AMERICAN BENEFITS COUNCIL

WRITTEN STATEMENT

FOR THE HEARING OF THE SENATE COMMITTEE ON HEALTH, EDUCATION, LABOR AND PENSIONS

ENTITLED

RETIREMENT SECURITY: BUILDING A BETTER FUTURE

MAY 13, 2021

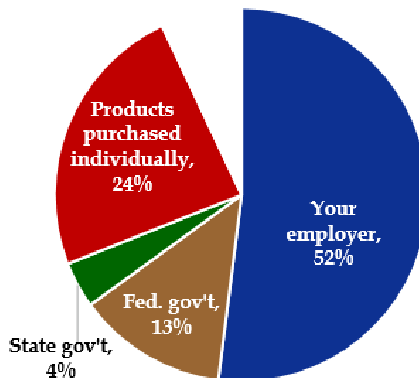
The American Benefits Council (the "Council") thanks Chair Murray and Ranking Member Burr and all members of the committee for holding the hearing, "Retirement Security: Building a Better Future." Your work and that of the committee has been instrumental in the great bipartisan strides we have made in this area. We appreciate your leadership in further improving retirement outcomes for American workers and their families.

A majority of voters trust employers the most to help them achieve a secure retirement.

Voters were asked:

Which ONE of the following sources do you trust the most to help you achieve a secure retirement?

- *Plans provided by employers, through a pension or 401(k)-type plan*
- *Financial products purchased by you individually*
- *Plans provided by the federal government*
- *Plans provided by your state government*



Source: Public Opinion Strategies 2020 Post-Election National Survey Results

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The private retirement system has helped millions of Americans achieve retirement security. According to a post-election poll conducted by Public Opinion Strategies in the 2020 presidential election, a majority of voters trust employers the most in helping them achieve a secure retirement and a majority of voters believe that the standards for employer-provided benefits should be established at the federal level. The Setting Every Community Up for Retirement Enhancement (SECURE) Act enacted in 2019 was a major step forward in meeting the challenges faced by Americans in achieving a secure retirement. In addition, the American Rescue Plan Act enacted earlier this year included vital funding reform that provided much needed stabilization to single-employer pension plans. Even with those changes being enacted, the system can be further improved and strengthened and there are numerous existing bipartisan proposals — several of which are discussed below — that we believe can help achieve that result.

The American Benefits Council is a Washington D.C.-based employee benefits public policy organization. The Council advocates for employers dedicated to the achievement of best-in-class solutions that protect and encourage the health and financial well-being of their workers, retirees and their families. Council members

include over 220 of the world's largest corporations as well as organizations serving employers of all sizes. Collectively our members directly sponsor or administer health and retirement benefits for virtually all Americans covered by employer-sponsored plans.

KEY BIPARTISAN PROPOSALS FOR IMPROVING RETIREMENT SECURITY

There are many retirement policy proposals that are worthy of discussion. We are highlighting several that Council members have identified as important reforms that build on the SECURE Act and significantly help American workers better prepare for retirement. Many of the proposals below are included in both the Retirement Security and Savings Act of 2021 (S. 1770, the "Cardin/Portman" bill) and the Securing a Strong Retirement Act of 2021 (H.R. 2954, the "Neal/Brady" bill) as approved by the House Ways and Means Committee. Some proposals not included in the bills should be considered as well. Some of the proposals are additionally found in in other bipartisan legislation, such as the Retirement Parity for Student Loans Act (S. 1443, the "Wyden student loan" bill) and the Retirement Savings Lost and Found Act (S. 1730, the "Warren/Daines missing participants" bill).

Self-correction procedures

Plan sponsors should generally be permitted to self-correct inadvertent plan violations under the IRS' Employee Plans Compliance Resolution System (EPCRS) without a submission to the IRS or a fee payable to the IRS. This will help employees because errors can be corrected more quickly and more efficiently. Under a proposal included in the Cardin/Portman bill and the Neal/Brady bill, all inadvertent plan violations could be self-corrected under EPCRS without a submission or fee to the IRS, provided that this rule would not apply if the IRS discovers the violation on audit and the employer has not at that point taken actions that demonstrate a commitment to correct the violation. These bills, which we strongly support, would also make improvements to the self-correction process that would make self-correction a more reliable and effective process.

