

Hatch, Wyden, Brown, Nelson Amendment #1 to the Retirement Enhancement and Savings Act of 2016.

Short Title: Expansion of opportunities for retirement savings.

Description of Amendment:

Proposal for Pooled Plan Providers of Retirement Savings Programs (OTT16317) - The multiple employer plan proposal allows unrelated employers to join together to sponsor a defined contribution plan or IRA retirement savings program and take advantage of pooled investments and lowered administrative burdens. The proposal makes two changes to current law that will facilitate the growth of plans sponsored by multiple unrelated employers: (1) a violation of the tax code by a single employer can jeopardize the tax qualified status of the entire plan (the “one bad apple” rule); the proposal reforms the rule so that a tax code violation by a single employer only affects the employer that engaged in the violation; and (2) current law requires that employers in a multiple employer plan have a connection to one another other than merely participation in the plan (the “commonality” rule); the proposal eliminates the commonality rule and allows unrelated employers to participate in a multiple employer plan. The proposal also enacts several rules to ensure that the plan providers that operate multiple employer plans are qualified and financially sound.

Description of Payfor:

Modification of Distribution Rules - Under current law, holders of certain types of retirement accounts are required to begin taking taxable distributions once they reach age 70 ½. The proposal would modify the distribution rules to accelerate taxable distributions, compared to current law, in certain situations.

Grassley Amendment #1 to the Retirement and Enhancement Savings Act of 2016

Cosponsors: Roberts, Bennet, Portman, Carper, Isakson, Warner

Short Title: Small Business Health Care Relief Act of 2016

Description of Amendment: Consistent with S. 3060, the Small Business Health Care Relief Act of 2016, this amendment provides an exception from certain group health plan requirements to allow small businesses (those under 50 employees) to use pre-tax dollars to assist employees in the purchase of policies in the individual health insurance market and pay other medical expenses. Under this amendment, a qualified small employer health reimbursement arrangement (QSEHRA) is generally not considered a group health plan so long as certain requirements are met. The maximum dollar amount of payments or reimbursements an eligible employee may receive in a year under a QSEHRA is \$4,950 for individual coverage or \$10,000 for family coverage. The amendment also includes provisions to coordinate the coverage under a QSEHRA with rules for the premium assistance credit and the high-cost coverage excise tax.

Offset: Not applicable; JCT has estimated this proposal to be on-budget revenue neutral.

Cornyn Amendment #1 to the Retirement Enhancement and Savings Act of 2016

Short title: The amendment prevents discriminatory taxation of natural gas pipeline property (S. 2117).

Description:

SECTION 1. LIMITATION ON DISCRIMINATORY TAXATION OF NATURAL GAS PIPELINE PROPERTY.

(a) Definitions- In this Act:

(1) ASSESSMENT- The term `assessment' means valuation for a property tax that is levied by a taxing authority.

(2) ASSESSMENT JURISDICTION- The term `assessment jurisdiction' means a geographical area used in determining the assessed value of property for ad valorem taxation.

(3) COMMERCIAL AND INDUSTRIAL PROPERTY- The term `commercial and industrial property' means property (excluding natural gas pipeline property, public utility property, and land used primarily for agricultural purposes or timber growth) devoted to commercial or industrial use and subject to a property tax levy.

(4) NATURAL GAS PIPELINE PROPERTY- The term `natural gas pipeline property' means all property (whether real, personal, and intangible) used by a natural gas pipeline providing transportation or storage of natural gas subject to the jurisdiction of the Federal Regulatory Commission.

(5) PUBLIC UTILITY PROPERTY- The term `public utility property' means property (excluding natural gas pipeline property) that is devoted to public service and is owned or used by any entity that performs a public service and is regulated by any governmental agency.

(b) Discriminatory Acts- A State, subdivision of a State, authority acting for a State or subdivision of a State, or any other taxing authority (including a taxing jurisdiction and a taxing district) may not do any of the following:

(1) ASSESSMENTS- Assess natural gas pipeline property at value that has a higher ratio to the true market value of the natural gas pipeline property than the ratio that the assessed value of commercial and industrial property in the same assessment jurisdiction has to the true market value of such commercial and industrial property.

(2) ASSESSMENT TAXES- Levy or collect a tax on an assessment that may not be made under paragraph (1).

(3) AD VALOREM TAXES- Levy or collect an ad valorem property tax on natural gas pipeline property at a tax rate that exceeds the tax rate applicable to commercial and industrial property in the same assessment jurisdiction.

