

The Secure Annuities for Employee (SAFE) Retirement Act of 2013

TITLE I - PUBLIC PENSION REFORM

A “SAFE Retirement Plan” for State and Local Governments. State and local governments may adopt a SAFE Retirement Plan. A SAFE plan is a new type of pension plan that delivers lifetime, defined benefit retirement income for employees with stable, predictable costs for employers and taxpayers. Key features include:

- Employees receive secure monthly income at retirement for life.
- Employer pension costs are stable, predictable and affordable.
- Pension plan underfunding is not possible.
- The life insurance industry invests the assets, pays the retirement benefits and bears the risks.
- Retirement benefits are protected by a robust State regulatory system and financial backstop.

The new pension structure for state and local governments will solve the pension underfunding problem prospectively while delivering retirement income security, in the form of a deferred, fixed income life annuity, to public employees. Involvement by the federal government will be limited to certifying the tax qualified status of the plan. *Section 102.*

TITLE II - PRIVATE PENSION REFORM

Subtitle A – Coverage Reforms

A “Starter 401(k)” Wage Deferral-Only Safe Harbor Plan. Employers that do not already sponsor a 401(k) plan may adopt a Starter 401(k) plan. A Starter 401(k) is a new tax-preferred retirement savings plan that allows employees to save up to \$8,000 per year, more than in an IRA, but does not involve the administrative burden or expense of a traditional or 401(k) plan. Perfect for a small or start-up business that is not in a position to contribute to a plan but wants to help its employees save. *Section 201.*

Enhancement of the Employer Start-Up Credit. Current law offers a small business that adopts a new qualified plan a tax credit, which can apply for up to three years, equal to the lesser of (1) 50 percent of the employer’s start-up costs, or (2) \$500. The bill would increase the \$500 amount to \$5,000. *Section 202.*

Upgrade to a Safe Harbor 401(k) Plan. Employers may upgrade from providing Simple Retirement Accounts for their employees to sponsoring a Safe Harbor 401(k) plan without having to wait until the end of the year. A good option for an employer with a growing business that doesn’t want to wait until next year to help its employees save more. *Section 203.*

Increase the Auto-Escalation 401(k) Limit. The 10% upper limit for the auto-escalation feature of an Auto-Enrollment 401(k) plan is eliminated, allowing employees to save more. *Section 204.*

Retirement Plan Adoption Grace Period. Employers may adopt a retirement plan on or before the due date, with extensions, of the employer’s tax return and the plan will be treated as if it had been adopted

on the last day of the taxable year to which the return relates. A good option for employers that want to adopt a plan but must wait until year end results are known before making a decision. *Section 205.*

Delayed Election of Safe Harbor 401(k) Plan Status. An employer may delay the election of Safe Harbor 401(k) plan status, and the related notice, until the last day of the first Safe Harbor plan year, as long as the employer makes a 4% of pay contribution on behalf of the employees for the initial Safe Harbor plan year. The normal 3% of pay contribution will apply to subsequent years. *Section 206.*

Multiple Employer Defined Contribution Plans Encouraged. 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 Bill makes MEPS more attractive by eliminating outdated barriers to the use of MEPS and improving the quality of MEP service providers. *Section 207.*

Subtitle B - Simplification Reforms

Reduce Unnecessary Plan Amendment Process Burdens. Plan amendments and restatements adopted by a plan sponsor due to statutory or regulatory changes (required amendments) may be adopted at any time before the due date for submission of the plan to the Internal Revenue Service pursuant to the plan's qualification review cycle (a 5-year cycle for individually designed plans and a 6-year cycle for pre-approved plans). The plan must be operated in accordance with applicable law during the interim and relief from the rule against retroactive plan amendments (the "anti-cutback rule") is granted until the date the amendment is required.

Plan amendments other than required amendments (discretionary amendments) may be adopted up to the due date, with extensions, of the employer's tax return for the taxable year in which the plan year ends, subject to the anti-cutback rule. *Section 211.*

Reduce Unnecessary and Outdated Discrimination Testing Burdens. Repeal burdensome, outdated rules that discourage plan adoption and not needed in light of comprehensive nondiscrimination tests that ensure the fair treatment of non-highly compensated employees. *Section 212.*

Reduce Unnecessary Administrative Burdens. Amendments to a safe harbor 401(k) plan may be adopted during the plan year, as long as the amendment, considered with the other plan provisions in effect for the entire plan year, do not cause the plan to violate specified safe harbor requirements. *Section 213.*

Simplify Hardship Distributions and Reduce Unnecessary Restrictions. Eliminate the restriction against accessing earnings on elective contributions when calculating the maximum distributable amount available for a hardship distribution. The "qualifying events test" and the "needs test" continue to apply.

Eliminate the requirement that participants take a plan loan before taking a hardship distribution.

Eliminate the prohibition on employee deferrals or employee contributions to all plans maintained by the employer for at least 6 months after the hardship distribution. There would be no ban on employee deferrals or contributions following a hardship distribution.