Reducing barriers to saving through student loan repayment programs

The burden of student loan debt serves as an unfortunate barrier to saving for retirement. Given the benefit of compound interest, putting money away early in one's career — especially through an employer-provided plan with matching contributions and low fees — can have a powerful effect on one's retirement savings account balance at retirement age. But student debt prevents many individuals, especially in their 20s and 30s, from saving optimally for retirement.

Many employers are interested in helping employees save for retirement despite student tuition or debt obligations and are considering a variety of innovative approaches to do so. We urge Congress to support these programs with policies that embrace innovation.

For example, the Council supports proposals that would make it easier for employers to provide matching contributions to 401(k) retirement plans based on an employee's student loan payments. Such a provision is included in the Wyden student loan bill. The Wyden student loan proposal is also included in the Cardin/Portman, Neal/Brady and Danny Davis/LaHood (H.R. 2917) bills. Measures such as this that would leverage the tax laws and behavioral economics would go a long way toward reducing barriers to retirement savings particularly for younger workers. Just like saving early, enacting supportive policy as soon as possible will have a positive effect on retirement outcomes.

We are supportive of other proposals to give employers greater flexibility in helping their employees with student loan debt including making permanent provisions that make it easier for employers to pay down student loans for their employees without triggering taxable income for their employees, up to an annual limit of $5,250 on the total of such repayments as well as other educational assistance.

PEP and "group of plan" reforms

Policymakers are constantly searching for ways to improve retirement plan coverage and Council members believe that the best way to do so is to build on the employer-based system. Open multiple employer plans (called "pooled employer plans," or PEPs) present a significant opportunity to do so. Much was accomplished in the enactment of the SECURE Act but additional reforms can make PEPs even more effective in expanding coverage, ensuring consistent participation and providing a solid retirement. We note the following proposals:

- **Provide the same PEP advantages to charities, churches and public educational institutions:** Currently, the PEP provisions in the SECURE Act do not cover 403(b) plans, which are widely used by charities, churches and public educational organizations (the only entities permitted to maintain such plans). We support the expansion in Neal/Brady and in Grassley/Hassan/Lankford (S. 1703) of the PEP provisions to cover 403(b) plans, so that these entities can enjoy the same new economies of scale being made available to taxable employers.

- **Service Crediting:** Under a MEP that is not a PEP (a "closed MEP"), if an employee works for one employer in the MEP and then moves to another employer in the MEP, the employee's service with the first employer counts with the second employer and vice versa.

- **PEPs:** The service crediting rule makes sense in the context of a closed MEP where employees are moving among closely related employers. But in the context of a PEP, it does not make sense. For example, why should a hardware store in Maine have to make a new employee immediately eligible and immediately vested based on prior service by the same employee for a barber shop in Nevada, just because the two employers participate in the same PEP?

- **Statute and policy:** The statute is not clear on whether the MEP rule applies to PEPs. In our view, it should not. From a policy perspective, the growth of PEPs and the expansion of coverage would be inhibited if the MEP rule applied to PEPs.

  - If small employers know that, for example, they may need to treat new hires as immediately eligible and immediately vested that could mean fewer small employers join PEPs, undermining the extent of the coverage expansion. This is because the potential additional expenses of applying the service crediting rules across the entire PEP could erase the cost savings obtained elsewhere for the PEP through economies of scale and tracking service crediting based on an employee's previous employers does little to advance administrative simplicity and cost savings.

  - Similarly, many employers would likely be concerned to learn that, under a PEP, a short-term employee who left after a couple of years could become 100% vested later by reason of working for an unrelated employer. Again, this has cost implications.

- **Trustee duties:** SECURE requires the trustee of a PEP "to be responsible for collecting contributions" to the PEP.

  - **Different business models**: Based on the input we have received, there are different business models that may be used with respect to the collection of contributions to the PEP. Under one business model, the trustee would be responsible for collecting contributions. Under a second business model, the PEP would use a directed trustee, which would not have any fiduciary expertise or any administrative system that could be used to enforce or oversee the collection of contributions. If the trustee in this second business model were forced to take on this responsibility, it would have to establish new systems to perform a new function, which would trigger unnecessary costs and delays in implementing PEPs.

