WAYS AND MEANS
REPUBLICANS | KEVIN BRADY, REPUBLICAN LEADER

Securing a Strong Retirement Act

Detailed Section-by-Section Description

October 27, 2020

Title I - Expanding Coverage and Increasing Retirement Savings

Section 101. Expanding automatic enrollment in retirement plans.

Current law: Employers sponsoring a defined contribution plan, such as a 401(k) plan, may automatically enroll employees in the plan. This means that each eligible employee is enrolled at a certain contribution level unless the employee affirmatively elects to opt out. The employer must allow employees to withdraw automatic contributions, including earnings, within 30 days of the date of the first automatic contribution, and may give employees up to 90 days to make such withdrawals. Default contributions may not exceed 15 percent in any year, absent a higher election by employee. Automatic enrollment encourages employees to participate and helps employers ensure broad participation in company retirement plans to meet non-discrimination rules.

Provision: New defined contribution plans that are established after December 31, 2021 would be required to automatically enroll new participants. Automatic contributions would be required to be at least 3 percent and may be up to 10 percent of compensation. If less than 10 percent, the contribution rate increases by 1 percentage point per year until it reaches 10 percent. Employees may either opt out of the automatic enrollment or chose a different contribution percentage. Employees would have at least 90 days after the first automatic contribution to withdraw. Small employers with fewer than 10 employees and new employers in business less than 3 years would be exempt from the requirement.

Considerations: Employees are more likely to participate in an employer's retirement plan if they are automatically enrolled in the plan unless they opt out. Requiring that new plans have auto-enroll should therefore increase participation in employer-sponsored retirement plans and increase retirement savings.

<u>Section 102. Small business incentives to offer retirement plans.</u>

Current law: Small employers, with no more than 100 employees, are eligible for a tax credit equal to 50 percent of the costs of starting a pension plan. The total credit is equal to the greater of (1) $500 of (2) the lesser of (a) $250 times the number of non-highly compensated employees eligible to participate in the plan or (b) $5,000. Small employers are also eligible for a credit of up to $500 per year for establishing an auto-enroll 401(k), SIMPLE 401(k), or SIMPLE IRA. Both credits apply for the first three years a plan is established or the plan features auto-enroll.

Provision: The start-up credit would be increased to 100 percent of the costs, instead of 50 percent, for small employers with no more than 50 employees.

In addition, employers with 50 or fewer employees who establish a defined contribution plan would be eligible for a credit equal to the applicable percentage of employer contributions to employee retirement accounts. The amount of the credit is limited to $1,000 with respect to each employee who participates in the plan. The applicable percentage begins at 100 percent and phases out over a 5-year period beginning in the year in which the plan is established.

Furthermore, the credit phases in for employers with between 51 and 100 employees. This phase-in would reduce the credit by 2 percent for each employee exceeding 50. Effective for taxable years beginning after December 31, 2020.

Considerations: Individuals are more likely to contribute to a tax-favored retirement account if their employer offers a retirement plan. One of the biggest costs to employers to offering such plans is the need to make matching or non-elective contributions in order to satisfy the non-discrimination rules. Providing employers with credit for such contributions, especially in the first several years after establishing a plan, will incentivize many employers to offer retirement plans, thus increasing retirement savings by employees.

<u>Section 103. Saver's credit reforms.</u>

Current law: Single filers with adjusted gross income of up to $19,500 (as adjusted for inflation in 2020) are eligible for a tax credit of 50 percent of contributions of up to $2,000 to defined contribution plans and IRAs. The credit rate is 20 percent for those with incomes up to $21,500 and 10 percent for those with incomes up to $32,500. The credit is not refundable. The income limits are doubled for joint filers and 150 percent for heads of household. The amount of the credit is per filer.

Provision: The income limit for the 50 percent credit would be increased to $40,000 for single filers ($80,000 joint filer and $60,000 head of household). The amount of the contribution eligible for the 50 percent credit would be increased to $3,000. The credit would be phased down as the taxpayer's income exceeds the applicable threshold, reaching zero at $60,000 for single filers ($100,000 joint and $80,000 for head of household). Effective for taxable years beginning after the date of enactment.

Considerations: The provision would greatly increase retirement savings by giving Americans substantial tax incentives for saving.

Section 104. Enhancement of 403(b) plans.

Current law: Most retirement plans can be structured as collective investment trusts, but 403(b) plans may not be structured in this manner.