(4) OTHER TAXES- Impose any other tax that discriminates against a natural gas pipeline providing transportation or storage of natural gas subject to the jurisdiction of the Federal Energy Regulatory Commission.

SEC. 2. JURISDICTION OF COURTS; RELIEF.

(a) Grant of Jurisdiction- Notwithstanding section 1341 of title 28, United States Code, and without regard to the amount in controversy or citizenship of the parties, the district courts of the United States shall have jurisdiction, concurrent with other jurisdiction of the courts of the United States, of States, and of all other taxing authorities and taxing jurisdictions, to prevent a violation of section 1.

(b) Relief in General- Except as provided in this subsection, relief may be granted under this Act only if the ratio of assessed value to true market value of natural gas pipeline property exceeds by at least 5 percent the ratio of assessed value to true market value of commercial and industrial property in the same assessment jurisdiction. If the ratio of the assessed value of commercial and industrial property in the assessment jurisdiction to the true market value of commercial and industrial property cannot be determined to the satisfaction of the court through the random-sampling method known as a sales assessment ratio study (to be carried out under statistical principles applicable to such a study), each of the following shall be a violation of section 1 for which relief under this Act may be granted:

(1) An assessment of the natural gas pipeline property at a value that has a higher ratio of assessed value to the true market value of the natural gas pipeline property than the ratio of the assessed value of all other property (excluding public utility property) subject to a property tax levy in the assessment jurisdiction has to the true market value of all other property (excluding public utility property).

(2) The collection of an ad valorem property tax on the natural gas pipeline property at a tax rate that exceeds the tax rate applicable to all other taxable property (excluding public utility property) in the taxing jurisdiction.

Offset: Not necessary; the amendment does not score.

Cornyn Amendment #2 to the Retirement Enhancement and Savings Act of 2016

Short title: The amendment provides that members of the Armed Forces serving in the Sinai Peninsula of Egypt receive the same tax benefits as those serving in a combat zone (S. 3272).

Description:

SECTION 1. TREATMENT OF CERTAIN INDIVIDUALS PERFORMING SERVICES IN THE SINAI PENINSULA OF EGYPT.

(a) In General- For purposes of the following provisions of the Internal Revenue Code of 1986, a qualified hazardous duty area shall be treated in the same manner as if it were a combat zone (as determined under section 112 of such Code):

- (1) Section 2(a)(3) (relating to special rule where deceased spouse was in missing status).
- (2) Section 112 (relating to the exclusion of certain combat pay of members of the Armed Forces).
- (3) Section 692 (relating to income taxes of members of Armed Forces on death).
- (4) Section 2201 (relating to members of the Armed Forces dying in combat zone or by reason of combat-zone-incurred wounds, etc.).
- (5) Section 3401(a)(1) (defining wages relating to combat pay for members of the Armed Forces).
- (6) Section 4253(d) (relating to the taxation of phone service originating from a combat zone from members of the Armed Forces).
- (7) Section 6013(f)(1) (relating to joint return where individual is in missing status).
- (8) Section 7508 (relating to time for performing certain acts postponed by reason of service in combat zone).

(b) Qualified Hazardous Duty Area- For purposes of this section, the term 'qualified hazardous duty area' means the Sinai Peninsula of Egypt, if as of the date of the enactment of this section any member of the Armed Forces of the United States is entitled to special pay under section 310 of title 37, United States Code (relating to special pay; duty subject to hostile fire or imminent danger) for services performed in such location. Such term includes such location only during the period such entitlement is in effect.

(c) Effective Date-

- (1) IN GENERAL- Except as provided in paragraph (2), the provisions of this section shall take effect on June 9, 2015.
- (2) WITHHOLDING- Subsection (a)(5) shall apply to remuneration paid after the date of the enactment of this Act.

Offset: To be provided.

Thune Amendment #1 to the *Retirement Enhancement and Savings Act of 2016*

Cosponsor: Cardin

Short Title: Permit IRAs to hold stock of S corporation banks

Description of amendment: This amendment is based on section 4 of S. 3181, the *S Corporation Modernization Act of 2016*.

Banks were initially allowed to organize as S corporations following enactment of the *Small Business and Job Protection Act of 1996*. Some banks, however, were unable to make the election because they had IRA shareholders. S corporations are generally not allowed to have IRA shareholders, and severe “prohibited transaction” penalties made it unworkable for the IRA owner or the bank to buy the stock out of the IRAs.