Permit safe harbor contributions, qualified non-elective contributions (QNECs) and qualified matching contributions (QMACs) to be distributed in hardship withdrawals. *Section 214.*

Reduce Unnecessary Restrictions on Rollovers. Where an eligible rollover distribution from a qualified retirement plan or tax-sheltered annuity includes a life insurance contract that met the incidental death benefit requirements at the time of distribution from the qualified plan, the contract can be rolled over to and held by an IRA. IRA's would continue to not be permitted to hold life insurance contracts under any other circumstances. *Section 215.*

Reduce Unnecessary Restrictions on Forfeitures. Forfeitures will be allowed to fund 401(k) safe harbor contributions. After forfeitures are used to fund safe harbor contributions, those contributions will become nonforfeitable. *Section 216.*

Simplify Certain Notice Requirements for New Participants. Defined benefit plans and certain defined contributions plans must provide a notice to participants explaining their right to a Qualified Pre-retirement Survivor Annuity ("QPSA") during the applicable period. Under the Bill, the applicable period is a reasonable period after the employee becomes a participant in the plan and the notice may be part of the summary plan description ("SPD"). *Section 217.*

Simplify Minimum Participation and Nondiscrimination Rules for Certain Plans. If an employer maintains a defined contribution plan under which a group of non-highly compensated employees sufficient to satisfy the requirements of section 401(a)(26) receive a minimum allocation of at least 7.5% of compensation, the employer is not required to separately satisfy section 401(a)(26) for a defined benefit plan where the defined contribution plan is aggregated for IRC sections 401(a)(4) and 410(b).

Exempt frozen defined benefit plans from 401(a)(26) provided no other defined benefit plan is maintained in the controlled group for the current plan year or for five-year period after this method of satisfying 401(a)(26) is used.

For purposes of satisfying section 401(a)(26), a frozen defined benefit plan may be aggregated with any other defined benefit or defined contribution plan maintained in the same controlled group. For this purpose, only non-highly compensated accruals in other plans shall be considered. *Section 218.*

Reduce Unnecessary Complexity for Terminating 403(b) Plans. Permit section 403(b) custodial accounts and annuities containing account balances to be distributed to participants and beneficiaries when a 403(b) is terminated in the same manner as "fully paid" annuities can now be distributed under Treasury guidance. Permitting distribution of the intact custodial account on plan termination will allow the plan to be wound down, while allowing the individual to retain the account and all of the rights they currently have under the custodial account agreement. *Section 219.*

Establish an Additional Automatic Enrollment Safe Harbor. The bill establishes a new automatic enrollment safe harbor *in addition to* the existing the existing 3% automatic enrollment safe harbor. Some of the features of the new safe harbor include:

- The minimum default level of contribution would be 6% in the first year, 8% in the second year, and 10 % in all subsequent years.
- The employer would be required to make matching contributions equal to 50 cents on the dollar for the first 2% of pay and 30 cents on the dollar for the next 8% of pay.
- A special tax credit would apply to small employers (i.e., employers with 100 or fewer employees) that adopt this safe harbor equal to 10% of the total amount of employer and employee contributions under the safe harbor on behalf of all eligible nonhighly compensated employees, up to a maximum annual credit of \$10,000. The credit would apply to the first three full years the arrangement is in effect.

Similar to the existing safe harbors, this new safe harbor arrangement would be exempt from nondiscrimination and top-heavy testing. This provision will help employees save more for retirement. *Section 220.*

In-Plan Lifetime Income Options Portability. One of the concerns plan sponsors have regarding offering lifetime income options in their defined contribution retirement plans relates to portability. To address this issue, the bill would treat a defined contribution plan's discontinuance of a lifetime income option as a distributable event, allowing affected participants to rollover the entire amount invested in the lifetime income-related investment to an IRA that provides the same or similar lifetime income protection. By allowing participants to rollover their accounts if a lifetime income option is discontinued, (for example, by change of plan provider or otherwise), the participants are generally able to preserve their guarantee feature. Otherwise, the participants will have paid the guarantee fee and potentially will receive no protection. *Section 221.*

Consolidation of Employee Notices.

- Direct the Secretaries of Labor and the Treasury to adopt final regulations within 18 months of enactment providing that a plan may, but is not required to, consolidate two or more of the notices required under ERISA §§ 404(c)(5)(B) and 514(e)(3), Internal Revenue Code §§ 401(k)(12)(D), 401(k)(13)(E), and 414(w)(4), and 29 C.F.R. § 2550.404a-5 into a single notice and/or consolidate such notices with the summary plan description or summary of material modifications described in ERISA § 104(b), so long as the combined notice, SPD, or SMM includes the required content, clearly identifies the issues addressed therein, and is provided within the time required by law.
- Amend ERISA §§ 404(c)(5)(B) and 514(e)(3) and Internal Revenue Code §§ 401(k)(12)(D), 401(k)(13)(E), and 414(w)(4) to provide that the annual notices must be furnished at least annually within any 12-month period without regard to the plan year.

Section 222.