Provision: 403(b) plans would be eligible to be structured as collective investment trusts. The provision would be effective for amounts invested after December 31, 2020.

Considerations: The provision would give employers more flexibility as to how they structure their retirement plans, likely leading to cost savings and more options for employees.

Section 105. Increase in age for required beginning date for mandatory distributions.

Current law: Generally, those aged 72 and above must take required minimum distributions from employer-sponsored defined contribution plans and traditional IRAs.

Provision: The required beginning date would be increased to age 75. The provision would be effective for distributions required to be made after December 31, 2020, with respect to individuals who attain age 72 after such date.

Considerations: Increasing the age for required minimum distributions will allow Americans to keep more of their savings in retirement plans for a longer period of time.

Section 106. Deferral of tax for certain sales of employer stock to employee stock ownership plan sponsored by S corporation.

Current law: If a taxpayer sells C corporation stock to an employee stock ownership plan (ESOP) and uses the proceeds to purchase other securities, the seller may elect to avoid recognizing taxable income on the sale, instead getting carryover basis in the new securities.

Provision: The treatment of sale of stock to an ESOP would be expanded to also cover S corporations. The provision would apply to sales after the date of enactment.

Considerations: The provision would encourage formation and expansion of ESOPs, giving more employees a stake in the success of their employer and enhancing their retirement savings.

Section 107. Indexing IRA catch-up limit.

Current law: Most of the contribution limits to defined contribution plans and IRAs are linked to inflation. However, the catch-up contribution limit to IRAs for those aged 50 and over is permanently set to $1,000.

Provision: The catch-up contribution limit to IRAs for those aged 50 and over would be indexed to inflation. The provision would be effective for taxable years beginning after 2021.

Considerations: Increasing the contribution limit with inflation will allow older Americans to save more for retirement.

Section 108. Higher catch-up limit to apply at age 60.

Current law: There are various contribution limits for different types of retirement accounts. There are increased limits for those aged 50 and over—$6,500 per year in employer-sponsored retirement plans generally, and $3,000 for SIMPLE plans. Both amounts are inflation-adjusted for 2020.

Provision: Those aged 60 and above would have higher allowable catch-up contributions, with up to an additional $10,000 per year for those aged 60 and above for employer-sponsored plans generally, and $5,000 for SIMPLE plans. Both limits would then be annually adjusted for inflation. The provision would be effective for tax years beginning after 2020.

Considerations: Those approaching retirement often have more ability to save because they have higher income and lower expenses than they did earlier in their careers. Increasing the catch-up limit will encourage them to save more in employer-sponsored retirement plans.

Section 109. Multiple Employer 403(b) Plans.

Current law: Unrelated employers may join together to offer their employees an employer sponsored 401(k) plan. If an employer engages in misconduct, the other employers that are part of the plan are not penalized. Prior to the SECURE Act (enacted in December 2019), there needed to a relationship amongst the employers in the plan other than participation in the same plan, and, misconduct by one employer in the plan put the employers at risk of negative action by the IRS or the Department of Labor.

Provision: Under the provision, the same treatment would be given to 403(b) plans. The provision would be effective for plan years beginning after December 31, 2020.

Considerations: Allowing unrelated employers to join in the same 403(b) plans should lead to economies of scale with lower costs and more investment options.

Section 110. Treatment of student loan payments as elective deferrals for purpose of matching contributions.

Current law: Employers may make matches on employee contributions to retirement plans. Employers often do so in order to meet one of the safe harbors that allow employers to meet the non-discrimination rules.

Provision: Employers would also be allowed to also make matching contributions to retirement plans for employee payment of student loans. The vesting requirements on the two types of matches would have to be the same. The provision would be effective for contributions made after 2020.

Considerations: Allowing employers to provide retirement account matches for employee student loan repayments will help those making student loan repayments save more for retirement.

Section 111. Application of credit for small employer pension plan startup costs to employers which join an existing plan.

Current law: The start-up tax credit for employers who establish a retirement plan applies for the first three years that the plan exists. If an employer joins a multiple employer plan that has already existed for three years, that employer may not be eligible for the credit.

Provision: For multiple employer plans, the credit for each employer would apply to the first three years that the employer is part of the plan, instead of being measured by how long the plan is in existence. The provision would apply after the date of enactment.

Considerations: Allowing the retirement startup credit to employers who join existing multiple employer plans will incentivize such employers to establish retirement plans for their employees, resulting in more retirement savings.

