RETIREMENT ENHANCEMENT AND SAVINGS ACT OF 2016 (S. 3471)

Increase Access for Workers in Small Companies to Retirement Plans by Authorizing Multiple Employer Defined Contribution Plans. (sec. 101–102 of the bill and sec. 413 of the Code, and secs. 3 and 103-104 of ERISA)

Multiple employer plans (MEPS) provide an opportunity for small employers to band together to obtain more favorable pension investment results and more efficient and less expensive management services. The legislation makes MEPS more attractive by eliminating outdated barriers to the use of MEPS and improving the quality of MEP service providers.

Expand Retirement Savings by Removing Auto Enrollment Safe Harbor Cap (sec. 103 of the bill and sec. 401(k) of the Code)

The legislation removes the cap that required automatic escalation of employee deferrals go no higher than 10 percent of employee pay under an automatic enrollment safe harbor plan. Lifting the cap after the first year of an employee's deemed election expands retirement contributions and grows retirement savings.

Simplification of Safe Harbor 401(k) Rules (sec. 104 of the bill and sec. 401(k) of the Code)

The legislation changes the nonelective contribution 401(k) safe harbor to provide greater flexibility, improve employee protection and facilitate plan adoption. The legislation eliminates the safe harbor notice requirement, but maintains the requirement to allow employees to make or change an election at least once per year. The bill also permits amendments to nonelective status at any time before the 30th day before the close of the plan year. Amendments after that time would be allowed if the amendment provides (1) a nonelective contribution of at least four percent of compensation (rather than at least three percent) for all eligible employees for that plan year, and (2) the plan is amended no later than the last day for distributing excess contributions for the plan year, that is, by the close of following plan year.

Increase Credit Limitation for Small Employer Pension Plan Start-Up Costs (sec. 105 of the bill and sec. 45E of the Code)

Increasing the credit for plan start-up costs will make it more affordable for small businesses to set up retirement plans. The legislation increases the credit by changing the calculation of the flat dollar amount limit on the credit to the greater of (1) $500 or (2) the lesser of (a) $250 multiplied by the number of nonhighly compensated employees of the eligible employer who are eligible to participate in the plan or (b) $5,000. The credit applies for up to three years.

Small Employer Automatic Enrollment Credit (sec. 106 of the bill and new sec. 45S of the Code)

Automatic enrollment is shown to increase employee participation and higher retirement savings. The legislation creates a new tax credit of up to $500 per year to employers to defray startup costs for new section 401(k) plans and SIMPLE IRA plans that include automatic enrollment. The credit is in addition to the plan start-up credit allowed under present law and would be available for three years. The credit would also be available to employers that convert an existing plan to an automatic enrollment design.

Treat Certain Taxable Non-Tuition Fellowship and Stipend Payments as Compensation for IRA Purposes (sec. 107 of the bill and sec. 219 of the Code)

Stipends and non-tuition fellowship payments received by graduate and postdoctoral students are not treated as compensation and cannot be used as the basis for IRA contributions. The legislation removes this obstacle to retirement savings by taking such amounts that are includible in income into account for IRA contribution purposes. The change will enable these students to begin saving for retirement and accumulate tax-favored retirement savings.

Repeal of Maximum Age for Traditional IRA Contributions (sec. 108 of the bill and sec. 219 of the Code)

The legislation repeals the prohibition on contributions to a traditional IRA by an individual who has attained age 70½. As Americans live longer, an increasing number continue employment beyond traditional retirement age. **Expansion of IRA Ownership of S Corporation Bank Stock (sec. 109 of the bill and secs. 1361 and 4975 of the Code)**

The legislation permits any IRA to be a shareholder of any S corporation that is a bank.

Extended Rollover Period for Plan Loan Offset (sec. 110 of the bill and sec. 402(c) of the Code)

The legislation extends the time window for participants to roll over plan offset amounts (amounts by which a participant's accrued benefit under the plan is reduced to repay a loan from the plan) resulting in more rollovers and preserving retirement savings. Specifically, the legislation expands the period for rollover to the due date (including extensions) for filing the Federal income tax return for the taxable year in which the plan loan offset occurs.

Modification of Hardship Withdrawals from Cash or Deferred Arrangements Rules (sec. 111 of the bill and sec. 401(k) of the Code)

The legislation simplifies the rules related to hardship withdrawals from 401(k) plans to reduce burdens on employers and plan administrators and remove impediments to retirement savings for participants. The legislation permits hardship withdrawals of amounts attributable to qualified nonelective contributions, qualified matching contributions (and earnings) and earnings on elective deferrals. The legislation directs Treasury to revise regulations to remove the six-month ban on contributions following a hardship distribution.

