

## **ENHANCING AMERICAN RETIREMENT NOW (EARN) ACT**

### **A. INDIVIDUAL RETIREMENT**

**1. Secure deferral arrangements.** Under present law, a 401(k) plan that default enrolls employees into elective deferral contributions and makes certain mandatory employer contributions is treated as satisfying nondiscrimination testing. This testing ensures that nonhighly compensated employees are proportionally benefiting from the plan. The default contribution must be no lower than 3% in the first year of enrollment and increases to no lower than an additional 1% per year until the fourth and later years, in which case the default must be at least 6%. The mandatory employer contributions are either a matching contribution equal to 100% of the first 1% of compensation deferred and 50% of the next 5% deferred, or an employer contribution of 3% of compensation (even if no deferrals are made by the employee). This provision would provide an alternative method of satisfying nondiscrimination testing and, if offered by a small employer, the employer would be eligible for a tax credit (see sec. 601). The provision would require default contributions must be no lower than 6% in the first year, increase 1% per year until the fifth and later years, in which case the default must be at least 10%. The provision would require employer matching contributions of 100% of the first 2% of deferred compensation, 50% of the next 4% deferred and 20% of the next 4% deferred. The provision would be effective after 2023.

**2. Matching payments for elective deferral and IRA contributions by certain individuals.** Current law provides for a nonrefundable credit for certain individuals who make contributions to IRAs, employer retirement plans (such as 401(k) plans), and ABLE accounts. This provision would modify the credit with respect to IRA and retirement plan contributions by changing it from a credit paid in cash as part of a tax refund to a government matching contribution that must be deposited into a taxpayer's IRA or retirement plan. The credit would be 50% of IRA or retirement plan contribution up to \$2,000 per individual. The credit rate would phase out between \$41,000 and \$71,000 in the case of taxpayers filing a joint return (\$20,500 to \$35,500 for single taxpayers and married filing separate; \$30,750 to \$53,250 for head of household filers). The provision would be effective for years after 2026.

**3. Modification of participation requirements for long-term, part-time workers.** The SECURE Act (enacted in 2019 as part of Public Law 116-94) requires an employer with a 401(k) plan to permit employees with at least 500 hours of service in 3 consecutive years to participate in the plan. The provision

would reduce the 3 year requirement to 2 years, effective after 2022.

**4. Treatment of student loan payments as elective deferrals for purposes of matching contributions.** This provision would permit employers to provide matching contributions under 401(k) and other tax-preferred retirement plans for employee student loan payments as if those payments were elective deferrals. The provision would be effective after 2023.

**5. Withdrawals for certain emergency expenses.** Under present law an additional 10% tax applies to early distributions from tax-preferred retirement accounts such as 401(k) plans and IRAs. This provision would provide an exception for certain distributions used for emergency expenses, which are unforeseeable or immediate financial needs relating to personal or family emergency expenses. Only one distribution would be permissible per year of up to \$1,000, and a taxpayer would have the option to repay the distribution within 3 years. No further emergency distribution would be permissible during the 3 year repayment period unless repayment occurs. The provision would be effective after 2023.

**6. 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. This provision would permit an employer to make additional contributions to each employee of the plan in a uniform manner, provided that the contribution may not exceed the lesser of 10% of compensation or \$5,000 (indexed). The provision would be effective after 2023.

**7. Small immediate financial incentives for contributing to a plan.** An employer that sponsors a tax-preferred retirement plan that provides for elective deferral contributions (e.g., 401(k) plans) generally is prohibited from providing any benefit that is conditioned on an employee's decision to contribute or not contribute. This provision would allow an employer to provide a de minimis financial incentive to employees who elect to make contributions, effective after date of enactment.

**8. Indexing IRA catch-up limit.** Present law permits an IRA owner to contribute an additional \$1,000 (unindexed) annually to the IRA beginning at age 50. This provision would index this catch-up limit, effective for years beginning after date of enactment.

**9. Higher catch-up limit to apply at age 60.** Present law permits participants in 401(k) plans (and other tax-preferred retirement plans that allow elective deferrals) to contribute an additional \$6,500 to the plan annually (\$3,000 for Simple plans) beginning at age 50 above the otherwise applicable limits on

elective deferrals. This provision would permit participants to elect to contribute an additional \$10,000 (indexed) annually beginning between age 60 and 63 (\$5,000 for Simple plans), and would be effective after 2023.