  - **Flexibility would expand coverage:** We believe that it is important to accommodate both business models, so that PEP coverage can be

expanded to the greatest extent. Accordingly, we ask that that Congress treat PEPs in the same way as all other types of plans. PEPs should be permitted to assign contribution collection responsibility to the entity best suited to this task, which will often be the pooled plan provider. This legislative solution would simply permit the collection process to be assigned to other fiduciaries, which would facilitate the use of the fiduciary with the most experience and expertise in this regard.

- **Groups of plans that are permitted to file a single Form 5500 under Section 202 of the SECURE Act:** Under current law, generally, a Form 5500 for a defined contribution plan must contain an opinion from an independent qualified public accountant as to whether the plan's financial statements and schedules are fairly presented (referred to below as the "audit requirement"). However, generally, no such opinion is required with respect to a plan covering fewer than 100 participants.
    - A group of plans that fits within the SECURE provision may contain some plans that are subject to the audit requirement and some that are not. Under the proposed change, plans which are subject to the audit requirement may elect to jointly file a single audit as if they were part of the same plan, but the audit requirement and expense would not be imposed on the small plans. As an alternative, to further simplify the administration of the group of plans and to enhance security, the plan administrator may elect to treat all the plans in the group as one plan for purposes of the audit requirement -- including the small plans upon which the requirement would otherwise not be imposed. The latter election would simplify plan administration by accommodating a wider variety of coverage solutions being developed in the marketplace.

Improving required retirement plan reports and disclosures

Under current law, employer-sponsored retirement plans and IRAs are required to provide a variety of reports and disclosures to participants at various times or upon the occurrence of specified events. The Council believes there is a significant opportunity to improve both the content and the timing of required disclosures in a manner that provides for more effective and meaningful communications to participants and account owners, while also decreasing administrative costs for plans and IRAs.

We support bipartisan proposals to take such steps, such as a proposal included in both the Cardin/Portman bill and the Neal/Brady bill. That proposal would direct the U.S. Treasury Department, the U.S. Department of Labor (DOL) and the Pension Benefit Guaranty Corporation (PBGC) to review the reporting and disclosure requirements and

make recommendations to Congress to consolidate, simplify, standardize and improve these participant communications.

A related issue that we urge the committee to consider is one that affects those plan participants who are *not enrolled in the plan* but who nevertheless are considered participants because they are *eligible* to enroll in the plan. Under current law, even non-enrolled participants are required to receive the same reports and disclosures as participants who are enrolled in the plan. Because these non-enrolled participants are receiving plan communications that do not relate to them, the Council strongly supports the proposal in both the Cardin/Portman bill and the Neal/Brady bill under which non-enrolled participants would not be required to receive the unnecessary notices that they receive under current law. Instead, such participants would receive an annual reminder of their eligibility to participate in the plan.

Stop indexing the PBGC variable rate premium for single-employer plans

A bipartisan proposal aimed at addressing concerns over PBGC premiums, which are a factor in causing employers to terminate or engage in pension plan de-risking activities, is included in the Cardin/Portman bill. Today, single-employer defined benefit plans pay both a per-participant flat-rate premium and a variable-rate premium to the PBGC each plan year. Both types of premiums are currently indexed. But indexing the variable-rate premium does not make sense because the variable-rate premium is calculated based on the plan's unfunded vested benefits, an amount that is inherently indexed. As a result, indexing the variable-rate premium will eventually lead to companies owing 100%, 200% or even more of their underfunding to the PBGC. The Cardin/Portman bill would address this by eliminating the indexing of the variable-rate premium and freezing such rate at the 2018 premium level ($38 per $1,000 of unfunded vested benefits).

The Council will soon be unveiling a host of additional PBGC premium reform proposals that are very much needed.

Permitting higher catch-up contributions for older Americans

Even though most Americans understand the benefit of saving for retirement throughout their working years, younger workers in particular often face competing financial priorities, such as buying a home, paying off student loans and raising a family. These expenses can make it challenging for many workers to prioritize saving for retirement until their 40s, 50s or even 60s. In 2020, most employees are generally limited to making elective deferrals of $19,500 to a 401(k), 403(b), or governmental 457(b) plan ($13,500 with respect to SIMPLE IRAs and SIMPLE 401(k)s). But individuals age 50 and older may make a "catch-up" contribution of an additional $6,500 ($3,000 for SIMPLEs). To give workers nearing retirement age an even greater ability to better prepare for retirement, the Council supports the provisions in the Cardin/Portman and

Neal/Brady bills that would increase the catch-up contributions for certain older workers.