Qualified Employer Plans Prohibited from Making Loans Through Credit Cards and Other Similar Arrangements (sec. 112 of the bill and sec. 72(p) of the Code)

The legislation prohibits the distribution of plan loans through credit cards or similar arrangements, except under existing arrangements available before September 21, 2016. New limitations on existing arrangements include disqualification of transactions of $1,000 or less or transactions with or on the premises of a liquor store, casino, gaming establishment or adultentertainment establishment. The change will ensure that plan loans are not used for routine or small purchases, thus reducing retirement savings.

Portability of Lifetime Income Options (sec. 113 of the bill and secs. 401(a), 403(b) and 457(d) of the Code)

The legislation permits qualified defined contribution plans, section 403(b) plans, or governmental section 457(b) plans to make a direct trustee-to-trustee transfer to another employer-sponsored retirement plan or IRA of lifetime income investments or distributions of a lifetime income investment in the form of a qualified plan distribution annuity, if a lifetime income investment is no longer authorized to be held as an investment option under the plan. The change will permit participants to preserve their lifetime income investments and avoid surrender charges and fees.

Treatment of Custodial Accounts on Termination of Section 403(b) Plans (sec. 114 of the bill and sec. 403(b) of the Code)

The legislation deems custodial accounts held by IRS approved nonbank trustees pursuant to a termination of section 403(b) plan to be IRAs. Custodial accounts under a section 403(b) plan that are designated Roth accounts are treated as a Roth IRA upon termination of the section 403(b) plan. The modification provides a mechanism for the termination of section 403(b) plan in a manner that preserves the assets that cannot otherwise be distributed, such as annuity contracts or mutual funds held in the participant's name, in a tax-favored retirement savings vehicle.

Clarification of Retirement Income Account Rules Relating to Church-Controlled Organizations (sec. 115 of the bill and sec. 403(b)(9) of the Code)

The legislation clarifies individuals that may be covered by plans maintained by church controlled organizations. Covered individuals include duly ordained, commissioned, or licensed ministers, regardless of the source of compensation; employees of a tax-exempt organization, controlled by or associated with a church or a convention or association of churches; and certain employees after separation from service with a church, a convention or association of churches, or an organization described above.

Plans Adopted by Filing Due Date for Year May Be Treated as in Effect as of Close of Year (sec. 201 of the bill and sec. 401(b) of the Code)

The legislation permits businesses to treat qualified retirement plans adopted before the due date (including extensions) of the tax return for the taxable year to treat the plan as having been adopted as of the last day of the taxable year. The additional time to establish a plan provides flexibility for employers that are considering adopting a plan and the opportunity for employees to receive contributions for that earlier year and begin to accumulate retirement savings.

Combined Annual Reports for Group of Plans (sec. 202 of the bill, sec. 6058 of the Code, and sec. 104 of ERISA)

The legislation directs the IRS and DOL to effectuate the filing of a consolidated Form 5500 for similar plans. Plans eligible for consolidated filing must be defined contribution plans, with the same trustee, the same named fiduciary (or named fiduciaries) under ERISA, and the same administrator, using the same plan year, and providing the same investments or investment options to participants and beneficiaries. The change will reduce aggregate administrative costs, making it easier for small employers to sponsor a retirement plan and thus improving retirement savings.

Disclosure Regarding Lifetime Income (sec. 203 of the bill and sec. 105 of ERISA)

The legislation requires benefit statements provided to defined contribution plan participants to include a lifetime income disclosure at least once during any 12-month period. The disclosure would illustrate the monthly payments the participant would receive if the total account balance were used to provide lifetime income streams, including a qualified joint and survivor annuity for the participant and the participant's surviving spouse and a single life annuity. The Secretary of Labor is directed to develop a model disclosure. Disclosure in terms of monthly payments will provide useful information to plan participants in correlating the funds in their defined contribution plan to lifetime income. Plan fiduciaries, plan sponsors, or other persons will have no liability under ERISA solely by reason of the provision of lifetime income stream equivalents that are derived in accordance with the assumptions and guidance under the provision and that include the explanations contained in model disclosure.

Fiduciary Safe Harbor for Selection of Lifetime Income Provider (sec. 204 of the bill and sec. 404 of ERISA)

The legislation provides certainty for plan sponsors in the selection of lifetime income providers, a fiduciary act under ERISA. Under the bill, fiduciaries are afforded an optional safe harbor means to satisfy the prudence requirement with respect to the selection of insurers and guaranteed retirement income and are protected from liability for any losses that may result to the participant or beneficiary due to an insurer's inability in the future to satisfy its financial obligations under the terms of the contract. Removing ambiguity about the applicable fiduciary standard eliminates a roadblock to offering lifetime income benefit options under a defined contribution plan.

Modification of Nondiscrimination Rules to Protect Older, Longer Service Participation (sec. 205 of the bill and sec. 401(a)(4) of the Code)

The legislation modifies the nondiscrimination rules with respect to closed plans to permit existing participants to continue to accrue benefits. The modification will protect the benefits for older, longer-service employees as they near retirement.