**10. Eliminate the “first day of the month” requirement for governmental section 457(b) plans.** Employee deferral elections under a governmental section 457(b) plan must be made prior to the first day of the month for which the election relates. This provision would replace this timing requirement with a rule requiring the deferral election be made prior to the date the compensation which is the subject of the election is currently available, and would be effective after date of enactment.

**11. Tax treatment of certain nontrade or business SEP contributions.** This provision would permit employers of domestic employees (e.g., nannies) to provide retirement benefits for such employees under a Simplified Employee Pension (SEP), and would be effective after date of enactment.

**12. Elimination of additional tax on corrective distributions of excess contributions.** Present law requires a corrective distribution if too much is contributed to an IRA. The corrective distribution includes the excessive contribution and any earnings allocable to that contribution. This provision would exempt the excess contribution and earnings allocable to the excess contribution from the 10% additional tax on early distributions, and would be effective after date of enactment.

**13. Employer may rely on employee certifying that deemed hardship distribution conditions are met.** Elective deferral contributions made by employees to employer retirement plans are generally subject to distribution restrictions. However, a hardship distribution is an exception if the employee has an immediate and heavy financial need and a distribution is necessary to meet that need. This provision would permit a retirement plan to rely on an employee’s certification that the conditions for a hardship distribution are satisfied, and would provide regulatory authority for exceptions to this reliance (e.g., if the plan has knowledge the hardship conditions are not actually satisfied). The provision would be effective after date of enactment.

**14. Penalty-free withdrawals from retirement plans for individuals in cases of domestic abuse.** The provision would waive the 10% additional tax that applies to early distributions from tax-preferred retirement accounts (e.g., 401(k) plans and IRAs) in the case of eligible distributions to domestic abuse victims. Eligible distributions are capped at \$10,000 (or 50% of the account balance if lesser) and may be recontributed to a tax-preferred retirement account. The provision would be effective after date of enactment.

**15. Amendments to increase benefit accruals under plan for previous plan year allowed until employer tax return due date.** This provision would permit an employer to increase benefits provided under its retirement plan for a year up until its tax return due date for such year, and would be effective for years after date of enactment.

**16. Retroactive first year elective deferrals for sole proprietors.** This provision would permit a sole proprietor of a business to determine the amount of his or her elective deferral contributions to the business' retirement plan for the first year of the plan's adoption until his or her tax return due date for such year, and would be effective for years after date of enactment.

**17. Treasury guidance on rollovers.** This provision would require Treasury to simplify and standardize the rollover process by issuing sample forms for direct rollovers that may be used by both the incoming and outgoing retirement plan or IRA. Issuance of the forms would be due by January 1, 2025.

**18. Exemption for automatic portability transactions.** 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). Present law requires an employer to roll over this distribution into a default IRA if the account balance is at least \$1,000 and the participant does not affirmatively elect otherwise. This provision would permit a retirement plan service provider to provide employer plans with automatic portability services. Such services involve the automatic transfer of a participant's default IRA (established in connection with a distribution from a former employer's plan) into the participant's new employer's retirement plan, unless the participant affirmatively elects otherwise. The provision would be effective after 2023.

**19. Application of section 415 limit for certain employees of rural electric cooperatives.** Under present law, section 415 generally limits the amount that may be paid by a pension plan in annual benefits to a participant to the lesser of \$245,000 (2022) or 100% of the participant's average compensation. This provision would eliminate the compensation-based limit for participants who are nonhighly compensated employees and participate in a rural electric cooperative retirement plan. The provision would be effective after date of enactment.

**20. Insurance dedicated exchange traded funds.** An exchange traded fund (ETF) is an alternative investment product to a mutual fund. Current tax regulations do not allow ETFs to be held in the segregated account of a variable insurance contract. This provision would direct Treasury to modify the regulations to permit ETFs to be held in the segregated account of a variable insurance

contract, generally effective 7 years after date of enactment.

## B. RETIREES

**1. Increase in age for required beginning date for mandatory distributions.** Tax-preferred retirement savings plans and IRAs are generally required to begin distributions once the account owner reaches age 72. This provision would increase the age to 75, effective after 2031.

