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# Comparison of Provisions in SECURE 2.0 and Cardin-Portman

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| TITLE I—EXPANDING COVERAGE AND INCREASING RETIREMENT SAVINGS | | | |
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| SECURE 2.0 Section | Current Law | SECURE 2.0 Description of Provision | Cardin-Portman Description of Provision |
| Sec. 101. Expanding automatic enrollment in retirement plans | Automatic enrollment and automatic escalation may be used by 401(k) and 403(b) plans, but are not currently required. | New 401(k) and 403(b) plans must include automatic enrollment with a default rate of between 3% and 10%, as well as automatic escalation of 1% per year up to a maximum of at least 10%, but no more than 15%.<br><br>Raises cap on permissible automatic escalation for safe harbor plans to 15%; cap for non-safe harbor plans raised to 10% in any year ending before 2025 (and 15% for years ending in 2025 or after).<br><br>Exemptions: governmental plans, church plans, small employers with 10 or fewer employees, SIMPLE 401(k) plans, new employers that have been in existence for less | No provision. |

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| | | than 3 years. Existing plans established before the date of enactment are exempt, except grandfathering does not apply to employers adopting an existing multiple employer plan ("MEP") after the date of enactment.<br>Effective for plan years beginning after December 31, 2022. | |
| Sec. 102. Modification of credit for small employer pension plan start-up costs | Small employers with fewer than 100 employees may be eligible for a three-year start-up credit that is up to 50% of administrative costs, up to a maximum yearly cap of $5,000. | Increases existing credit from 50% to 100% of qualified start-up costs for employers with up to 50 employees.<br>Provides for an additional credit for 5 years of up to $1,000 per employee equal to the applicable percentage of eligible employer contributions to an eligible employer plan (not including a defined benefit plan). This credit applies to employers with up to 50 employees and is phased out for employers with between 51 and 100 employees.<br>Effective for tax years beginning after 2021. | Sec. 109. Increases the existing credit from 50% to 75% of qualified start-up costs for employers with up to 25 employees.<br>Effective for taxable years beginning after December 31, 2021. |
| Sec. 103. Promotion of the Saver's Credit | Eligible taxpayers receive a nonrefundable income tax credit with respect to their qualified retirement savings contributions. | Requires Treasury to take steps to increase public awareness of the Saver's Credit and report to Congress within 90 days. | No provision. But see Saver's Credit expansion proposal described in Sec. 104 of Cardin-Portman below. |

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| | | Effective for tax years beginning after enactment. | |
| Sec. 104. Enhancement of 403(b) Plans | 403(b) plan investments are generally limited to annuity contracts and mutual funds. Assets of a 403(b) custodial account cannot be commingled in a group trust with any assets other than those of a regulated investment company 403(b) account. | Amends the tax and securities laws to allow 403(b) plans with custodial accounts to invest in collective investment trusts (81-100 group trusts).<br>Effective for amounts invested after December 31, 2021. | Sec. 116. Substantially identical. |
| Sec. 105. Increase in age for required beginning date for mandatory distributions | Currently, as established by the 2019 SECURE Act, required minimum distributions generally must begin by age 72. Prior to January 1, 2020, the age at which required minimum distributions were required to begin was 70½. | Increases required minimum distribution age to 73 beginning in 2022, 74 beginning in 2029, and 75 beginning in 2032.<br>Effective for distributions after December 31, 2021 for individuals attaining age 72 after that date. | Sec. 108. Increases the required minimum distribution age to 75 beginning in 2032 without the intervening steps.<br>Effective for calendar years beginning after December 31, 2021. |
| Sec. 106. Indexing IRA catch-up limit | Currently, annual IRA catch-up contributions for those who are age 50 or over are a flat $1,000 and are not indexed for inflation. | Indexes IRA catch-up contributions in the same manner as the indexing for regular IRA contributions.<br>The indexed amounts are rounded down to the nearest multiple of $100.<br>Effective for tax years beginning after December 31, 2022. | Sec. 119. Identical except the indexed amounts are rounded down to the nearest multiple of $200. |
| Sec. 107. Higher catch-up limit to | Currently, individuals age 50 and over are allowed to make catch-up | Increases the limit on catch-up contributions for individuals age 62-64 in non- | Sec. 120. Identical except the higher catch-up limits apply |

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| apply at age 62, 63, and 64 | contributions to 401(k), 403(b), governmental 457(b), and SIMPLE plans, and the annual catch-up contribution limits are generally indexed for inflation. In 2021, the maximum catch-up contribution for non-SIMPLE plans was $6,500, and $3,000 for SIMPLEs. | SIMPLE 401(k) plans to the lesser of: 1) $10,000 (indexed for inflation); or (2) the participant's compensation for the year reduced by any other elective deferrals of the participant for the year.<br><br>Increases the limit on catch-up contributions for individuals age 62-64 in SIMPLEs to the lesser of (1) $5,000 (indexed for inflation); or (2) the participant's compensation for the year reduced by any other elective deferrals of the participant for the year.<br><br>Effective for tax years beginning after December 31, 2022. | to individuals who attain age 60 in the taxable year and do not phase out at age 65.<br><br>Effective for years beginning after December 31, 2021. |
| Sec. 108. Multiple Employer 403(b) Plans | The SECURE Act provided for the creation of PEPs, which allowed unrelated employers to join the same tax-qualified plan while still being considered one plan for purposes ERISA. PEPs are not subject to the same DOL commonality requirements as closed MEPs. | Provides that 403(b) plans can be established and maintained as a MEP/PEP under rules similar to qualified plans. Provides that 403(b) and qualified plan MEPs operate under the same rules. Provides relief from the "one bad apple rule" for 403(b) MEPs/PEPs that satisfy rules similar to the qualified plan rules.<br><br>Effective for plan years beginning after December 31, 2021. | No provision. |