Congress acted in 2004 to address this issue of IRA shareholders of banks. The *American Jobs Creation Act (AJCA)* allowed banks with stock held by an IRA on October 22, 2004 to make S corporation elections. The AJCA required the IRA to pay unrelated business income tax (UBIT) on their share of S corporation income, as well as a second round of UBIT on any gain on the disposition of stock in the S corporation. UBIT is computed at corporate rates.

This amendment would allow IRAs to more broadly hold stock in S corporation banks by eliminating the requirement that shares were held in the IRA as of the date of enactment of the AJCA (October 22, 2004). As such, the amendment is consistent with current law treatment for qualified retirement plans. The pass-through income is UBIT to the IRA shareholder.

The amendment also removes the October 22, 2004 limiting date with respect to a narrow prohibited transaction exemption for purchases of stock out of IRAs when a bank makes an S corporation election. Under the existing code section, to qualify for this exemption: (1) the sale must be pursuant to an S corporation election by the bank; (2) the sale must be for fair market value (as established by an independent appraiser); (3) the IRA incurs no commissions, costs, or other expenses in connection with the sale; and (4) the stock must be sold in a single transaction for cash not later than 120 days after the S corporation election is made. The exemption allows shareholders who want to continue their ownership in the S corporation bank to do so without reducing the value of their IRA if the bank decides to make an S election (thus making the pass-through income of the bank UBIT to the IRA should the S corporation bank stock remain in the IRA).

Offset: To be provided.

[Note: Amendment sponsor(s) reserve the right to modify this amendment for technical, revenue-related (if applicable), germaneness, or other purposes.]

Burr-Casey Amendment #1 to the Retirement and Enhancement Savings Act of 2016

Short Title: ABLE to Work Act

Description of Amendment: Based on S. 2702, the ABLE to Work Act, which would enable individuals with disabilities who work and earn income to save additional amounts in their 529A (or ABLE) account above the current annual maximum contribution (up to the Federal Poverty Level) and to be eligible for the Saver's Credit.

Offset: No offset needed. Scored as insignificant.

Isakson Amendment #1 to the Retirement and Enhancement Savings Act of 2016

Coponsors: Sens. Cantwell, Grassley, Brown, and Hatch

Short Title: Lifetime Income Safe Harbor

Description of Amendment:

While still obligated to maintain current standards in selecting a product and provider, when assessing the financial capability of an annuity provider, employers should be able to rely on specific representations from the insurer regarding their status in relation to state insurance regulation and enforcement. This will lead to greater certainty for plan sponsors and fiduciaries when selecting lifetime income products, and increase access to lifetime income products.

CBO: Not applicable.

[Note: Amendment sponsor(s) reserve the right to modify this amendment for technical, revenue-related (if applicable), germaneness, or other purposes.]

Toomey Amendment #1 to the Retirement Enhancement and Savings Act of 2016

Short Title: An amendment to add safeguards against leakage to 401(k) loans administered through a credit card arrangement

Description:

Modify the provision in the mark relating to “qualified employer plans prohibited from making loans through credit cards and other arrangements” to allow qualified employer plans to offer loans through a credit card arrangement, but only if the following conditions are met:

- 1) Any purchase made with a card must exceed \$1,000, indexed to inflation starting in 2018
- 2) The card cannot be used to purchase anything in an establishment that EBT cards are not permitted to use

In addition, GAO shall conduct a study analyzing the impact of 401(k) loans administered through a credit card type arrangement on “leakage” from retirement accounts. If the study shows that credit card style loans result in greater leakage than traditional 401(k) loans, the GAO is to report this to the Chairman and Ranking Member of the Senate Finance Committee, along with recommendations for action.

Offset: to be determined

[NOTE- Amendment sponsor reserves the right to modify the amendment for technical, revenue-neutrality, or other purposes.]

Toomey Amendment #2 to the Retirement Enhancement and Savings Act of 2016

Short Title: An amendment to improve the bill

Description:

To be provided

Offset: to be determined

[NOTE- Amendment sponsor reserves the right to modify the amendment for technical, revenue-neutrality, or other purposes.]

**HELLER AMENDMENT #1 to the Retirement and Enhancement Savings Act of
2016**

Heller Amendment #1 to the Chairman's Mark

Short Title: Amendment of a perfecting nature

Description of Amendment: TBD

Offset: To be provided.

[NOTE – Amendment sponsor reserves the right to modify the amendment for technical, revenue-neutrality, or other purposes.]

Wyden Amendment #1 to the Retirement and Enhancement Savings Act of 2016

Short Title: Create a Matching Contribution for Retirement Savings

Description of Amendment: Current law includes a nonrefundable tax credit for eligible taxpayers who make elective deferrals to tax-favored retirement plans or contributions to IRAs (i.e., the Saver’s Credit). This provision would make the credit refundable so that those without any tax liability receive a benefit. It also would require the credit amount be contributed directly to a tax-favored retirement plan, in essence making the credit more like a “matching contribution.”