Section 112. Military spouse retirement plan eligibility credit for small employers.

Current law: There is no special credit for an employer who employ military spouses that participate in the employer's retirement plan.

Provision: Small employers (with up to 100 employees) would be eligible for a tax credit if they (1) make military spouses immediately eligible for plan participation within two months of hire, (2) upon plan eligibility, make the military spouse eligible for any matching or nonelective contribution that they would have been eligible for otherwise at two years of service, and (3) make the military spouse 100 percent immediately vested in all employer contributions. The tax credit would equal the sum of (1) $250 per military spouse, and (2) 100 percent of all employer contributions (up to $250) made on behalf of the military spouse, for a maximum tax credit of $500. This credit would apply for three years with respect to each military spouse. The credit would not apply with respect to highly compensated employees (those earning at least $125,000 for 2019). The provision would apply for tax years beginning after the date of enactment.

Considerations: Military spouses sometimes must change location frequently, making it difficult for them to vest in employer contributions to their retirement accounts, which sometimes requires two years of service with the employer. Providing employers a credit for immediate vesting of employer contributions for military spouses will help military families save more for retirement.

Section 113. Small immediate financial incentives for contributing to a plan.

Current law: Employers generally may not offer immediate financial incentives to employees to join retirement plans.

Provision: Employers would be permitted to offer employees small immediate financial incentives to join and contribute to a plan. The provision would be effective for plan years beginning after the date of enactment.

Considerations: Allowing employers to provide small immediate incentives for participation in retirement plans would encourage more employees to participate.

Section 114. Safe harbor for corrections of employee elective deferral failures.

Current law: When an employee forgoes part of a paycheck for a contribution to their retirement account, the employer must immediately deposit such amount into the employee's retirement account. Mechanisms exist for employers to correct any inadvertent mistakes.

Provision: Employers would have more leeway with regard to correcting such errors by 9½ months after the end of the plan year in which the failure occurred, so long as the manner of the correction is favorable to the employee. The correction may occur after the failure was already identified by the IRS. The provision is effective for any errors occurring in plan years that end nine months or more after the date of enactment.

Considerations: Making it easier for employers to correct mistakes in their retirement plans without penalties will help encourage more employers to sponsor retirement plans.

Section 115. One-year reduction in period of service requirement for long-term, part-time employees.

Current Law: Employers are required to allow certain long-term, part-time employees who work at least 500 hours per year for three consecutive years (the "period of service requirement") to participate in the company's 401(k) retirement plan. This rule is subject to certain limitations, such as the employee reaching age 21 by the end of the three-year period.

Provision: Reduces the period of service requirement from 3 years to 2 years.

Considerations: Expands savings opportunities by increasing the number of part-time workers eligible to join a company 401(k) plan.

Section 116. First Responders Working for Volunteer Firefighting Organizations May Join Government Retirement Plans.

Current Law: Volunteer firefighting agencies are non-profit organizations that can employ full-time firefighters and emergency medical services (EMS) personnel. These public safety agencies provide firefighting and EMS services to local governments under contract. States and local governments sponsor pension plans for the benefit of their employees, but firefighters and EMS personnel who work for local governments indirectly, through a public safety agency, are not permitted to join the government-sponsored plan.

Provision: Allows professional firefighters and EMS personnel who work for a public safety agency and perform services for a local government under contract to join the government's pension plan.

Considerations: Professional firefighters and EMS personnel who work for local governments under contract would enjoy the same retirement benefits as similarly situated individuals who work for the state or local government directly.

Title II - Preservation of Income

Section 201. Remove required minimum distribution barriers for life annuities.

Current law: In general, those individuals at least 72 years old must take annual distributions from their retirement accounts, which are generally equal to a fraction of the account balance roughly equal to the individual's life expectancy. Individuals participating in a defined contribution plan may satisfy their required minimum distribution requirements by purchasing an annuity from an insurance company if the annuity satisfies certain regulatory requirements, including the requirement that the payments be fixed (nonincreasing). Payments under a qualifying annuity contract are treated as distributions that satisfy the required minimum distribution requirement.