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| Sec. 109. Treatment of student loan payments as elective deferrals for purposes of matching contributions | Currently, a matching contribution cannot be made based on student loan repayments. The IRS has ruled (through a private letter ruling, with more general guidance pending) that a plan design that provides for a nonelective employer contribution can be based on student loan repayments without violating the contingent benefit rule. | Employer contributions made on behalf of employees for "qualified student loan payments" are treated as matching contributions, so long as certain requirements are satisfied. Applies to 401(k), 403(b), and SIMPLE IRAs, and 457(b) plans. Notably, a plan may treat a qualified student loan payment as an elective deferral or an elective contribution (as applicable) for purposes of the matching contribution requirement under a basic safe harbor 401(k) plan or an automatic enrollment safe harbor 401(k) plan, as well as for purposes of the Section 401(m) safe harbors. Employers are permitted to apply the ADP test separately to employees who receive matching contributions on account of qualified student loan payments.<br><br>Effective for plan years beginning after December 31, 2021. | Sec. 111. Identical. |
| Sec. 110. Application of credit for small employer pension plan startup costs to employers | Present law provides a nonrefundable income tax credit equal to 50% of the qualified start-up costs paid or incurred during the taxable year by an employer with fewer than 100 | Clarifies that the first credit year is the taxable year which includes the date that the eligible employer plan to which such costs relate becomes effective with respect to the eligible | No provision. |

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| joining an existing plan | employees that adopts a new eligible employer plan, provided that the plan covers at least one non-highly compensated employee.<br><br>The credit applies for up to three years beginning with the year the plan is first effective, or, at the election of the employer, with the year preceding the first plan year. | employer. This means that small employers that join a MEP are entitled to the start-up credit for their first three years in the MEP.<br><br>Effective for plans that become effective with respect to the eligible employer after the date of enactment. | |
| Sec. 111. Military spouse retirement plan eligibility credit for small employers | N/A | Creates a new, nonrefundable income tax credit for eligible small employers that employ military spouses and allow them to participate in the employer's defined contribution plan (subject to special rules). The credit is $250 per employee, plus up to $250 for contributions made by the employer, and applies for up to 3 years.<br><br>Effective for taxable years beginning after the date of enactment. | Sec. 122. Similar. The credit is $200 per employee, plus an amount not to exceed $300 for contributions made by the employer. |
| Sec. 112. Small immediate financial incentives for contributing to a plan | The current law contingent benefit rule prohibits 401(k) plan participants from receiving financial incentives (other than matching contributions) for contributing to a plan. | Allows participants to receive de minimis financial incentives for contributing to a 401(k) or 403(b) plan by providing an exemption from the contingent benefit rule and providing relief from the Code and ERISA prohibited transaction rules. | Sec. 118. Identical. |

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| | | Effective for plan years beginning after the date of enactment. | |
| Sec. 113. Safe harbor for correction of employee elective deferral failures | The IRS' Employee Plans Compliance Resolution System (EPCRS) contains rules allowing plans to correct errors, including with respect to missed deferrals under automatic enrollment or automatic escalation features. | Creates a safe harbor that a plan will not fail to be a qualified plan merely because of a "reasonable administrative error" in administering automatic enrollment or automatic escalation features so long as that error is corrected within 9 ½ months of the end of the plan year in which the error occurred and is resolved favorably toward the participant and without discrimination toward similarly situated participants. The safe harbor is available for 401(a), 403(b) and 457(b) plans and IRAs.<br>Effective for any errors with respect to which the date that is nine and one-half months after the end of the plan year during which the error occurred is after the date of enactment. | No provision. |
| Sec. 114. One-year reduction in period of service requirement for long-term, part-time workers | Under current law as amended by the SECURE Act, 401(k) plans generally must permit an employee to contribute to a plan if the employee worked at least 500 hours per year with the employer for at least three | Reduces from three to two the required years of service before long-term, part-time workers are eligible to contribute to a plan. Also clarifies that pre-2021 service is disregarded for vesting of employer contributions. | Sec. 105. Reduces from three to two years of required service, but does not address the retroactive vesting service issue. It also exempts such |

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| | consecutive years and has met the minimum age requirement (age 21) by the end of the three-consecutive year period. | Effective as if included in the SECURE Act (e.g., effective for plan years beginning after December 31, 2020). | arrangements from top-heavy rules. |
| Sec. 115. Findings related to S corporation ESOPs | N/A | States that "it is the goal of Congress to preserve and foster employee ownership of S corporations through ESOPs." | Not included. But see Sec. 121 of Cardin-Portman bill for related provision. |
| **TITLE II—PRESERVATION OF INCOME** | | | |
| Sec. 201. Remove required minimum distribution ("RMD") barriers for life annuities | All annuity payments must be nonincreasing or only increase following the limited exceptions. One exception is for annuity contracts purchased from insurance companies, which permits increases that meet an actuarial test. The current annuities actuarial test does not permit certain guaranteed annual increases, return of premium death benefits, and period certain guarantees for participating annuities. | Amends the RMD rules to relax these rules and permit commercial annuities that are issued in connection with any eligible retirement plan to provide additional types of payments, such as certain lump sum payments and annual payment increases at a rate less than 5% annually.<br><br>Effective upon enactment. | Sec. 202. Identical. |
| Sec. 202. Qualifying longevity annuity contracts ("QLACs") | Existing regulations limit the premiums an individual can pay for a QLAC to the lesser of $135,000 or 25% of the individual's account balance. It also provides for | Eliminates the 25% limitation. Clarifies that a divorce occurring after a QLAC is purchased but before payments begin will not affect the permissibility of the joint and survivor benefits under the contract. Further | Sec. 201. Similar, but also (1) increases the dollar limitation on premiums from $135,000 to $200,000, adjusted for inflation, and (2) permits certain indexed and |