**2. Qualifying longevity annuity contracts.** A qualified longevity annuity contract (QLAC) is a fixed annuity provided under a defined contribution plan that commences at an advanced age (but no later than age 85) and meets certain other requirements. Among the requirements are that the premiums for a QLAC cannot exceed \$135,000 (2022) or 25% of the participant's account balance. The provision would eliminate the 25% threshold, increase the dollar limit to \$200,000 (indexed), and clarify that survivor benefits may be paid in the case of divorce, and would generally be effective after date of enactment.

**3. Remove required minimum distribution barriers for life annuities.** This provision would permit a commercial annuity issued by a tax-preferred retirement plan to provide for certain features generally not permitted under present law such as a guaranteed increase in annual annuity payments of up to 5% per year and lump sum payments that reduce the annuity payment period, effective after date of enactment.

**4. 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. The provision would permit the account owner to elect to aggregate distributions from both portions of the account for purposes of determining minimum distributions, and would be effective after date of enactment.

**5. Reduction in excise tax on certain accumulations in qualified retirement plans.** Under present law, a 50% additional tax applies if a taxpayer fails to receive a required minimum distribution from an IRA or tax preferred retirement plan. This provision would reduce the tax rate to 25%, and would further reduce the rate to 10% if the minimum distribution is taken within a correction period (generally ending no later than the end of the second tax year following the year in which the distribution should have been made), and would be effective after date of enactment.

**6. Clarification of substantially equal periodic payment rule.** Present law imposes a 10% additional tax on early distributions from tax-preferred retirement accounts, but an exception applies to substantially equal periodic payments that are made over the account owner's life expectancy. This provision would provide that the exception continues to apply if the case of a rollover of the account, an exchange of an annuity providing the payments, or an annuity that satisfies the required minimum distribution rules. The provision would be effective after date of enactment.

**7. Recovery of retirement plan overpayments.** Sometimes employer retirement plans make a mistake and overpay a participant or beneficiary. The tax rules governing these plans generally require the plan to recover such overpayments. This provision would clarify that a tax-preferred employer plan does not violate the tax qualification rules if the plan does not seek repayment or if the plan is amended to account for the overpayments. This provision would also clarify that a mistaken overpayment for which no repayment is sought is eligible for rollover to another plan or IRA. This provision would be effective after date of enactment.

**8. Retirement Savings Lost and Found.** Under this provision, Treasury would be required to maintain a database that would provide contact information for employer retirement plans for the purpose of assisting participants and beneficiaries in recovering lost plan benefits. Treasury also would be required to hold a participant's account balance in an employer retirement plan if the balance is under \$1,000, the employer sought to distribute the account balance because it was immediately distributable (e.g., following a termination of employment), and the participant did not affirmatively make an alternative election. An account balance held by Treasury would be treated as being held in an IRA, would be credited with interest, and Treasury would periodically notify the owner of his or her distribution rights.

**9. Roth plan distribution rules.** Under present law, required minimum distributions are not required to begin prior to the death of the owner of a Roth IRA. However, pre-death distributions are required in the case of the owner of a Roth designated account in an employer retirement plan (e.g., 401(k) plan). This provision would eliminate the pre-death distribution requirement for Roth accounts in employer plans, effective after 2023.

**10. One-time election for qualified charitable distribution to split interest entity; increase in qualified charitable distribution limitation.** This provision would index for inflation the annual IRA charitable distribution limit of \$100,000, effective after 2023. Further, the provision would expand the IRA

charitable distribution provision to allow for a one-time, \$50,000 distribution to charities through charitable gift annuities, charitable remainder unitrusts, and charitable remainder annuity trusts, effective after date of enactment.

**11. Exception to penalty on early distributions from qualified plans for individuals with a terminal illness.** Under present law, an additional 10% tax applies to early distributions from tax-preferred retirement accounts. This provision would provide an exception to the tax in the case of a distribution to a terminally ill individual, and would be effective after date of enactment.

**12. Surviving spouse election to be treated as employee.** This provision would allow a surviving spouse to elect to be treated as the deceased employee for purposes of the required minimum distribution rules. The provision would be effective after 2023.

**13. Long term care contracts purchased with retirement account distributions.** This provision would permit retirement plans to distribute up to \$2,500 per year for the payment of premiums for certain specified long term care insurance contracts. Distributions from plans and IRAs to pay such premiums would be exempt from the additional 10% tax on early distributions. Only a policy that provides for high quality coverage is eligible for early distribution and waiver of the 10% tax. High quality in this context describes a policy that would provide meaningful financial assistance in the event that an insured needs home-based assistance or nursing home care. Treasury would also maintain a website providing consumer education regarding long term care contracts. The proposal would be effective 3 years after date of enactment.