Making Target Date Disclosure More Effective. The Department of Labor’s new participant disclosure regulation requires that each designated investment alternative’s historical performance be compared to an appropriate broad-based securities market index. Under the bill, DOL is directed to modify its regulations so that an investment that uses a mix of asset classes can be benchmarked against a blend of broad-based securities market indices, provided (a) the index blend reasonably matches the fund’s asset allocation over time, (b) the index blend is reset at least once a year, and (c) the underlying indices are appropriate for the investment’s component asset classes and otherwise meet the rule’s conditions for index benchmarks. (These conditions are important to prevent the blended benchmark from being manipulated.) This change in the disclosure rule will allow better comparisons and aid participant decision-making. This change, including the conditions, would also apply to balanced funds and other asset allocation investments. *Section 223.*

Subtitle C - Longevity Reforms

Expand the Ability of Employers to Offer Annuities in Defined Contribution Plans. The annual Required Minimum Distribution (“RMD”) will be eliminated with respect to the portion, not to exceed 25% of the account balance, used by a participant to purchase a deferred joint and survivor life annuity. The deferred annuity must be purchased on or before the date of the participant’s initial RMD and the deferral period may not extend beyond the date the participant attains age 85.

The elimination of a lump sum form of benefit by the sponsor of a defined benefit plan will no longer be prohibited under the anti-cutback rule in section 411(d)(6). *Section 231.*

Require Treasury to Use Updated Mortality Tables. The Life Expectancy Factors used to determine the age 70½ distributions are based on mortality factors that are over 10 years old. Within one year following the date of enactment, Treasury must update the mortality table for age 70½ distributions and/or provide an alternative table. Subsequent updates shall occur not less frequently than every five years thereafter. The updated mortality table shall be effective on the first day of the first plan year commencing after the date of publication. *Section 232.*

Provide Participants and Retirees with More Flexibility to Manage their Retirement Distributions. Participants will be allowed to elect to convert their RMD to a Roth amount inside the plan and/or IRA, generating a taxable payment but preserving the value inside the retirement account until the participant needs the income. *Section 233.*

Reduce the Administrative Burden of Plan Operation. A defined contribution plan sponsor will be permitted to transfer responsibility for administration of the joint and survivor annuity rules to the annuity provider. *Section 234.*

Expand the Voluntary Correction Program. Because of the ever growing complexity of plan administration due to continued Internal Revenue Code changes, the bill would expand the correction system to allow more types of errors to be corrected internally through self-correction and a simplified IRS Voluntary Correction Program (VCP) submission program with reduced VCP fees. For example, the bill would allow for correction of many plan loan errors through self-correction. These are a frequent

area for error and it can be burdensome to go to the IRS to correct a single loan error. Typically, correcting a loan error for a loan amount would be less than the cost of the VCP fee. *Section 235.*

Subtitle D - ERISA Modifications

Modernize Internal Revenue Code and ERISA Disclosures Using 21st Century Technology. All Code and ERISA disclosures for participants and beneficiaries may be made available to such individuals in an electronic manner including by use of a website. Individuals will have the right to opt out and instead receive paper documents. Plan administrators will be required to provide such individuals with an advance notice describing the process and notifying them of their right to opt for paper documentation. *Section 241.*

Improve the Coordination of Plan Document Updates. The frequency with which a plan must update its SPD will be conformed to the deadline by which the plan must be amended or restated to comply with legislative and regulatory changes (required amendments). The SPD would be due 210 days after the restatement deadline. The rules regarding the frequency with which a participant must receive a copy of the SPD, and the rules regarding the preparation and disclosure of the Summary of Material Modifications will remain unchanged. *Section 242.*

Simplify Small Plan Audits. Qualified retirement plans covering 100 or more participants are subject to an annual audit requirement. The calculation of the number of participants will be based on a determination of those with account balances or accrued benefits under the plan, whether or not vested, not merely those eligible to participate. *Section 243.*

Annuity Provider Selection Safe-Harbor. The selection of a defined contribution plan annuity provider is deemed to satisfy the plan sponsor's fiduciary duty to determine the ability of the provider to make all payments due under the annuity contracts to the extent that the contracts would be guaranteed by a State guaranty association under State law. *Section 244.*

Title III – Regulatory Authority Regarding IRAs

Restore Sole Jurisdiction for IRA Prohibited Transaction Rules to the Treasury Department. Prior to the issuance of a 1978 Executive Order, Treasury had jurisdiction over the prohibited transaction rules applicable to IRAs. The IRA prohibited transaction rules are codified solely in the Internal Revenue Code. Sole jurisdiction over the IRA prohibited transaction rules will be returned to the Treasury Department from the Department of Labor. In addition, Treasury will consult with the Securities and Exchange Commission in prescribing rules relating to the professional standard of care owed by brokers and investment advisors to IRA investors. *Section 301.*

Restore Joint Jurisdiction for Pension Prohibited Transaction Regulation to the Treasury Department and the Department of Labor. The 1978 Executive Order also transferred some of the Treasury Department's joint jurisdiction over the prohibited transaction rules applicable to employer sponsored retirement plans to the Department of Labor. Joint jurisdiction to issue regulations relating to all prohibited transaction rules in the Internal Revenue Code applicable to employer sponsored retirement plans will be returned to Treasury. *Section 301.*