Wyden Amendment #2 to the Retirement and Enhancement Savings Act of 2016

Short Title: Allow Employers to Make Retirement Matching Contributions on Student Loan Repayments

Description of Amendment: This provision would allow employers to make matching contributions to their 401(k) retirement plans on behalf of their employees who made student loan payments but were unable to afford to also contribute to their 401(k) plans. Under the proposal, for purposes of the rules relating to matching contributions, a plan may elect to treat student loan payments the same as an elective contribution to a 401(k) plan.

Schumer Amendment #1 to the Retirement and Enhancement Savings Act of 2016.

Short Title: Volunteer Responder Incentive Protection Act

Description of Amendment:

This amendment would reinstate the expired tax exclusion for benefits paid to volunteer firefighters and emergency medical providers by states and local governments for taxable years beginning in 2015, 2016 or 2017. The amendment is based on the Volunteer Responder Incentive Protection Act of 2015 (S. 609).

Offset to be provided.

[NOTE – Amendment sponsors reserve the right to modify the amendment for technical, revenue-neutrality, or other purposes.]

Schumer Amendment #2 to the Retirement and Enhancement Savings Act of 2016.

Short Title: Volunteer Emergency Services Recruitment and Retention Act

Description of Amendment:

- Allow a sponsor of a length of service award plan for bona fide volunteers providing firefighting or fire prevention services, emergency medical services, ambulance services, or emergency rescue services to elect to have such a plan administered in a manner consistent with the requirements of a Sec. 457(b) deferred compensation plan.
- Increase the cap on annual contributions into a bona fide volunteer's length of service award plan from \$3,000 to \$5,500 and create a mechanism for the cap to increase with inflation.
- Direct the Secretary of Labor to issue guidance clarifying that a length of service award program is not an employee pension benefit plan under the Employee Retirement Income Security Act of 1974 (ERISA).

The amendment is based on the Volunteer Emergency Services Recruitment and Retention Act (S. 616).

Offset to be provided.

[NOTE – Amendment sponsors reserve the right to modify the amendment for technical, revenue-neutrality, or other purposes.]

Schumer Amendment #3 to the Retirement and Enhancement Savings Act of 2016.

Short Title: Cooperative and Small Employer Charity Pension Plans Conforming Amendment

Description of Amendment:

Under the 2014 Cooperative and Small Employer Charity Pension Flexibility Act, Cooperative and Small Employer Charity Pension Plans (“CSEC plans”) are subject to funding rules that reflect their very low risk to the PBGC. In general, this was done by applying funding rules in effect prior to the Pension Protection Act of 2006 (“PPA”), since the PPA funding rules were designed for single-employer plans where the bankruptcy of the one plan sponsor can cause the plan to be turned over to the PBGC. CSEC plans are multiple-employer plans that can continue in operation despite the bankruptcy of many of their participating employers.

The proposal would conform the PBGC premium rules for CSEC plans to the funding rules for CSEC plans. Thus, under the proposal, premiums for CSEC plans would also be set at the premium rate in existence before 2006: \$19 per participant in the case of the flat rate premium, and \$9 for each \$1,000 of unfunded vested benefits in the case of the variable rate premium.

In addition, under the proposal, the PBGC variable rate premium would be based on the measure of plan liability included in the 2014 CSEC legislation to conform the funding and premium rules in an effective manner.

Offset to be provided.

[NOTE – Amendment sponsors reserve the right to modify the amendment for technical, revenue-neutrality, or other purposes.]

Stabenow Amendment #1 to an Original Bill Entitled the Retirement Enhancement and Savings Act of 2016

Cosponsors: Nelson

Short Title: Disregard certain stock repurchased by a business from an ESOP for purposes of calculating excess business holdings.

Description of Amendment: The amendment would treat stock as outstanding for purposes of calculating excess business holdings if:

- 1) The stock is not readily tradable on an established securities market;
- 2) The stock was purchased by the business enterprise on or after January 1, 2005, from a stock bonus or profit sharing plan described in section 401(a) in which employees of such business enterprise participate, in connection with a distribution from such plan;
- 3) The stock is held by the business enterprise as treasury stock, cancelled, or retired.

In no case shall permitted holdings exceed 49 percent.

Offset: No offset expected to be required.