Provision: Annuities would be allowed to satisfy the required minimum distribution rules if they increase by up to 5 percent per year; consist of a lump sum payment in satisfaction of future annuity payments using reasonable assumptions as determined in good faith by the issuer or accelerates the receipt of annuity payments to be received in the following 12 months; provide dividends or similar amounts; or a death payment equal to the amounts paid for the annuity contract less prior payments. The provision would require Treasury to change its regulations to allow the amount being annuitized to be less than total future expected payments, that an annuity may be deemed to meet this requirement if the initial payment is at least equal to the initial payment that would be required from an individual account, and that life insurance companies may use their own life expectancy tables rather those issued by the IRS. The provision would be effective upon the date of enactment.

Considerations: Providing more flexibility as to the timing, amounts and features of annuity payments that meet the required minimum distribution rules will make individuals more likely to choose to purchase annuities with their retirement savings.

Section 202. Qualifying Longevity Annuity Contracts.

Current law: Treasury guidance allows amounts within retirement accounts used to purchase "qualified longevity annuity contracts" (generally, fixed annuities starting up to age 85) to be excluded from required minimum distributions. However, this exclusion is limited to 25 percent of the account balance and no more than $125,000.

Provision: Treasury would be directed to modify the guidance to repeal the 25 percent account balance limitation, increase the $125,000 to $200,000, allow for indexed annuities, and allow for the retiree to cancel the contract within 90 days of the date of purchase. In addition, Treasury would be directed to facilitate joint and survivor benefits by directing that spousal payments would be permissible even if a divorce occurs between the date of purchase and the payment commencement date. The provision would generally be effective on the date of enactment regardless of when Treasury modifies the regulations, but the cancellation option and joint and survivor benefit provisions would be effective beginning in 2014.

Considerations: Expanding the amounts that can be excluded from the required minimum distribution rules if used to purchase qualified longevity contracts and providing more flexibility with regard to such contracts will encourage more Americans to purchase these contracts.

Section 203. Insurance-dedicated exchange-traded funds.

Current Law: Individuals who purchase variable annuities or private placement life insurance are permitted to invest, through the policy, in an insurance-dedicated fund (IDF) that may be designed to track the investment strategy of a well-known publicly traded mutual fund. The investment options available to variable annuity holders are limited to the IDFs offered by the carrier. Variable annuity holders are not permitted to acquire mutual fund shares directly and, correspondingly, IDFs are only open to investment by individuals through their insurance policies.

For financial regulatory reasons, exchange-traded funds (ETFs) must be open to investment by certain financial institutions who ensure that the value of ETF shares tracks the performance of an underlying index, such as the S&P 500 index, as intended. Therefore, because the ETF structure does not allow investment to be limited to insurance company segregated accounts, insurance carriers are not able to offer insurance-dedicated exchange-traded funds.

Provision: Allows variable annuity holders to purchase IDFs that track the performance of a publicly traded exchange-traded fund (ETF) as well as a mutual fund. The provision would be effective within 18 months, or upon issuance of IRS regulations.

Considerations: Diversified ETFs that track the performance of the broader market are currently off-limits to variable annuity and public placement life insurance holders. These policies are limited IDFs based on mutual fund strategies that may not achieve the policy holder's investment objectives. The provision would modernize the rules applicable to these widely-held insurance policies by allowing policy holders to purchase a highly-diversified investment, improving this existing option to save for retirement.

Title III - Simplification and Clarification of Retirement Plan Rules

Section 301. Recovery of retirement plan overpayments.

Current law: If an employer sponsored plan makes excess payments to participants, the plan may seek to recoup those payments. Some interpret existing regulatory guidance as requiring plans to seek recoupment of such payments.

Provision: So long as a participant did not attempt to obtain overpayments, plans would be prohibited from recouping any payments made more than three years before any attempt to recoup. In addition, the recoupment could only come from future payments, not reduce any future payment by more than 10 percent and no such reduction could exceed 90 percent of the total overpayments. Furthermore, overpayments could not be recovered from anyone other than the person to whom such overpayments were made. Plans would also be allowed not to seek recoupment at all. The provision would apply as of the date of enactment.

Considerations: Limiting the degree to which plans may seek to recoup prior overpayments protects participants who may not have the assets available to pay back prior overpayments that they thought belonged to them and that they may have already spent.

Section 302. Reduction in excise tax on certain accumulations in qualified retirement plans.

Current law: Individuals aged at least 72 must take annual required minimum distributions from their retirement accounts. Failure to take such required minimum distribution is subject to an excise tax of 50 percent.

Provision: The excise tax on failure to take a required minimum distribution would be reduced from 50 to 25 percent. The excise tax would be reduced to 10 percent for taxpayers who correct their failure before the earlier of (1) the date the IRS initiates an audit with respect to the failure or (2) the end of the second taxable year beginning after the end of tax year in which the penalty is imposed. The provision would be effective for tax years beginning after 2020.