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| | other restrictions on non-spouse death benefits. | clarifies that employees may rescind a contract during the 90-day trial period ("short free look period").<br><br>Generally effective for contracts purchased on or after enactment. For joint and survivor annuity contracts and the short free look period, the provisions are effective for contracts purchased on or after July 2, 2014. | variable contracts with guaranteed benefits. |
| Sec. 203. Insurance-dedicated exchange-traded funds ("ETF") | The investment assets held in the segregated asset account for a variable annuity or life insurance contract must be adequately diversified. If the assets are not adequately diversified, the variable contract is not treated as an annuity or life insurance contract. | Directs the Secretary of the Treasury to revise the regulations setting forth diversification requirements with respect to variable contracts to facilitate the use of ETFs.<br><br>Effective for investments made on or after the date that is seven years after the date of enactment. | Sec. 204. Similar, but also clarifies that similarities to other funds are irrelevant (effective after 1983).<br><br>Effective for investments made on or after enactment (good faith standard pending regulations, which are to be issued within a year). |
| **TITLE III—SIMPLIFICATION AND CLARIFICATION OF RETIREMENT PLAN RULES** | | | |
| Sec. 301. Recovery of retirement plan overpayments | Fiduciaries for plans that have mistakenly overpaid a participant must take reasonable steps to recoup such overpayment, such as collecting the overpayment from the participant or employer in order to maintain the tax-qualified status of the plan and | A 401(a), 403(a), 403(b), and governmental plan (not including a 457(b) plan) will not fail to be a tax favored plan merely because the plan fails to recover an "inadvertent benefit overpayment" or otherwise amends the plan to permit this increased benefit. There | Sec. 322. Identical. |

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| | comply with ERISA. EPCRS includes various procedures for correcting overpayments made from defined benefit and defined contribution plans. The PBGC also has overpayment recoupment policies for terminating defined benefit plans. | is also fiduciary relief for failure to make the plan whole.<br><br>However, the plan sponsor must still satisfy minimum funding requirements and prevent/restore an impermissible forfeiture.<br><br>Alternatively, if the plan sponsor elects to offset future plan payments to recover the overpayment, restrictions will be imposed on the offset. Moreover, restrictions will be imposed on collection efforts from the participant (e.g., no interest, must recover within 3 years, etc.).<br><br>In certain cases, the overpayment is also treated as an eligible rollover distribution.<br><br>Effective upon enactment. | |
| Sec. 302. Reduction in excise tax on certain accumulations in qualified retirement plans | Existing law imposes an excise tax on an individual if the amount distributed to an individual during a taxable year is less than the RMD under the plan for that year. The excise tax is equal to 50% of the shortfall (that is, 50% of the amount by which the required minimum distribution exceeds the actual distribution). (The excise tax | Reduces the excise tax for failure to take RMDs from 50% of the shortfall to 25%. Further reduces the excise tax to 10% if the individual corrects the shortfall during a two year correction window.<br><br>Effective for taxable years beginning after December 31, 2021. | Identical.<br><br>Sec. 309. Reduces the excise tax for failure to take RMDs from 50% of the shortfall to 25%.<br><br>Sec. 318(c). Further reduces the excise tax to 10% if the individual corrects the shortfall during a two year correction window. |

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| | may be abated under a reasonable cause exception.) | | Effective for taxable years beginning after December 31, 2021. |
| Sec. 303. Performance benchmarks for asset allocation funds | Existing regulations require a plan fiduciary to supply certain performance and benchmark data to participants about their investment options. | Requires the Secretary of Labor to modify existing regulations no later than six months after enactment to provide that, in the case of a designated investment alternative which contains a mix of asset classes, a plan administrator may, but is not required to, use a benchmark which is a blend of different broad-based securities market indices.<br>A study of the effectiveness of the benchmarking is due by December 31, 2022.<br>Effective upon enactment. | Sec. 303. Identical. |
| Sec. 304. Review and report to the Congress relating to reporting and disclosure requirements | Plans are currently required to file reports with federal agencies (*e.g.*, Form 5500) and provide numerous notices to participants (*e.g.*, Summary Plan Description). | Requires the Secretaries of Labor and the Treasury and the Director of the Pension Benefit Guaranty Corporation ("PBGC") to study the disclosure and reporting requirements on plan sponsors and submit a report (within 18 months of enactment) to Congress addressing possible avenues for simplification, consolidation, or standardization.<br>Effective upon enactment. | Sec. 301. Identical. |

| Sec. 305. Eliminating unnecessary plan requirements related to unenrolled participants | Under current rules, employees who choose not to participate in an employer-sponsored plan ("unenrolled participants") are required to receive numerous communications from the plan sponsor. | Amends the requirements for plan sponsor notices to unenrolled participants in individual account plans to consist solely of an annual notice of eligibility to participate during the annual enrollment period (and providing any document so entitled upon request).<br><br>Effective for plan years beginning after December 31, 2021. | Sec. 321. Substantially identical. |
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| Sec. 306. Retirement savings lost and found | N/A | Directs Secretaries of Treasury, DOL, and Commerce to create an online searchable "Lost and Found" database maintained by PBGC to collect information on benefits owed to missing, lost or non-responsive participants and beneficiaries in tax-qualified retirement plans and to assist such plan participants and beneficiaries in locating those benefits.<br><br>This applies to tax-qualified defined benefit and defined contribution plans subject to ERISA vesting provisions.<br><br>Payments from an ongoing plan to nonresponsive participants where the vested accrued benefit does not exceed $1,000 must be paid to the Lost and Found. | Sec. 323. Identical. |