## C. PUBLIC SAFETY OFFICERS AND MILITARY

**1. Military spouse retirement plan eligibility credit for small employers.** This provision would provide a tax credit to a small employer who permits military spouses to participate in the employer's defined contribution plan (\$200 per spouse), along with an enhanced credit (up to an additional \$300 per spouse) if the employer makes contributions to the plan for the military spouse. A small employer is an employer with 100 or fewer employees. The provision would be effective after date of enactment.

**2. Distributions to firefighters.** An exception to the 10% additional tax on early distributions from tax-preferred retirement savings applies in the case of public safety officers. This provision would extend this exception to private-sector firefighters, effective after date of enactment.

**3. Exclusion of certain disability-related first responder retirement payments.** Disability payments are generally excluded from a recipient's gross

income. However, some employers terminate disability payments once the recipient reaches normal retirement age because the recipient is eligible for pension benefits. Present law does not provide for a continuation of the gross income exclusion in such a case. This provision would continue the gross income exclusion and would be effective for after 2027.

**4. Repeal of direct payment requirement on exclusion from gross income of distributions from governmental plans for health and long-term care insurance.** Present law provides an exclusion from gross income (\$3,000) for a distribution from a governmental retirement plan to a public safety officer to pay for his or her health insurance premiums. The exclusion requires that the plan directly pay the insurance premiums. This provision would repeal the direct payment requirement and would be effective after date of enactment.

**5. Modification of eligible age for exemption from early withdrawal penalty.** The 10% additional tax on early distributions from tax preferred retirement savings plans does not apply to a distribution from a governmental plan to a public safety officer who is at least age 50. This provision would extend the exception to public safety officers with at least 25 years of service with the employer sponsoring the plan, and would be effective after date of enactment.

**6. Exemption from early withdrawal penalty for certain State and local government corrections employees.** This provision would extend the public safety officer exception to the 10% early distribution tax to corrections officers who are employees of state and local governments, effective after date of enactment.

## **D. NONPROFITS AND EDUCATORS**

**1. Enhancement of 403(b) plans.** Group trusts are sometimes used by multiple tax-preferred retirement savings plans (such as 401(k) plans) and IRAs to diversify investments and lower costs. A section 403(b) plan that is structured as a custodial account is limited to mutual fund investments and cannot participate in a group trust unless the trust solely comprises of section 403(b) custodial accounts. This provision would permit 403(b) custodial accounts to participate in group trusts with other tax-preferred savings plans and IRAs, and would be effective after date of enactment.

**2. Hardship withdrawal rules for 403(b) plans.** This provision would make technical modifications to conform the hardship distribution rules that apply to 403(b) plans to those that apply to 401(k) plans, such as allowing hardship distributions to be made from earnings on elective deferrals held in a 403(b) custodial account. The provision would be effective after date of enactment.

**3. Multiple employer 403(b) plans.** The SECURE Act (enacted in 2019) provides for new rules that encourage the formation of multiple employer defined contribution plans (e.g., 401(k) plans). Such plans allow an employer to achieve administrative and cost efficiencies from participation in a much larger plan than would be the case if the plan only covered that employer's employees. This provision would extend these rules to 403(b) plans, and would be effective for plan years beginning after date of enactment.

## E. DISASTER RELIEF

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

## F. EMPLOYER PLANS

**1. Credit-for employers with respect to modified safe harbor requirements.** Under this provision, a small employer (100 or fewer employees) that adopts a plan that satisfies the default enrollment requirements and employer matching contributions described in sec. 101 would be eligible for a tax credit. The credit generally would be equal to the sum of the employer's matching contributions required under sec. 101. However, no credit would be available with respect to matching contributions for highly compensated employees, and matching contributions eligible for the credit would be limited to matching contributions provided for the first 2% of an employee's deferral contributions and only with respect to an employee's first 5 years of participation (after the plan is amended to incorporate the default enrollment requirements of sec. 101). The provision would be effective after 2023.

**2. Application of top heavy rules to defined contribution plans covering excludable employees.** Under present law, the top heavy rules require minimum benefits if a retirement plan's benefits are too heavily concentrated among the sponsoring employer's key employees. This provision would provide that the top heavy rules do not apply for those employees that an employer is not required to

cover under ERISA, which is generally employees with less than 1 year of service or under age 21, effective after date of enactment.