Stabenow Amendment #2 to an Original Bill Entitled the Retirement Enhancement and Savings Act of 2016

Short Title: Clarifying the Role of the PBGC's Participant and Plan Sponsor Advocate

Description of Amendment: The amendment would make the following clarifications and improvements to the role of the PBGC's Participant and Plan Sponsor Advocate, who helps both participants and plan sponsors resolve concerns they have with the PBGC (notably, the Participant and Plan Sponsor Advocate does not mediate disputes among participants and plan sponsors themselves).

(1) Clarify that the Participant and Plan Sponsor Advocate is independent, and has the right to request and to receive information from the PBGC that may be necessary or appropriate to enable them to perform their responsibilities.

(2) Clarify that the Participant and Plan Sponsor Advocate is authorized to advocate for both plan participants and plan sponsors (as opposed to advocate for participants and "assist" plan sponsors as set out in current law, which is less clear).

(3) Clarify that the Participant and Plan Sponsor Advocate may advocate for participants and plan sponsors with respect to plans "insured by" the PBGC, rather than just those "trusteed by" the PBGC. This would make certain that more participants and plan sponsors have access to assistance from the Participant and Plan Sponsor Advocate.

Offset: No offset expected to be required.

Cantwell/Crapo/Thune Amendment #1 to the Retirement and Enhancement Savings Act of 2016

Short Title: Tribal Pension Parity

Description of Amendment:

To provide fairness between Indian tribal plans and other government plans, amends various provisions of the Internal Revenue Code (and makes conforming amendments to ERISA) to treat tribal government plans like state government plans, including with respect to the following:

1. adding the same distribution rights for tribal and state public safety employees;
2. removing the "essential government function" and "commercial" activity tests that currently apply to tribal plans, but not to state and local government plans;
3. confirming that pension plans may honor tribal court domestic relations orders that meet the same standards applied to state court orders;
4. grandfathering tribal "457" plans that otherwise comply with the Code and were established when it was not clear what plans tribes could adopt; and
5. applying the same employment tax rules for tribal deferred compensation plans that apply to state and local plans.

Offset: To be provided if necessary

**Cantwell/Schumer/Carper/Stabenow/Bennet/Cardin/Brown/Nelson/Menendez
Amendment #2 to the Retirement and Enhancement Savings Act of 2016**

Short Title: Extend expiring tax provisions

Description of Amendment: The amendment extends tax provisions expiring at the end of 2016 to the end of 2018.

Offset: To be provided.

Cantwell/Grassley Amendment #3 to the Retirement and Enhancement Savings Act of 2016

Short Title: Biodiesel Tax Incentive Reform and Extension Act of 2016

Description of Amendment: Consistent with S. 3188, the Biodiesel Tax Incentive Reform and Extension Act of 2016, amends the Internal Revenue Code to modify and extend the income tax credit for biodiesel and renewable diesel and the excise tax credit for biodiesel fuel mixtures, and modifies the credits by making them available to domestic producers of the fuels and extending them through 2019.

Offset: To be provided.

Nelson Amendment #1 to the Chairman’s Mark of an Original Bill Entitled the Retirement and Enhancement Savings Act of 2016

Short Title: The Retirement Security Act

Description of Amendment: The amendment is the text of the Retirement Security Act (S.266), which—

- Allows unrelated small businesses to join multiple employer plans (Open MEPs), to share the administrative burden of a retirement plan.
- Directs the Treasury Department to issue regulations to fix current law’s so-called “one bad apple” rule. Under the “one bad apple” rule, the failure of one business participating in a MEP to meet the minimum criteria necessary to maintain a tax-preferred retirement plan can endanger benefits for all MEP participants.
- Directs the Treasury Department to simplify, clarify, and consolidate notice requirements for retirement plans.
- Creates a safe harbor for “automatic enrollment” plans and provides a tax credit to encourage small businesses to match employee contributions to the plans, up to 10 percent of their pay.
- Directs the Treasury Department to make the saver’s credit available on Form 1040 EZ.

Offset: TBD

Menendez Amendment #1 to The Retirement Enhancement and Savings Act of 2016

Title: Small Employer Benefit Arrangements (SEBA)

Proposal: To modify the Internal Revenue Code (IRC) and Employee Retirement Income Security Act (ERISA) to allow cooperatives operating under IRC Subchapter T, §1381, to continue operating on a “single employer” basis in the provision of employee benefits. We propose calling this arrangement a Small Employer Benefit Arrangement (SEBA).

Offset: To be provided

Carper-Heller Amendment #1 to the Retirement and Enhancement Savings Act of 2016

Short Title: To provide parity within the investment tax credit (ITC) for certain energy property.