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| | | Imposes annual reporting requirements for plan sponsors and additional reporting changes.<br>Increases the mandatory cashout provisions to $6,000 (up from $5,000) and expands the rollover options for mandatory distributions.<br>Effective upon enactment. | |
| Sec. 307. Expansion of Employee Plans Compliance Resolution System ("EPCRS") | Under existing rules, employer sponsors of qualified plans have certain opportunities to self-correct plan errors under EPCRS. This generally involves operational failures that are insignificant (or otherwise corrected within a two year period). | Allows any eligible inadvertent failure (as defined in the bill) to be self-corrected under EPCRS (subject to any IRS imposed restrictions).<br>This covers 401(a), 403(a), 403(b), 408(p) (SIMPLE IRAs) and 408(k) (SEPs).<br>It also directs the Secretary to expand EPCRS to (1) allow custodians of IRAs to address eligible inadvertent failures, and (2) add additional safe harbors for correcting such inadvertent failures (including earnings calculations).<br>Effective upon enactment. | Sec. 115. Substantially similar. Expressly includes self-correction of required minimum distribution failures within 180 days with no excise tax. Also requires Secretary of Labor to accept loan corrections under EPCRS as meeting DOL VCP program. |
| Sec. 308. Eliminate the "first day of the month" requirement for governmental | Currently, participants in a 457(b) plan generally may only defer compensation if an agreement providing for the deferral has been entered into before the first day of the month in which | Conforms rule for governmental 457(b) plans to rule for 401(k) and 403(b) plans by allowing participants in governmental 457(b) plans to change their deferral rate at any time | Sec. 305. Substantially identical. |

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| Section 457(b) plans | the compensation is paid or made available. | before the compensation is available to the individual. For tax-exempt 457(b) plans, participants may defer compensation for any calendar month only if an agreement providing for such deferral has been entered into before the beginning of such month.<br><br>Effective for taxable years beginning after enactment. | |
| Sec. 309. One-time election for qualified charitable distribution (QCD) to split-interest entity; increase in qualified charitable distribution limitation | Under current law, certain charitable IRA distributions (called qualified charitable distributions) up to $100,000 are excluded from gross income of the individual. QCDs also count for minimum required distribution purposes. | Allows individuals to make a one-time election of up to $50,000 (indexed) for qualifying charitable distributions to certain split-interest entities, including charitable remainder annuity trusts, charitable remainder unitrusts, and charitable gift annuity.<br><br>Indexes the $100,000 limit to inflation.<br><br>Effective for distributions made in taxable years ending after the date of enactment. | No provision. |
| Sec. 310. Distributions to firefighters | Current law permits “qualified public safety employees” in a governmental plan to take retirement withdrawals beginning at age 50 after separation from service without incurring a 10% early withdrawal penalty. | Extends the age 50 early withdrawal exception for qualified public safety employees to also apply to private sector firefighters receiving distributions from a qualified retirement plan or 403(b) plan. | Sec. 320. Identical. |

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| | | Effective for distributions made after December 31, 2021. | |
| Sec. 311. Exclusion of certain disability-related first responder retirement payments | Disability-related retirement payments are typically included in the recipient's taxable income. | For first responders, excludes service-connected disability pension payments (from a 401(a), 403(a), governmental 457(b), or 403(b) plan) from gross income after reaching retirement age up to an annualized excludable disability amount.<br><br>Effective for amounts received with respect to taxable years beginning after December 31, 2026. | No provision. |
| Sec. 312. Individual retirement plan statute of limitations for excise tax on excess contributions and certain accumulations | The Code imposes excise taxes on excess contributions made to IRAs (Section 4973), failures to distribute RMDs from plans and IRAs (Section 4974), and prohibited transactions involving plans and IRAs (Code Section 4975). The statute of limitations with respect to a tax liability for excess retirement contributions or other accumulations generally starts to run within three years after the tax return (or Form 5329 in certain cases) is filed, but if a return is never filed, the statute does not begin to run. | For purposes of any excise tax imposed on excess contributions or on certain accumulations in connection with an IRA, provides that the applicable return to start the statute of limitation is the income tax return filed by the person on whom the tax is imposed for the year in which the act (or failure to act) giving rise to the liability for such tax occurred. The filing of Form 5329 is generally no longer be required to start the statute of limitations.<br><br>For a person not required to file a return for that year, the statute of limitations begins on the date that the return | Sec. 318(e). Identical, except also applies to Code section 4975 – excise tax on prohibited transactions. |

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| | | would have been required to be filed.<br><br>Effective upon enactment. | |
| Sec. 313. Requirement to provide paper statements in certain cases | ERISA requires plan administrators to periodically furnish participants and beneficiaries with statements describing the individual's benefit under the plan. In defined contribution plans, benefit statements must be provided at least once each calendar quarter, if the participant has the right to direct investments, and at least once each calendar year in other cases. In defined benefit plans, benefit statements must generally be delivered at least once every three years.<br><br>DOL disclosure regulations include various document delivery safe harbors. DOL updated the disclosure regulations in 2020 to add two new additional safe harbors: (1) a 2002 safe harbor that applies only to individuals who generally either (a) have the ability to effectively access electronic documents at work, where such access is an integral part of the individual's duties; or (b) | Modifies the pension benefit statements requirement to generally require that:<br>- for a defined contribution plan, at least one statement must be provided on paper in written form for each calendar year; and<br>- for a defined benefit plan, at least one statement must be provided on paper every three years.<br><br>Exceptions allowed for plans that allow employees to opt in to e-delivery or plans that follow the 2002 safe harbor.<br><br>It also directs the Secretary to make changes by December 31, 2021 to the e-delivery rules to include certain participant protections.<br><br>Effective for plan years beginning after December 31, 2022. | No provision. |

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| | have consented to receiving documents electronically; and (2) a 2020 safe harbor where the plan administrator complies with certain notice, access, and other requirements. | | |
| Sec. 314. Separate application of top heavy rules to defined contribution plans covering excludable employees | Generally, for a defined contribution plan, the top heavy minimum contribution is three percent of the participant's compensation. A defined contribution plan is top-heavy if the aggregate of accounts for key employees exceeds 60 percent of the aggregate accounts for all employees. If a plan is top-heavy, minimum contributions or benefits must be provided for non-key employees and, in some cases, faster vesting is required. | Allows a top-heavy plan that covers otherwise excludable employees (e.g., the Code's minimum age and service rules – age 21 and one year of service) and which meet the top-heavy minimum contribution rules testing only this group, to disregard this group from the top-heavy minimum contribution testing.<br>Effective for plan years beginning after date of enactment. | Sec. 106. Identical. |
| Sec. 315. Repayment of qualified birth or adoption distribution limited to 3 years | Following the SECURE Act, current law does not limit the period during which a qualified birth or adoption distribution (QBAD) may be repaid and qualify as a rollover contribution. | Requires qualified birth or adoption distributions to be recontributed within three years of the distribution in order to qualify as a rollover contribution. (This aligns the rule with similar disaster relief provisions and simplifies plan administration.) | No provision. |