**3. Increase in credit limitation for small employer pension plan startup costs of certain employers.** Present law provides for a tax credit for small employers (100 or fewer employees) that adopt a retirement plan. The credit is equal to 50% of plan start-up costs and is capped between \$500 and \$5,000 depending on the size of the employer. The credit is available for the first 3 years of plan adoption. This provision would modify the existing credit by increasing the 50% rate to 75% in the case of an employer with 25 or fewer employees. The provision would be effective after 2023.

**4. Expansion of Employee Plans Compliance Resolution System.** The IRS has promulgated the Employee Plans Compliance Resolution System (EPCRS) to permit employer retirement plans to correct tax qualification failures. This provision would modify EPCRS to permit self-correction of inadvertent failures by a plan (generally without a time limit) provided that the failure at issue is not egregious. IRS would be authorized to issue guidance on correction methods that must be used for such self correction, including general correction principles if a specific correction is not proscribed. The provision would also expand EPCRS to cover certain failures with respect to IRAs, such as required minimum distribution failures. The provision would be effective after date of enactment.

**5. Application of credit for small employer pension plan startup costs to employers which join an existing plan.** Present law provides small employers with a credit in the case of the adoption of a retirement plan. This provision would extend the credit to employers who join a multiple employer retirement plan, and would be effective after date of enactment.

**6. Safe harbor for corrections of employee elective deferral failures.** The IRS has issued guidance on the correction of failures relating to default enrollment of employees into retirement plans such as 401(k) plans. This guidance includes a safe harbor, which expires December 31, 2023, that permits correction if notice is given to the affected employee, correct deferrals commence within certain specified time periods, and the employer provides the employee with any matching contributions that would have been made if the failure had not occurred. The provision would make this safe harbor permanent, and is effective after 2023.

**7. Reform of family attribution rule.** Present law requires that separate businesses be treated as a single employer for various tax rules applicable to retirement plans based on the degree of common ownership of the separate businesses. Various rules apply to attribute ownership of a business by one family member to other family members. For example, the attribution rules treat an

individual as owning stock in a business owned by his or her spouse if the individual directly owns stock in the business or is an employee or director of the business. This provision would modify the ownership attribution rules to provide that an individual in a community property state is not treated as owning shares in a business owned by his or her spouse merely because the individual has a community share in the spouse's property. The provision would also disaggregate two businesses if the only common ownership link is on account of attribution of parental ownership to a child or on account of a stock option held by a minor child to acquire an ownership interest in either business. The provision would be effective after 2023.

**8. 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 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). This provision would increase the annual deferral limit to \$16,500 (indexed) and the catch-up contribution at age 50 to \$4,750 (indexed) in the case of an employer with no more than 25 employees. An employer with 26 to 100 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. The proposal would be effective after 2023.

**9. Employers allowed to replace simple retirement accounts with safe harbor 401(k) plans during a year.** This provision would allow an employer to replace a Simple IRA plan with a simple 401(k) plan or other 401(k) plan that requires mandatory employer contributions during a plan year, and would be effective after 2023.

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

**11. Credit for small employers that adopt an automatic portability**

**arrangement.** This provision would provide a \$500 credit to small employers (100 or fewer employees) that adopt an automatic portability arrangement, effective after date of enactment. (See sec. 118 regarding automatic portability transactions.)

**12. Re-enrollment credit.** This provision would provide a \$500 credit (for up to 3 years) if a small employer (100 or fewer employees) adopts a reenrollment feature in a retirement plan that default enrolls employees into elective deferral contributions. 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). The provision would be effective after 2023.

**13. Corrections of mortality tables.** This provision would generally require that for purposes of the minimum funding rules, a pension plan is not required to assume mortality improvements at any age greater than 0.78%, and would be effective after date of enactment.

**14. 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. This provision would extend the sunset date to the end of 2032 and would permit transfers to pay retiree health and life insurance benefits provided the transfer is no more than 1.75% of plan assets and the plan is at least 110% funded, and would be effective after date of enactment.

**15. Deferral of tax for certain sales of employer stock to employee stock ownership plans sponsored by S corporation.** An employee stock ownership plan (ESOP) is a type of retirement plan which is invested in the stock of the employer that sponsors the retirement plan. This provision would permit the owner of employer stock issued by an S corporation to defer 10% of long term capital gain from the sale of that stock to an ESOP, effective for years after 2027.