Description of Amendment: Would implement a technical correction to the changes made to Section 48 of the Internal Revenue Code enacted as part of Division P, Title III, Section 303, of Public Law No. 114-113. This correction would provide parity within Section 48 for qualified fuel cell property, qualified small wind energy property, combined heat and power system property, qualified microturbine property, thermal energy property and equipment used to produce, distribute, or use energy derived from a geothermal deposit. In the case of technologies that are not fuel cells, geothermal energy resources or small wind, parity will be provided starting at a 10 percent rate.

Offset: To be provided.

Carper Amendment #2 to the Chairman's Mark of an Original Bill Entitled the Retirement Enhancement and Savings Act of 2016

Short Title: Automatic IRA Act

Description of Amendment: This amendment, based directly on S.245 as introduced by Senator Whitehouse, amends the Internal Revenue Code to: (1) require certain employers who have been in business for at least two years, who have more than ten employees, and who do not maintain qualifying retirement plans or arrangements to make available to their eligible employees a payroll deposit Individual Retirement Account arrangement (automatic IRA arrangement) which grants such employees the right to opt-out of participation; (2) require the Secretary of the Treasury to provide employers with a model notice for notifying employees of their opportunity to participate in an automatic IRA arrangement and to provide participants with an annual statement setting forth payments, earnings, value, and other specified information; (3) impose a penalty on employers who fail to provide eligible employees access to an automatic IRA arrangement; (4) allow employers with fewer than 100 employees a tax credit for costs associated with establishing and maintaining an automatic IRA arrangement; and (5) increase the dollar limitation on the tax credit for small employer pension plan startup costs. This amendment shall apply to calendar years beginning after December 31, 2017.

In addition, this amendment establishes an Automatic IRA Advisory Group to make recommendations regarding automatic IRA investment options. This amendment also requires the Secretary and the Secretary of Labor to jointly conduct feasibility studies on: (1) extending spousal consent requirements to automatic IRA arrangements; (2) automatically transferring amounts saved by employees in retirement bonds into alternative, private sector, diversified investments when employees' automatic IRA balances reach a certain dollar level; (3) using investment data to notify individuals with multiple small balance retirement accounts of consolidation options; and (4) using investment arrangements associated with automatic IRAs to assist in addressing the problem of abandoned accounts.

Estimated Ten Year Costs: Cost to be determined.

Offset: Offset to be determined.

Cardin-Portman Amendment #1 to the Retirement and Enhancement Savings Act of 2016

Short Title: Retirement Security Preservation Act, updated

Description of Amendment: This amendment is based on S. 2855 (113th Congress), the Portman-Cardin Retirement Security Preservation Act of 2014.

S. 2855 amends the nondiscrimination rules that apply to qualified retirement plans to protect older, longer-service participants whose defined benefit plans have been closed or frozen.

Over the past several years, many companies have transitioned from “traditional” defined benefit plans to other retirement plan models, such as defined contribution plans. In doing so, a large number of these companies have elected to grandfather existing employees by closing the traditional DB plan (also known as “soft freezing”); other companies have “hard frozen” their traditional DB plan but assisted existing employees in other ways, such as through enhanced DC plan contributions.

When a plan closes or is “soft frozen,” existing participants or a subset of participants continue to earn benefits under the traditional DB plan, but new employees cannot be participants in the plan. When a plan is “hard frozen,” employees earn no new benefits under the DB plan (in other words, no new benefits accrue to the existing DB plan participants, and no new employees are allowed to join the DB plan).

Over time, existing employees in the closed/frozen plan typically build seniority and become more highly-compensated than younger, newer employees, who are more likely to have greater job turnover. This widens the income gap between the employees in the closed plan and the new employees. Because the grandfathered group in the closed plan generally becomes more highly compensated, closed/frozen plans almost always end up inadvertently violating the IRS nondiscrimination testing rules.

Since the introduction of S. 2855, Treasury has extended temporary relief and issued proposed regulations that partially address these issues, but only for a certain subset of affected plans. According to recent surveys, a significant number of closed or frozen DB plans, representing hundreds of thousands of participants, will not be able to take advantage of the proposed regulations.

This amendment updates S. 2855 to incorporate elements of the Treasury regulations (including anti-abuse parameters to prevent incentivizing plan closures or the creation and immediate closing or freezing of a plan or plan features) and to provide targeted relief to many of the plans who are not able to take advantage of the Treasury regulations.

Offset: To be provided.