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| | | Effective as if included in section 113 of the SECURE Act. | |
| Sec. 316. Employer may rely on employee certifying that deemed hardship distribution conditions are met | Applicable Treasury regulations provide that hardship distributions may be made on account of an immediate and heavy financial need or an unforeseeable emergency. These needs are evaluated using facts and circumstances. (There is a streamlined hardship documentation approach that uses a self-certification process if certain requirements are met.) | Allows employees to self-certify that they have had one of the safe harbor events that constitutes a deemed hardship for purposes of taking a hardship withdrawal from a 401(k) plan or a 403(b) plan.<br>The administrator can also rely on the employee's certification that the distribution is not in excess of the amount required to satisfy the financial need.<br>A similar rule applies for purposes of unforeseeable emergency distributions from governmental Section 457(b) plans.<br>Effective for plan years beginning after December 31, 2021. | No provision. |
| Sec. 317. Penalty-free withdrawals from retirement plans for individuals in case of domestic abuse | N/A | Permits certain penalty-free early withdrawals in the case of domestic abuse in an amount not to exceed the lesser of $10,000 or 50% of the value of the employee's account under the plan.<br>In addition, such eligible distributions to a domestic abuse victim (defined in the bill) may be recontributed to | No provision. |

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| | | applicable eligible retirement plans, subject to certain requirements. (This is similar to the QBAD provision.)<br><br>This also provides for an in-service distribution event for 401(k), 403(b), and governmental 457(b) plans.<br><br>Effective for distributions made after the date of enactment. | |
| Sec. 318. Reform of family attribution rules | Current law provides family attribution rules to address scenarios in which a person, such as a family member, is treated as having an ownership interest in a business. These rules take into account the laws on familial property ownership in a community property state. These rules are important for determining who is the employer and in the controlled group/affiliated service group for various testing and distribution rights. | Adds special rules to address family attribution and to disregard community property laws for purposes of determining ownership of a business. To the extent these changes result in changes to the controlled group or affiliated service group, the Section 410(b)(6)(C) transition relief is available.<br><br>Effective for plan years beginning on or after the date of enactment. | No provision. |
| Sec. 319. Amendments to increase benefit accruals under plan for previous plan year allowed | Current law provides a remedial amendment period for plans to meet qualification requirements. In general, a discretionary plan amendment (which would include an increase in benefit accruals) must be | Allows plans to make discretionary plan amendments to increase benefits until the employer's tax filing deadline (including extensions) for the taxable | No provision. |

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| until employer tax return due date | adopted by the end of the plan year in which it is effective. | year in which the amendment is effective.<br><br>This applies to stock bonus, pension, profit-sharing, or annuity plan to increase benefits for the preceding plan year (other than increasing matching contributions).<br><br>Effective for amendments made in plan years beginning after December 31, 2022. | |
| Sec. 320. Retroactive first year elective deferrals for sole proprietors | Under section 201 of the SECURE Act, a Section 401(k) plan of a sole proprietor can be funded with employer contributions as of the due date for the business's return, but the elective deferrals must be made as of December 31 of the prior year. | For a sole proprietor's first plan year (if the owner is the only employee), allows elective deferrals to be made by the tax filing due date (determined without regard to any extensions).<br><br>Effective for plan years beginning after enactment. | No provision. |
| Sec. 321. Limiting cessation of IRA treatment to portion of account involved in a prohibited transaction | If an IRA beneficiary engages in a prohibited transaction with respect to the IRA, the IRA loses its tax-favored status and ceases to be an IRA as of the first day of the taxable year in which the prohibited transaction occurs. As a result, the IRA is treated as distributing to the individual on the first day of that taxable year the fair | Modifies the disqualification rule that applies when an IRA owner or beneficiary engages in a prohibited transaction so that only the portion of the IRA that is used in the prohibited transaction is treated as distributed to the individual.<br><br>Effective for taxable years beginning after enactment. | No provision. |

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| | market value of all of the assets in the account. | | |
| **TITLE IV—TECHNICAL AMENDMENTS** | | | |
| Sec. 401. Amendments relating to Setting Every Community Up for Retirement Enhancement Act of 2019 | 1) The SECURE Act changed the age on which the required beginning date for required minimum distributions was based, from age 70½ to age 72.<br>2) The SECURE Act also modified certain retirement contribution limits as they apply to "difficulty of care" payments. Generally, the amount that may be contributed to an IRA is limited by the compensation that is includible in an individual's gross income for the taxable year. However, the SECURE Act modified the limit on nondeductible contributions to a traditional IRA to generally allow an individual to contribute a difficulty of care payment. | 1) The proposal clarifies that the increase in the age on which the required beginning date for required minimum distributions is based (to age 72) does not change the general requirement to actuarially increase the accrued benefit of an employee who retires in a calendar year after the year the employee attains age 70½ (other than a five-percent owner) to take into account the period after age 70½ in which the employee was not receiving any benefits under the plan.<br>2) The proposal also clarifies that the excise tax on excess contributions to an IRA generally does not apply to difficulty of care payments contributed to an IRA.<br><br>Effective as if included in the section of the SECURE Act to which the amendment relates. | No provision. |