## **G. NOTICES**

**1. Review and report to Congress relating to reporting and disclosure requirements.** This provision requires Treasury, Department of Labor, and Pension Benefit Guaranty Corporation (PBGC) to review and report to Congress within 18 months with respect to the various notice and disclosure requirements that apply to employer retirement plans, including an analysis of the effectiveness of these requirements and recommendations on simplification.

**2. 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. This provision requires GAO to issue a report to Congress on the effectiveness of section 402(f) notices.

**3. Eliminating unnecessary plan requirements related to unenrolled participants.** This provision would exempt employer retirement plans from providing notices and disclosures to an employee who is not enrolled in the plan provided that an annual reminder notice is given to the employee of his or her eligibility to participate in the plan and the plan provides any notices or disclosures that the employee requests and would be entitled to receive if enrolled in the plan. This would be effective for plan years after date of enactment.

## **H. TECHNICAL MODIFICATIONS**

**1. Repayment of qualified birth or adoption distribution limited to 3 years.** The SECURE Act provides that amounts distributed from tax preferred retirement accounts to pay for birth or adoption expenses may be repaid, but does not specify a repayment deadline. This provision would provide for a 3 year repayment deadline.

**2. Amendments relating to Setting Every Community Up for Retirement Enhancement Act of 2019.** This provision would make technical corrections to the SECURE Act.

**3. Modification of required minimum distribution rules for special needs trusts.** The SECURE Act 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. This provision would clarify 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. The provision would be effective after date of enactment.

## **I. PLAN AMENDMENTS**

**1. Provisions relating to plan amendments.** This provision would provide employer retirement plans with an extended period of time by which plan amendments must be adopted to reflect the changes in law made by this legislation. The extended deadline would generally be December 31, 2024 for calendar year plans.

## **J. TAX COURT RETIREMENT PROVISIONS**

**1. Proposals relating to judges of the Tax Court.** Current law allows Tax

Court judges to contribute to the thrift savings plan (TSP), but prevents Tax Court judges from receiving TSP automatic or matching contributions. Other federal judges, in contrast, may receive automatic and matching contributions if they are not covered by a judicial retirement plan. If those judges later elect to receive judicial retirement benefits, his or her retired pay will be offset by an amount designed to recapture those TSP automatic and matching contributions. The provision would provide parity between other federal judges and Tax Court judges by extending the same TSP matching contributions policy to Tax Court judges. Additionally, Tax Court judges may elect to participate in a plan providing benefits for the judge's surviving spouse and dependent children. Benefits vest only after the judge has performed at least five years of service and made contributions for at least five years of service. In contrast, other federal judges vest after 18 months of service, and the 18-month period is waived if the judge were to be assassinated. The provision would also provide parity between other federal judges and Tax Court judges by applying the 18-month vesting period and assassination waiver to Tax Court judges. Lastly, the provision provides that compensation earned by retired Tax Court judges (i.e., those who are disabled or meet the recall requirements) for teaching is not treated as outside earned income for purposes of limitations under the Ethics in Government Act of 1978, and makes technical amendments to coordinate Tax Court judicial retirement with the Federal Employees Retirement System (FERS) and the retirement and survivors' annuities plans.

**2. Retirement and recall for special trial judges.** Special trial judges of the Tax Court are the only judicial officers who do not have an option to participate in a judicial retirement program. The provision establishes a retirement plan under which a special trial judge may elect to receive retired pay in a manner and under rules similar to the regular judges of the Court. The provision provides parity between special trial judges of the Tax Court and other federal judges.

## K. REVENUE PROVISIONS

**1. Simple and SEP Roth IRAs.** This provision would permit an employee participating in a SIMPLE IRA plan or a Simplified Employee Pension (SEP) to elect to treat elective deferrals and employer contributions as after-tax Roth contributions, and would be effective after 2023.

**2. Elective deferrals generally limited to regular contribution limit.** This provision would require catch-up contributions within an employer retirement plan to be made as after-tax Roth contributions, and would be effective after 2023.

**3. Optional treatment of employer matching and other employer**

**contributions as Roth contributions.** This provision would permit an employee to elect to treat employer matching and other employer contributions as after-tax Roth contributions, and would be effective after 2023.