[Note: Amendment sponsor(s) reserve the right to modify this amendment for technical, revenue-related (if applicable), germaneness, or other purposes.]

Cardin-Roberts Amendment #2 to the Retirement and Enhancement Savings Act of 2016

Cosponsors: Brown, Cantwell, Casey, Grassley, Portman, Stabenow

Short Title: Promotion and Expansion of Private Employee Ownership Act of 2015

Description of amendment: This amendment is based on S. 1212, the Promotion and Expansion of Private Employee Ownership Act of 2015.

S Corporation Employee Stock Ownership Plans, or S-ESOPs, have a track record of providing retirement security for employee-owners of both small and large businesses. S. 1212, introduced by Senators Cardin and Roberts, contains several provisions to further encourage employee ownership in S corporations, including extending the gain deferral provisions of Code section 1042 to sales of employer stock to S-ESOPs, providing resources to small businesses contemplating making the transition to an ESOP, and ensuring that SBA-certified small businesses do not lose their status by becoming employee owned.

The consideration of S. 1212 was supported in the July 2015 Senate Finance Committee Savings & Investment Bipartisan Tax Working Group report. The bill currently has 34 bipartisan cosponsors.

Offset: To be provided.

[Note: Amendment sponsor(s) reserve the right to modify this amendment for technical, revenue-related (if applicable), germaneness, or other purposes.]

Cardin Amendment #3 to the Retirement and Enhancement Savings Act of 2016

Cosponsors: Crapo, Roberts

Short Title: Non-QCCO participation in 403(b)(9) retirement income accounts

Description of amendment: This amendment confirms that the employees of non-qualified church-controlled organizations can participate in section 403(b)(9) retirement income accounts.

Offset: To be provided.

[Note: Amendment sponsor(s) reserve the right to modify this amendment for technical, revenue-related (if applicable), germaneness, or other purposes.]

Brown/Portman Amendment #1 to the Retirement Enhancement and Savings Act of 2016

Short Title: Delay the Increase in the Threshold for Seniors Deducting Medical Expenses

Description of Amendment: This amendment will delay the increase in the threshold for accessing the medical expense deduction for those 65 and older from 7.5 percent to 10 percent of income for two years. Changing the threshold amounts to a tax increase for the 8 million to 10 million Americans that claim this deduction on their tax returns. These taxpayers are overwhelmingly working families who reported less than \$60,000 in income.

Offset: TBD

NOTE – Amendment sponsor reserves the right to modify the amendment for technical or other purposes

Brown Amendment #2 to the Retirement Enhancement and Savings Act of 2016

Short Title: Repeal Social Security's Windfall Elimination Provision and Government Pension Offset.

Description of Amendment: This amendment would amend title II of the Social Security Act to repeal the windfall elimination provision (WEP) and the government pension offset (GPO). The WEP reduces Social Security retirement benefits for workers who have fewer than 30 years of covered employment and receive a pension for non-Social Security covered work. The GPO similarly reduces spousal benefits for workers receiving a pension for non-covered employment. This amendment is based on the Social Security Fairness Act (S. 1651).

Offset: TBD

NOTE – Amendment sponsor reserves the right to modify the amendment for technical or other purposes

Brown Amendment #3 to the Retirement Enhancement and Savings Act of 2016

Short Title: The Supplemental Security Income Restoration Act

Description of Amendment: This amendment would amend title XVI of the Social Security Act to update various eligibility requirements for the supplemental security income program. It will raise the general income exclusion, the earned income exclusion, and the resource limit for individuals and couples who qualify for this program. Each of these provisions will be tied to inflation going forward. The amendment would further repeal the In-Kind Support and Maintenance Rule and the transfer penalty within the program. This amendment is based on the Supplemental Security Income Restoration Act (S. 1387).

Offset: TBD

NOTE – Amendment sponsor reserves the right to modify the amendment for technical or other purposes

Brown Amendment #4 to the Retirement Enhancement and Savings Act of 2016

Short Title: Requiring Inverted Corporations to Pay What They Owe

Description of Amendment: This amendment would strike all revenue raising provisions of the bill. It would replace them with language to amend the Internal Revenue Code to include unrepatriated earnings in taxable income for groups that include inverted companies. This amendment is based on the Pay What You Owe Before You Go Act (S. 2662).

Offset: Not necessary

NOTE – Amendment sponsor reserves the right to modify the amendment for technical or other purposes

Casey-Burr Amendment #1 to an Original Bill Entitled the Retirement and Enhancement Savings Act of 2016

Cosponsors: Brown

Short Title: Allow for savings in 529 accounts to be rolled over in to ABLE accounts

Description of Amendment: Allow for savings in 529 accounts to be rolled over in to ABLE accounts, such rollovers would count toward and be limited to the ABLE annual contribution limit.