| TITLE V—ADMINISTRATIVE PROVISIONS | | | |
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| Sec. 501. Provisions relating to plan amendments | Current law generally requires plan amendments to reflect legal changes to be made by the tax filing deadline for the employer's taxable year in which the change in law occurs (including extensions).<br><br>The Code and ERISA provide that, in general, accrued benefits cannot be reduced by a plan amendment (the "anti-cut-back rule").<br><br>Individually designed plans have the Required Amendment List that provides some additional time for amendments. | Allows plan amendments made pursuant to this bill to be made by the end of the 2023 plan year (2025 plan year in the case of governmental plans) as long as the plan operates in accordance with such amendments as of the effective date of a bill requirement or amendment. If a plan operates as such and meets the amendment timeline and requirements of this bill, then the plan will be treated as being operated in accordance with its terms, and the amendment will not violate the anti-cutback rule (unless so designated by the Secretary).<br><br>Extends the plan amendment deadlines under the SECURE Act and the CARES Act to these new dates.<br><br>Effective upon enactment. | Sec. 601. Substantially identical. |
| **TITLE VI—REVENUE PROVISIONS** | | | |
| Sec. 601. Simple and SEP Roth IRAs | Unlike 401(k), 403(b), and governmental 457(b) plans, SIMPLE IRAs and SEPs are not permitted to offer a Roth option. Instead, all contributions must be pre-tax. | Under the proposal, a SEP and a SIMPLE IRA are permitted to be designated as Roth IRAs (and the Roth IRA contribution limits are adjusted accordingly). | Sec. 308 Allows SIMPLE IRAs (but not SEPs) to be Roth IRAs. |

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| | | Effective for taxable years beginning after December 31, 2021. | |
| Sec. 602. Hardship withdrawal rules for 403(b) plans | Prior to the Bipartisan Budget Act of 2018 (BBA), the hardship rules for 401(k) plans and 403(b) plans were generally the same. The BBA created some differences, primarily allowing 401(k) plans to make hardship distributions from more contribution sources, such as qualified nonelective contributions (QNECs), and earnings on elective deferrals instead of just from employee deferrals. | Conforms the hardship distribution rules for Section 403(b) plans to those of Section 401(k) plans. Therefore, a 403(b) plan may distribute QNECs, qualified matching contributions, and earnings on any of these contributions (including elective deferrals).<br>Effective for plan years beginning after December 31, 2021. | Sec. 317. Identical. |
| Sec. 603. Elective deferrals generally limited to regular contribution limit | Section 401(k), 403(b), and governmental 457(b) plans may permit employees to make catch-up contributions (if age 50 or older), subject to certain limitations. | Requires a Section 401(a) qualified plan, Section 403(b) plan, and governmental Section 457(b) plan that has catch-up contributions to be designated as Roth contributions. The proposal does not apply to SIMPLE IRAs or SEP plans.<br>Effective for taxable years beginning after December 31, 2021. | No provision. |
| Sec. 604. Optional treatment of employer matching | Current law does not permit employer matching contributions to be made on a Roth basis. | Allows a Section 401(a) qualified plan, a Section 403(b) plan, or a governmental 457(b) plan to permit employees to | No provision. |

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| contributions as Roth contributions | | designate matching contributions as Roth contributions. Matching contributions designated as Roth contributions are not excludable from income.<br><br>Effective for contributions made after enactment. | |

| CARDIN-PORTMAN PROVISIONS WITH NO EQUIVALENT IN SECURE 2.0 | | |
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| **Cardin-Portman Section** | **Current Law** | **Proposed Law** |
| Sec. 101. Secure deferral arrangements | Current law permits plan sponsors to establish safe harbor 401(k) plans that are not subject to certain nondiscrimination testing requirements. | Adds a new ADP safe harbor plan design, which begins automatic deferrals at 6% with 1% increases each year thereafter up to 10%. Special employer matching contributions for non-highly compensated employees (HCE) (requiring some match on up to 10%) are required.<br><br>Effective for plan years beginning after December 31, 2021. |
| Sec. 102. Facilitating automatic enrollment | N/A | Directs the Secretary of the Treasury to issue regulations to simplify and clarify the rules regarding automatic enrollment and automatic escalation participant notices.<br><br>No effective date given. |
| Sec. 103. Credit for employers with respect to modified safe harbor requirements | N/A | Creates a new credit for small employers that adopt the safe harbor created in Sec. 101 equal to an employer's matching contributions that do not exceed 2% of a non-HCE participating employee's pay. |

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| | | An employer is eligible for the credit for the first 5 years an employee participates.<br><br>Effective for taxable years which include any portion of a plan year beginning after December 31, 2021. |
| Sec. 104. Expansion of Saver's Credit | Under current law, joint taxpayers with an adjusted gross income between $30,000 and $32,500 are entitled to a Saver's Credit of 20% of eligible plan/IRA contributions. Joint taxpayers with an AGI between $32,500 and $50,000 are entitled to a 10% credit. The Saver's Credit is not currently refundable. | Makes the Saver's Credit refundable and requires that it be contributed directly to a retirement plan or Roth IRA. Increases the number of taxpayers qualifying for the 20% credit by expanding the AGI band from $30,000 to $40,000. Simplifies the lookback period rules. Directs Treasury to increase awareness of the Saver's Credit.<br><br>Effective for taxable years beginning after December 31, 2021. |
| Sec. 107. 60-day rollover to inherited individual retirement plan of nonspouse beneficiary | Current law only allows spouse beneficiaries to roll inherited IRAs into their own IRAs, and prohibits indirect rollovers to inherited IRAs. Nonspouses can only initiate a trustee-to-trustee transfer and maintain the assets in the name of the deceased account holder for the benefit of the beneficiary. | Allows nonspouse beneficiaries of a qualified plan/IRA to transfer or roll amounts to an inherited IRA within 60 days.<br><br>Effective for distributions made after December 31, 2021. |
| Sec. 110. Credit for re-enrollment | N/A | Creates a new $500 credit (for 3 years) for small employers that automatically re-enroll plan participants into the EACA/employer plan at least once every three years.<br><br>Effective for taxable years beginning after December 31, 2021. |
| Sec. 112. Treatment of qualified | Current law states that employer-provided qualified retirement | Expands qualified retirement planning services exclusion to expressly include |