Considerations: Lowering the excise tax on failure to take required minimum distributions will help individuals preserve more of their retirement savings.

Section 303. Performance benchmarks for asset allocation funds.

Current law: Target date funds are generally retirement plan investment options that seek to attain higher returns and therefore take more risk when the target date is far off, and gradually become more conservative as the target date approaches. The target date is often when the participant anticipates retiring. Guidance from the Department of Labor generally requires any benchmarking of target date funds against other target date funds with a similar date.

Provision: The Department of Labor would be required within six months of the date of enactment to issue new guidance allowing for benchmarking of target date funds to be broken down against the separate components of the target date fund instead of in the aggregate against other target date funds with a similar date. This approach to benchmarking would be permitted but not required.

Considerations: Giving participants information about how the component parts of their target date fund is performing compared to similar investments may be useful to them.

<u>Section 304. Review and report to the Congress relating to reporting and disclosure requirements.</u>

Current law: There are many reporting and disclosure requirements that employer sponsored retirement plans must provide to the government and to plan participants under the Internal Revenue Code and ERISA.

Provision: As soon as practicable after the date of enactment, the Departments of Treasury and Labor and the PBGC would be required to review how these reporting and disclosure requirements could be simplified, and report back to Congress with recommendations within 18 months of the date of enactment.

Considerations: The current set of disclosures is very expansive, complicated for participants to understand, and expensive for employers to produce. The disclosures should be streamlined and be made more understandable and useful for participants.

<u>Section 305. Eliminating Unnecessary Plan Requirements related to Unenrolled Participants.</u>

Current law: Plans must provide all participants and employees eligible to participate in the plan with extensive information about the plan.

Proposal: Plans would be allowed to provide much more limited information to employees who are not contributing to a plan and that have no balance in the plan. That information would still have to include, amongst other things, the participant's eligibility to enroll in the plan and the key benefits, rights and features of the plan, or any information requested by the employee that the employee would otherwise be entitled to. The provision would be effective for plan years beginning after December 31, 2020.

Considerations: Limiting disclosures to those not participating in plans will reduce burdens on employers that sponsor retirement plans.

<u>Section 306. Retirement Savings Lost and Found.</u>

Current law: Occasionally, an employee who participates in an employer's retirement plans and separates from employment leaves their retirement account balance unclaimed in the employer's retirement plan. The employer must report this to the Social Security Administration, which later attempts to inform the participant of the account when the participant starts taking Social Security. However, if the account balance is $5,000 or less the plan may generally disburse the account proceeds. If the amount exceeds $1,000 the disbursed amount must be rolled over into an IRA established in the participant's name. Accounts worth $1,000 or less may be disbursed in cash, which can cause the participant to incur penalties for early withdrawal from a retirement account. If an employer terminates a defined contribution plan, it may turn over missing participants in the plan to the Pension Benefit Guarantee Corporation (PBGC), which takes over these assets, and looks for the participants, and maintains a searchable online database. When PBGC finds the missing participants, it provides them with their account balance plus interest, with an option to annuitize.

Proposal: Establishes an Office of Retiremet Savings Lost & Found within the PBGC that would serve as a repository for information about all lost retirement accounts accessible through a searchable online database. The Office would also accept transfers from plans of small lost accounts worth $1,000 or less, investing the amounts received in U.S. Treasury Securities. As under current law, plans seeking to disburse a lost retirement account would be required to roll over accounts worth more than $1,000 into an IRA established in the participants name, but the threshold for disbursement would be increased from $5,000 to $6,000. The PBGC would be limited to accepting lost accounts worth $1,000 or less. The Office would be required to be established within two years after enactment, and the rules applicable to employers would be effective with respect to employees who separate from service in plan years beginning in the second calendar year after the year of enactment.

Considerations: Increasing the account balance that could be cashed out would lower administrative costs for plans which would benefit plan participants. Adding these accounts to the online database maintained by the PBGC will make it easier for former employees to find lost accounts by establishing a single online database containing information on all lost accounts. Requiring the PBGC to hold small accounts will reduce the likelihood that such accounts will be liquidated, avoiding penalties for the employee, and giving these employees an opportunity to benefit from market appreciation over a long period of time.

Section 307. Exemption from required minimum distribution rules for individuals with certain account balances.