Offset: TBD

Casey-Burr Amendment #2 to an Original Bill Entitled the Retirement and Enhancement Savings Act of 2016

Cosponsors: Brown

Short Title: Increase the ABLE age limit to 45 (up from age 25).

Description of Amendment: This bill would raise the age limit for ABLE accounts to age 45 (up from age 25).

Offset: TBD

Casey Amendment #3 to an Original Bill Entitled the Retirement and Enhancement Savings Act of 2016

Cosponsors: Wyden, Brown

Short Title: Expand access to 401k and 403(b) plans to long-term part-time employees

Description of Amendment: This amendment would require employers providing 401(k) and 403 (B) plans to their employees to expand eligibility to participate by permitting employees to make their own (salary reduction) contributions provided the employee has worked at least 500 hours per year for at least two consecutive years. The proposal is tailored so the expansion avoids unintended effects of discouraging employers from sponsoring plans or prompting employers to limit hours or refrain from hiring part-time workers.

The proposal would not require employers to make matching contributions. Further, the two-year requirement ensures that those eligible are established long-term part-time employees. The proposal would also require a plan to credit, for each year in which such an employee worked at least 500 hours, a year of service for purposes of vesting.

With respect to employees newly covered under the proposed change, employers would receive nondiscrimination testing relief (similar to current-law relief for plans covering otherwise excludable employees), including permission to exclude these employees from top-heavy vesting and top-heavy benefit requirements.

This proposal would apply to plan years beginning after December 31, 2016, unless the employer elects to count earlier tax years.

Offset: TBD

Warner - Heller Amendment #1 to the Retirement and Enhancement Savings Act of 2016

Short Title: Empowering Employees through Stock Ownership Act

Description of Amendment: Businesses across the country offer stock options to their employees, from senior management to administrative staff, for many reasons. Stock options allow companies to share the value of their firms with employees, recruit and maintain talented workers, and offer compensation that goes beyond a standard salary. For cash-strapped start-up companies, options are a way to compensate employees and compete with more established firms.

For companies that are publicly traded, employees can sell all or a portion of their shares on the public market to pay for their taxes. In the case of privately held companies, however, there is generally not a market for employees to sell shares to cover their tax liability. For privately held companies that are growing, the tax consequences for employees can be prohibitive and result in many employees being unable to exercise their stock options. As a result, employees are missing out on the opportunity to gain wealth as their company succeeds.

The amendment addresses this issue by modifying Section 83 of the Internal Revenue Code as set forth in S.3152, the *Empowering Employees through Stock Ownership Act*.

S.3152 extends the time period in which qualified employees are required to pay tax upon the exercise of stock options or restricted stock units (RSUs) that are settled for stock to 7 years. To qualify for the deferral of income tax, an employer must meet the requirements of an eligible corporation, which is generally required to grant options to 80% or more of its employees on an annual basis, with similar terms, and cannot be traded on an established securities market.

Individuals who own 1% or more of the company and those who control the company, such as the Chief Operating Officer, the Chief Financial Officer, and the four most highly compensated officers, would not be eligible to make the election and benefit from tax deferral. Family attribution rules would also apply.

The amendment would also make the following modifications to S.3152 as described in JCX-75-16, *Description of the Chairman's Amendment in the Nature of a Substitute of H.R.5719, the "Empowering Employees through Stock Ownership Act"*:

- Expands the circumstances which would trigger the end of the deferral period to include the first date on which an employee can sell back to the employer the shares of stock that

had been granted under an option.

- Narrows the definition of eligible corporation for purposes of issuing such options to exclude the case where a predecessor corporation had been tradable on a public exchange.
- Creates a ten-year window as part of the test of who is an eligible employee for the purpose of excluding the 1% owners and the most highly-compensated employees.
- Provides that if a corporation engages in a share buyback program, at least 25% of the total buyback funds must be used to buy back stock that had been elected to be deferred, or if not, no further deferrals may be elected in the subsequent year.
- Modifies the notice requirements for employers to provide that the notice be given when the qualified stock is substantially vested with the employee and to include additional information.
- Changes the effective date to be with respect to stock attributable to options exercised or restricted stock units settled after December 31st of this year.
- Makes other minor technical changes.

Offset: To be provided.

[NOTE – Amendment sponsor reserves the right to modify the amendment for technical, revenue-neutrality, or other purposes.]