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| retirement planning services | planning services are excludable from an employee's gross income as a qualified fringe benefit with no cash option available. | advice regarding investments in qualified plans/IRAs and retirement advice regarding investments outside such arrangements. This exclusion applies even if the employee had the option to choose between those services and compensation (constructive receipt exception).<br>Effective for taxable years beginning after December 31, 2021. |
| Sec. 113. Allow additional nonelective contributions to SIMPLE plans | Current law limits employer nonelective contributions to SIMPLE plans (IRA and 401(k)) to no more than 3% of employee compensation as a matching contribution. Alternatively, a nonelective contribution (instead of a match) of 2% can be made. | Allows employers to make a nonelective contribution of up to 10% of compensation to eligible employees, up to certain limits. (No change to matching contributions.)<br>Effective for years beginning after December 31, 2021. |
| Sec. 114. Reform of the minimum participation rule | Current law requires a defined benefit plan to cover 40% of an employer's workforce (up to 50 employees). This is generally determined by looking at the employer's entire controlled group. | Directs the Secretary to issue final regulations allowing the 40% test to apply separately to "bona fide separate subsidiaries or divisions" no later than December 31, 2022. |
| Sec. 117. Eligibility for participation in retirement plans | Existing law has special eligibility restrictions for 457 plans. | Allows individuals who have received a small $3,500 cashout distribution, prior to the Small Business Job Protection Act of 1996, to participate in an eligible deferred compensation plan. |
| Sec. 121. Deferral of tax for certain sales of employer stock to ESOP sponsored by S corporation | Current law allows domestic C corporations to recognize gain on the sale of qualified securities in certain circumstances only to the extent that amount realized by the sale exceeds the purchase price of qualified replacement property. | Allows any domestic corporation to use this rule, not just C corporations.<br>Effective for sales after the date of enactment. |

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| Sec. 203. Eliminating a penalty on partial annuitization | Current law does not accommodate partial annuitization of an account balance under a defined contribution plan to satisfy required minimum distribution rules (Code section 401(a)(9)). | Directs the Secretary to amend the required minimum distribution rules to allow an employee to partially annuitize their annual required distribution from a defined contribution plan (includes IRAs, 403(b) plans, and 457(b) plans) and have any excess distribution credited toward the RMD for any remaining interest under the same plan.<br>Effective on enactment. |
| Sec. 302. Consolidation of defined contribution plan notices | Current law requires certain retirement plan notices to be provided to participants as individual notices. | Directs the Secretaries within 18 months of enactment to amend regulations to permit a plan to consolidate certain required plan notices. |
| Sec. 304. Permit nonspousal beneficiaries to roll assets to plans | Current law allows non-spousal beneficiaries to roll assets into an inherited IRA, but not into a qualified plan. | Allows a designated beneficiary other than a surviving spouse to directly roll assets into a qualified plan (includes 403(a), 403(b), governmental 457(b)).<br>Effective for distributions made after enactment. |
| Sec. 306. Simplifying 402(f) notices | N/A | Directs the Secretaries to simplify the model 402(f) (rollover) notices to "facilitate better understanding by recipients of different distribution options and corresponding tax consequences" no later than December 31, 2022. The notice must include an explanation of the effect of elections on spousal rights. |
| Sec. 307. Permit plans to use base pay or rate of pay calculation | Current law safe harbor definitions of compensation do not provide special relief for employees whose annual salaries may vary significantly due to overtime. | Directs the Secretary to allow plans to use base pay or rate of pay for purposes of various nondiscrimination safe harbors in determining contributions and benefits no later than December 31, |

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| | | 2022 (subject to exceptions for certain non-HCEs structures). |
| Sec. 310. Clarification of catch-up contributions with respect to separate lines of business ("SLOB") | Under current law, there is no qualified SLOB ("QSLOB") relief for catch-up contributions which must provide consistent catch-up treatment across all controlled group plans. | Clarifies that the QSLOB rules extend to catch-up contributions, so that each separate line of business can elect to offer or not offer catch-up contributions.<br>Effective for taxable years beginning after December 31, 2021. |
| Sec. 311. Clarification of substantially equal periodic payment rule | Under current law, early distributions from a qualified plan or IRA before age 59 ½ are subject to a 10% penalty, with certain exceptions. One exception is the substantially equal periodic payment ("SEPP") rule. | Permits certain rollovers to subsequent plans without trigging the 72(t)(4) recapture rules for a change in substantially equal periodic payments. Also clarifies that annuities that pass the required minimum distribution rules meet the SEPP rules. (Similar relief available for nonqualified annuity contracts.)<br>Effective upon enactment. |
| Sec. 312. Clarification of treatment of distributions of annuity contracts | Under current law, distributions of annuity contracts from a trust or annuity plan are not expressly treated as part of a lump sum distribution for net unrealized appreciation (NUA) purposes. | Clarifies that a distribution of an annuity contract from a plan will be treated as part of a lump sum distribution for NUA purposes.<br>Effective as if included in the Small Business Job Protection Act of 1996. |
| Sec. 313. Clarification regarding elective deferrals | Current law does not expressly address the treatment of severance or back pay as a source of elective deferrals or 457(b) contributions. | Directs Treasury to promulgate rules within six months after enactment to allow plans to permit employees to make deferrals or 457(b) contributions from severance or back pay payments. |
| Sec. 314. Tax treatment of certain nontrade or business SEP contributions | Currently SEP contributions are subject to a 10% tax on nondeductible contributions. There is an exception for non-business contributions to a | Expands exemption to include SEP contributions that are not deductible when contributed solely because such contributions are not made in connection |