Modification of PBGC Premiums for CSEC Plans (sec. 206 of the bill and sec. 4006 of ERISA)

In 2014, different funding rules were adopted for three types of pension plans: single-employer, multiemployer and CSEC plans. The legislation establishes individualized rules for calculating PBGC premiums. For CSEC plans, the legislation specifies flat-rate premiums of $19 per participant, and variable rate premiums of $9 for each $1,000 of unfunded vested benefits.

Benefits for Volunteer Firefighters and Emergency Medical Responders (sec. 401 of the bill and sec. 139B of the Code)

The legislation reinstates for one year the exclusions for qualified State or local tax benefits and qualified reimbursement payments provided to members of qualified volunteer emergency response organizations and increases the exclusion for qualified reimbursement payments to $50 for each month during which a volunteer performs services.

Treatment of Qualified Equity Grants Provided to Employees (sec. 402 of the bill and secs. 83, 3401 and 6051 of the Code)

The legislation allows a qualified employee of a corporation with no stock that is readily tradable on an established securities market during any preceding calendar year to elect to defer, for income tax purposes (FICA and FUTA are not affected), the inclusion in income of the amount of income attributable to qualified stock transferred to the employee by the employer. Allowing employees to elect to defer recognition of income until an opportunity to sell some of the stock arises, (but in no event longer than five years from the date that the employee's right to the stock becomes substantially vested) would give employees the opportunity to realize income to pay the tax liability and avoid allowing options to lapse. Nonqualified employees include (1) a one-percent owner at any time during the 10 preceding calendar years, (2) the chief executive officer or chief financial officer of the corporation or an individual acting in either capacity, (3) a family member of an individual described in (1) or (2), or (4) someone who has been one of the four highest compensated officers of the corporation for any of the 10 preceding taxable years.

Modifications to Required Minimum Distribution Rules (sec. 501 of the bill and sec. 401(a)(9) of the Code)

The legislation modifies the required minimum distribution rules with respect to defined contribution plan and IRA balances upon the death of the account owner. Under the legislation, for aggregate account balances over $450,000, distributions to individuals other than the surviving spouse of the employee (or IRA owner), disabled or chronically ill individuals, individuals who are not more than 10 years younger than the employee (or IRA owner), or child of the employee (or IRA owner) who has not reached the age of majority are required to be distributed by the end of the fifth calendar year following the year of the employee or IRA owner's death. The modification would limit the tax subsidy for retirement savings once the needs of the individual and surviving spouse, and certain other beneficiaries, have been met.

Increase in Penalty for Failure to File (sec. 502 of the bill and sec. 6651(a) of the Code)

The legislation increases the failure to file penalty to the lesser of $400 or 100 percent of the amount of the tax due. Increasing the penalties will encourage the filing of timely and accurate returns which, in turn, will improve overall tax administration.

Increased Penalties for Failure to File Retirement Plan Returns (sec. 503 of the bill and sec. 6652(d), (e), and (h) of the Code)

The legislation modifies the failure to file penalties for retirement plan returns. The Form 5500 penalty would be modified to $100 per day, not to exceed $50,000. Failure to file a registration statement would incur a penalty of $2 per participant per day, not to exceed $10,000. Failure to file a required notification of change would result in a penalty of $2 per day, not to exceed $5,000 for any failure. Failure to provide a required withholding notice results in a penalty of $100 for each failure, not to exceed $50,000 for all failures during any calendar year. Increasing the penalties will encourage the filing of timely and accurate information returns and statements and the provision of required notices, which, in turn, will improve overall tax administration.

Modification of User Fee Requirements for Installment Agreements (sec. 504 of the bill and sec. 6159 of the Code)

User fees present a financial barrier to compliance in collection and discourage low-income taxpayers from voluntary tax compliance. The legislation generally prohibits increases in the amount of user fees charged by the IRS for installment agreements. The legislation waives the fee for low-income taxpayers entering into an agreement to make automated installment payments through a debit account. For low-income taxpayers who are unable to make payments electronically the user fee will be reimbursed upon completion of the installment agreement.

Increase Information Sharing to Administer Excise Taxes (sec. 505 of the bill and sec. 6103(o) of the Code)

The legislation allows the IRS to share returns and return information with the U.S. Customs and Border Protection for purposes of administering and collecting the heavy vehicle use tax.

Repeal of Partnership Technical Terminations (sec. 506 of the bill and sec. 708(b)(1)(B) of the Code)

The legislation repeals the section 708(b)(1)(B) rule providing for technical terminations of partnerships. The present-law rule of section 708(b)(1)(A) that a partnership is considered as terminated if no part of any business, financial operation, or venture of the partnership continues to be carried on by any of its partners in a partnership remains.

Pension Plan Acceleration of PBGC Premium Payment (sec. 507 of the bill and sec. 4007 of ERISA)

The legislation accelerates the payment of variable-rate premiums for which the due date under present law occurs during the period October 1, 2026, through November 30, 2026, to September 30, 2026. The change will strengthen the financial status of the PBGC insurance program.