Current law: Individuals with retirement accounts generally must begin taking required minimum distributions at age 72.

Provision: Individuals with account balances of $100,000 or less on the last day of the year in which the individual would be required to take required minimum distributions (which under section 105 of the bill, would be increased to age 75) would be exempted from required minimum distribution rule. The provision would apply to distributions required to be made in calendar years beginning more than 120 days after the date of enactment.

Considerations: Exempting individuals with relatively low account balances from required minimum distributions will allow them to avoid the complex rules and preserve more of their savings in tax-favored retirement accounts.

Section 308. Expansion of employee plans compliance resolution system.

Current law: Retirement plans are subject to many complex requirements under the Internal Revenue Code and ERISA. Running afoul of many of these requirements can subject a plan to severe consequences, including disqualification of the plan. The Employee Plans Compliance Resolution System (EPCRS) allows employer sponsored plans but not IRAs, to disclose errors to the IRS and correct those errors without drastic penalties.

Provision: ECPRS would generally be expanded to include errors disclosed by the plan before identification by the government. Plan loan errors would be included in ECPRS. Failure to make a required minimum distribution that are corrected within 180 days would not subject to excise taxes. ECPRS would be expanded to cover IRAs.

Considerations: Expanding the scope of ECPRS will encourage more voluntary compliance by employer sponsored plans and IRA owners.

Section 309. Eliminate the "First Day of the Month" Requirement for Section 457(b) Plans.

Current law: Employees contributing to 457(b) plans may only begin, or change, their contributions to the plan on the first day of each month. Other types of employer-sponsored defined contribution plans, such as 401(k) plans and 403(b) plans are allowed to permit employees to do so at any time.

Provision: 457(b) plans would be allowed to permit employees to begin, or change, their contribution to the plan at any time. The provision would be effective for tax years beginning after the date of enactment.

Considerations: Allowing plans to provide more flexibility to employees as to changing their retirement contributions will help employees save more for retirement.

Section 310. One-time Election for Qualified Charitable Distribution to Split-interest Entity.

Current Law: Individuals are permitted to donate up to $100,000 annually to a public charity from an individual retirement account (IRA) upon reaching age 70½. These donations can be used to satisfy the taxpayer's required minimum distribution requirement, and they are excluded from adjusted gross income. The recipient must be a public charity, except that donor advised funds or supporting organizations are excluded. These gifts from an IRA are also not taken into account when calculating the otherwise applicable limit on charitable donations as a percentage of taxable income.

Outside the context of IRAs, individuals can make a deductible contribution to a split-interest entity for the benefit of a public charity. Generally, these are gifts of a remainder interest in a charitable trust, with an income interest, such as a fixed annuity, accruing to the donor or one or more named beneficiaries. The deductible amount is determined by a formula taking into account the life expectancy of the beneficiaries and prevailing interest rates at the time of the gift. The common types of split-interest entities are charitable remainder trusts (CRTs) and charitable gift annuities (CGAs), which are contractual agreements with a charity that operate similarly to a CRT.

CGAs tend to be smaller than CRTs, due to the administrative overhead associated with managing a trust, and income to the beneficiary is treated differently. In the case of a CRT, the income is fully taxable, but only income in excess of the donor's basis is taxable in the case of a CGA.

Proposal: This provision would increase the amount individuals are permitted to donate up to \$130,000 annually and allow a one-time gift up to the same amount to a qualified split-interest entity, including a CGA or CRT. Payments to the non-charitable beneficiary from a CGA or CRT would be fully taxable to the beneficiary in the year received. Gifts to a split-interest entity could also be used to satisfy required minimum distribution requirements, and they would not be treated as income to the donor in the year of the gift.

Considerations: The proposal would expand opportunities to give to charity from an IRA, allowing donors to set up split-interest entities as is currently allowed with respect to gifts from taxable accounts.

Section 311. Retirement Plan Distributions for Charitable Purposes.

Current law: Individuals are permitted to donate up to \$100,000 annually to a public charity from an individual retirement account (IRA) upon reaching age 70½. These charitable donations can be used to satisfy the taxpayer's required minimum distribution requirement, and they are excluded from adjusted gross income. The recipient must be a public charity, except that donor advised funds or supporting organizations are excluded. These gifts from an IRA are also not taken into account when calculating the otherwise applicable limit on charitable donations as a percentage of taxable income.