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| | SIMPLE IRA or SIMPLE 401(k) (e.g., to a SIMPLE for a household employee) | with a trade or business of the employer (e.g., to SEP of a household employee) from the 10% tax on nondeductible contributions to qualified employer plans.<br>Effective for tax years beginning after December 31, 2019. |
| Sec. 315. Allow certain plan transfers and mergers | Transfers and mergers between defined contribution 401(a)/403(a) plans and 403(b) plans are generally not permitted (other than church plans). | Permits transfers or plan mergers between 401(a)/403(a) defined contribution plans and 403(b) plans. Similar to other merger rules, the transfer or merger cannot cause a reduction in the vested or total benefit for participants. These transfers or mergers are subject to spousal consent and anti-cutback protections, and retain grandfather treatment under the Code. Participant consent may also be required. Directs the Secretary of Treasury to promulgate rules within 1 year of enactment.<br>Effective for merger/transfer occurring in years beginning after the Secretary promulgates rules. |
| Sec. 316. Exception from required distributions where aggregate retirement savings do not exceed $100,000. | Under current law, plan participants are generally required to take required distributions beginning at age 72. | Provides that employees with less than $100,000 in their eligible retirement accounts (in the aggregate) are not required to take required retirement distributions during their lifetime. This does not apply to defined benefit plans. Provides for a phase out for employees with balances near the $100,000 cap. Indexes the $100,000 cap for inflation, with the increase in multiples of $5,000. Provides that plans can rely on |

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| | | certification provided by employee. Also applies to 403(b), IRAs, and 457(b) plans.<br><br>Effective for initial measurement dates on or after December 31, 2021. |
| Sec. 318(b) and (d) only. IRA preservation | Currently, taxpayers are subject to an 6% excise tax for each year the excess contribution remains in an IRA. An IRA is disqualified if the owner engages in prohibited transactions. | Reduces the 6 % excise tax to 3% on excess IRA contributions made by taxpayers who correct the error within a specified 2-year correction window. Repeals the tax disqualification penalty for IRAs where IRA owner engages in prohibited transactions.<br><br>Effective upon enactment, except for certain transition provisions. |
| Sec. 319. Elimination of Additional Tax on Certain Distributions. | Currently, withdrawals of interest on excess IRA contributions are not expressly exempt from the 10% additional tax on early distributions. | Exempts from the 10% additional tax on early distributions amounts attributable to withdrawal of interest or other income earned on excess contributions to an IRA.<br><br>Effective for determinations made on or after enactment. |
| Sec. 401. Cash balance clarification | Under current law, a cash balance plan cannot have an interest crediting rate that exceeds a "market rate of return." IRS regulations provide acceptable interest crediting rates that can be used by plan sponsors, including the variable 30-year Treasury Rate, which is commonly used. | Amends the Code and ERISA by generally imposing a 6% cap on variable interest crediting rates.<br><br>Effective for years beginning after enactment. |
| Sec. 402. Aligning use of lookback months to determine interest rates | Currently, Treasury Regulation section 1.417(e)–1(d)(10)(ii) provides relief from Code Section 411(d)(6) (prohibition against reducing accrued benefits) for amendments that change certain applicable interest rates. | Instructs the Secretary of Treasury to modify the regulation to extend the same relief for amendments that change the time for determining any interest rates (e.g., lookback month); provided that subsequent amendments of the same kind may not occur within 5 years |

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| | | absent consent of the Secretary of Treasury.<br><br>Effective upon enactment. |
| Sec. 403. Corrections of mortality tables | Currently, the IRS has regulations in place prescribing the mortality tables to be used by most defined benefit pension plans when determining present value stream of expected future benefit payments for purposes of determining the minimum funding requirements for a defined benefit plan. | Requires amendment of regulations (within 6 months of enactment) by providing that, for valuation dates occurring during or after 2022, such mortality improvement rates shall not assume future mortality improvements at any age which are greater than .78%. The proposal also permits the Secretary of Treasury to enact regulations to modify the .78% as necessary.<br><br>Effective upon enactment. |
| Sec. 404. Cease double-indexing the variable rate premium. | ERISA Section 4006(a)(3)(E)(ii) provides rules for determining the premium fund target for purposes of unfunded vested benefits. | Amends ERISA Section 4006(a)(3)(E)(ii) by removing the "applicable dollar amount" language for each $1000 of unfunded vested benefits (which varies based on plan year) to a flat $38 for each $1000 of unfunded vested benefits, regardless of the plan year.<br><br>Effective for plan years beginning after December 31, 2021. |
| Sec. 405. Enhancing retiree health benefits in pension plans | Current law Code section 420 provides rules and restrictions for the transfer of excess pension assets to retiree health accounts made on or before December 31, 2025. | Amends Code Section 420 rules to extend the provision through 2031 and provide special rules for de minimis transfers of excess pension assets to retiree health accounts.<br><br>Effective for transfers made after enactment. |
| Sec. 501. Roth plan distribution rules | Current law provides that qualified plans with Roth deferrals are subject to required minimum distribution rules during the participant's lifetime. (This | Exempts designated Roth accounts from the lifetime required minimum distribution rules of Code section 401(a)(9)(A) and the incidental death |

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| | is unlike Roth IRAs that are not subject to these lifetime distribution rules.) | benefit requirements of Code section 401(a).<br>Effective for taxable years beginning after December 31, 2021, but not applicable to distributions required with respect to years beginning before January 1, 2022, but are permitted to be paid on or after such date. |
| Sec. 502. Distributions for charitable purposes. | Under current law, certain charitable IRA distributions (called qualified charitable distributions) up to $100,000 are excluded from gross income of the individual (and are counted for required minimum distribution purposes). | Extends this exclusion to SEPs and SIMPLE IRAs, 403(b) plans and 457(b) plans.<br>Effective for distributions made after December 31, 2021. |
| Sec. 503. Surviving spouse election to be treated as employee | Current law provides that spousal beneficiaries may treat a deceased IRA owner's account as their own IRA for purposes of required minimum distribution rules. Such a rule does not exist for qualified plans. | Extends the IRA treatment for spousal beneficiaries to qualified plans.<br>Effective for distributions with respect to employees who die after December 31, 2021. |
| Sec. 504. Rollovers from Roth IRAs to plans | Under current law, a Roth IRA can only be rolled over to another Roth IRA. | Directs the Secretary of Treasury to modify regulations to allow rollovers from a Roth IRA to an applicable retirement plan (e.g., a plan with Roth deferrals under 401(k), 403(b), or governmental 457(b)).<br>Generally effective for distributions made after December 31, 2021. |