permits that, for purposes of the Internal Revenue Code and ERISA, 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%. Effective for years beginning after the date of enactment.
Sec. 602. Termination of variable rate premium indexing	Defined benefit plans subject to Title IV of ERISA are required to pay a variable rate premium to PBGC. In 2022, the variable rate premium is \$48 per each \$1000 of unfunded vested benefits, but it is indexed for inflation.	End the indexing of the variable rate premium at sets the premium permanently at \$48 per each \$1000 of unfunded vested benefits. Effective upon enactment.



PROVISIONS IN THE RISE & SHINE ACT WITHOUT AN EQUIVALENT IN THE HOUSE BILL

Bill Section	Current Law	RISE & SHINE Act
Sec. 603. Enhancing retiree health benefits in pension plans	Present law permits an employer to use assets from an overfunded pension plan to pay retiree health and life insurance benefits. These rules sunset at the end of 2025.	Extends the sunset date of existing overfunding rules to the end of 2032. Similar provision appears in the EARN Act Sec. F14. Effective upon enactment.
Sec. 702. Worker Ownership, Readiness, and Knowledge (WORK) Act	N/A	Creates an Employee Ownership and Participation Initiative at the Department of Labor to provide technical assistance to those seeking to start new employee-owned businesses and encourage employee participation. Appropriates funds for a grant program related to employee ownership. Effective upon enactment.

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

[Elizabeth Dold](#), [Michael Kreps](#), [Louis Mazawey](#), [Diana McDonald](#), [Brigen Winters](#)