Increasing the age at which RMDs must begin

The Council believes it is important that retirees be allowed to retain their savings in retirement accounts as long as possible to help protect against the risk of retirees depleting their retirement savings during their lifetime. We therefore urge the committee to support bipartisan proposals such as those in the Cardin/Portman and Neal/Brady bills that would further increase the age at which participants and IRA account owners must begin taking RMDs to age 75.

Reforming the rules regarding inadvertent overpayments to participants

The complexity of administering a retirement plan can result in a plan incorrectly calculating benefit payments for a participant, especially in a defined benefit plan. Sometimes these errors result in an overpayment being made to a participant. IRS correction procedures in some cases require plans to seek to recoup from participants a discovered overpayment, sometimes months or even years after the overpayment was made to the participant. This often causes significant distress for participants – many of whom were retirees – who had no idea that the plan incorrectly calculated their benefits. Further complicating matters, in many cases an overpayment was rolled over to an IRA or another plan because the participant believed that such amount was eligible for rollover treatment when in reality it was not.

In some circumstances under EPCRS a plan sponsor may correct for an overpayment without seeking recoupment from the participant. However, the Council's members believe that additional steps to protect retirees should be taken and therefore the Council strongly supports provisions in the Neal/Brady and Cardin/Portman bills that would permit employers not to seek recoupment from the participant and to permit rollovers of inadvertent overpayments.

Expansion of electronic disclosure of plan communications

DOL regulations give plan sponsors the option to provide required notices and statements in an electronic format while providing participants with appropriate protections and the right to receive paper copies of notices at no charge. The Council strongly supported updating the means by which plan sponsors can fulfill their disclosure requirements. We believe that electronic communication can improve employee engagement and help them take more effective and timely action. Bipartisan proposals that restrict this option should be carefully measured against these goals and should be designed to resolve a specific problem so as not to undermine the goals.

Similarly, we support retirement plan proposals to allow remote notarization with strong safeguards to protect participants and spouses. This was acutely necessary

during the pandemic and has been allowed on a temporary basis. The success of this system – in terms of efficiency, protections and flexibility -- on a temporary basis provides a solid basis for making this rule permanent.

Missing participants

Our members devote a great deal of effort and financial resources to sponsoring retirement plans and to searching for those who have unclaimed benefits. We wholeheartedly share the goal of reuniting plan participants with their retirement benefits.

In this regard, we welcomed the introduction of missing participant legislation in Neal/Brady, Cardin/Portman and Warren/Daines, which addressed the missing participant issue. The Department of Labor has issued guidance, in the nature of best practices, but more is needed because it does not define when a participant is missing or unresponsive. The Council believes strongly in the need for comprehensive guidance on plan fiduciary responsibilities with respect to unresponsive and missing participants.

The bills also include a provision that would use data that employers are already required to report to Treasury to create a national, online lost and found for Americans' retirement accounts. In addition, the Department of Labor would be directed to develop standards for determining if an employer has satisfied their fiduciary responsibilities with respect to missing participants; in our view, all agencies involved should develop the standards jointly, including Treasury and PBGC. And it should be clear that once a plan does not contain any benefits on behalf of a participant, the plan fiduciaries should have no further duty to search for that participant.

We look forward to continuing to work with Congress on these issues as we collect additional input from our members. Their extensive experience with missing and lost participants provides a valuable resource for policymakers, including input with respect to strategies to improve consistency among agencies with regulatory authority for missing and unresponsive participants.

New "secure deferral arrangement" automatic enrollment safe harbor

A significant retirement policy success in recent years has been encouraging plan sponsors to automatically enroll their employees in a retirement plan at a default contribution rate and then to periodically increase that rate over time. But as successful as these automatic enrollment and automatic escalation features have been to date, policymakers are now looking at options to continue building on their success.