Provision: Charitable distributions from employer sponsored retirement plans (*e.g.*, 401(k) plans) would also qualify towards the required minimum distributions and are excluded from income, and the amount of the maximum charitable distribution would be increased to \$130,000 annually, consistent with Section 310 of the bill. The provision would be effective for distributions made after December 31, 2020.

Considerations: The provision would make it easier for retirees with account balances in employer sponsored retirement plans to make charitable contributions without having to first transfer the funds into an IRA.

Section 312. Distributions to Firefighters.

Current law: Distributions from retirement plans before age 59½ are generally subject to a 10 percent additional tax (sometimes referred to as a penalty, although the tax is not technically a penalty). An exception applies to distributions from employer sponsored plans if the employee has attained age 55. For first responders the exception for those separated from public service applies at age 50. In general, the exception for first responders only applies to public sector workers.

Provision: The exception from the 10 percent additional tax for first responders separated from service for distributions beginning at age 50 would be expanded to private sector firefighters. The provision would apply to distributions after December 31, 2020.

Considerations: Private sector firefighters, just like public sector firefighters, would be able to access their retirement savings at an earlier age without additional taxes. The nature of their employment is such that they often must retire earlier than other workers.

Section 313. Exclusion of certain disability-related first responder retirement payments.

Current law: In general, disability payments are considered to be similar to the underlying income from employment that these payments are replacing, and therefore constitute taxable income.

Provision: Disability payments to first responders from retirement plans would be excluded from income until the payments shift from disability into retirement at which point they would be taxable. The provision would apply to amounts received in tax years beginning after the date of enactment.

Considerations: First responders who are disabled as a result of their injuries at work would avoid taxation on their disability income.

Section 314. Statute of Limitations for IRA Penalties Starts Running When Individual Tax Return is Filed.

Current Law: Individual IRA owners are subject to excise taxes for excess contributions, for failure to take required minimum distributions once they reach age 72, and for prohibited transactions such as using the assets in an IRA as collateral for a loan. In the Internal Revenue Manual, the IRS takes the position that the statute of limitations on assessment for these excise taxes does not start running until the taxpayer files Form 5329 to self-declare an excess contribution or failure to take the required minimum distribution. Individuals are required to file Form 5330 (which is not designed for individuals) to start the statute of limitations running on the prohibited transaction excise tax. Ordinarily, the taxpayer would not file either of these forms if the error that gives rise to these penalties is inadvertent.

Generally, the statute of limitations is 3 years from the due date of the federal income tax return (e.g., IRS Form 1040) or 3 years after the date the return was actually filed, which ever is later. The statute of limitations can be extended indefinitely in the case of fraud or willful tax evasion or to 6 years in the case of a substantial understatement of gross income. The statute of limitations does not start running until the individual tax return is filed.

Provision: Make clear that the statute of limitations for excise taxes with respect to an IRA begins running upon filing of the taxpayer's individual tax return (e.g., IRS Form 1040). The IRS would have the same amount of time to assess deficiencies with respect to an IRA as for other errors on the individual's tax return. This rule would apply to the tax on excess contributions, the tax on failure to take a required minimum distribution, and the tax on prohibited transactions.

Section 315. Requirement to Provide Paper Statements in Certain Cases.

Current Law: Retirement plan sponsors are required to send quarterly benefit statements and many other disclosures to participants. The statute does not specify the manner of delivering such disclosures, but they have generally been sent on paper through the mail. Since 2002, employees who are wired at work may receive retirement plan disclosures electronically. Additionally, the Department of Labor recently finalized a regulation – the e-disclosure rule – that allows employers to deliver retirement plan disclosures electronically if they adhere to certain safeguards. One of these safeguards is a paper notice that informs participants of their right to receive some or all retirement plan disclosures on paper.

Proposal: Plan sponsors would be required to deliver at least one paper quarterly benefit statement per year. In addition to summarizing the participant's benefits, the paper statement would contain information informing participants about how to opt-out of the paper disclosure requirement, or order some or all disclosures to be delivered on paper for no additional cost. The single paper notice required by the e-disclosure rule would be incorporated into the paper quarterly benefit statement for employers who elect to take advantage of the e-disclosure rule.

Considerations: The e-disclosure rule requires a paper notice informing participants about how to opt-out and receive some or all retirement plan disclosures on paper. The proposal would eliminate this paper notice requirement and replace it with a requirement to send a single quarterly benefit statement to plan participants on paper, unless the participant opts out.