Under the existing automatic enrollment safe harbor, plans are generally deemed as meeting certain nondiscrimination testing rules if certain criteria are met, including that employees are automatically enrolled at a contribution rate of at least 3% of

compensation in the first year and such rate must increase by at least 1% a year until the contribution rate is at least 6% (but not greater than 15%) by the fourth year.

The Council encourages the committee to consider proposals that would build upon the existing safe harbor by adding a new automatic enrollment safe harbor for "secure deferral arrangements." A secure deferral arrangement would, among other features, provide for a higher default contribution rate in the first year (i.e., at least six but not greater than 10%) and would remove that 10% cap on default deferrals after the first year. Such proposals have been included in the Cardin/Portman bill, the Collins/Hassan bill and the 2017 Neal bill.

Remove limitations on subsidies resulting from accumulation of retirement assets

Effective retirement saving can improve overall health and financial well-being. Individuals and families should not be penalized for preparing for retirement. The Council urges the committee to support legislation that would exclude current retirement plan assets and future retirement plan benefits from eligibility calculations for state and federal housing and food subsidies.

Along these same lines, the Council supports efforts to allow employers to deposit any employer contributions that would otherwise be made on behalf of special needs employees to the employee's Section 529A (ABLE) account instead of the company's 401(k) plan. Special needs employees frequently choose not to participate in a 401(k) plan, or they must withdraw funds with corresponding taxes and penalties, because the funds accumulated in the plan can imperil their eligibility for much-needed means-tested benefits that they would otherwise be qualified to receive. Under the proposed solution, the employee could opt into the ABLE account, if offered by the plan sponsor. The employer contribution would be subject to the same deduction rules currently applicable to 401(k) employer contributions and the employee would be taxed on the contribution made to the account. The amounts would be subject to the Section 529A rules once contributed.

Parity for CSEC organizations

The SECURE Act, Neal/Brady and Cardin/Portman together include numerous very helpful tax credits as incentives for taxable companies to start a plan or to adopt certain pro-participant features. For example, the following very beneficial proposals are either in the law or being considered:

- The SECURE Act increased the cap on the small business start-up credit from $500 to $5,000.

- The SECURE Act provided a three-year $500 small business tax credit for adopting automatic enrollment.

- Neal/Brady would increase the start-up in credit in two very material ways:

    - Increase the credit from 50% to 100% of start-up costs for companies with up to 50 employees.

    - Provide a contribution-based credit that could be worth over $100,000 over five years, depending on the size of the business.

- Cardin/Portman would provide a five-year tax credit for small businesses that adopt a new type of safe harbor automatic enrollment 401(k) plan.

- Similar to Neal/Brady, Cardin/Portman would enhance the small business start-up credit by increasing it from a credit equal to 50% of start-up costs to a 75% credit for the smallest employers.

- Cardin/Portman would provide a three-year $500 small business credit for adopting automatic re-enrollment.

Unfortunately, tax-exempt organizations do not receive any of these credits, so the significant help — well over $100,000 in total in some cases — that the credits provide is not available to tax-exempt employers. Moreover, tax-exempt organizations do not pay any less to set up a plan.

We strongly believe that something needs to be done to level the playing field to treat tax-exempt organizations more fairly. We also recognize that addressing this issue in a comprehensive way for all tax-exempt organizations is a broad project that will require further work and consideration. But we believe that it is appropriate to start the legislative process with a small but important step and therefore support a proposal that would provide tax credits to employees in cooperative and small employer charity (CSEC) plans.

A consistent federal framework

We have one key point in conclusion. The fundamental basis for an effective private retirement system is the ability to rely on the single set of national rules applicable to designing and operating retirement plans, especially for companies that operate in more than one state. These rules can be found in Section 514 of the Employee Retirement Income Security Act (ERISA). There is no greater threat to the health of the private retirement system than a possible erosion of this principle of current law. We urge Congress to work with us to support and enforce the federal nature of the rules governing qualified retirement plans.

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The ability to save for retirement is a critically important part of Americans' sense of economic security. Employer-provided retirement plans are a uniquely positive influence on one's financial well-being in retirement. Public policy should therefore encourage participation and adequate savings in these plans whenever possible.

We thank the committee for holding this hearing and for a long history of dedicated bipartisan work on protecting and enhancing the private retirement system. We look forward to continuing to work with the committee on this critical endeavor.