Comments of the Investment Company Institute
on the
Retirement Improvements and Savings Enhancements Act of 2016
Discussion Draft

December 7, 2016

The Investment Company Institute[1] (ICI) appreciates this opportunity to comment on the Retirement Improvements and Savings Enhancements (RISE) Act of 2016 discussion draft. We applaud Senate Finance Committee Ranking Member Wyden for addressing the challenges of ensuring that Americans are adequately prepared for retirement. As described in the Summary of the Discussion Draft, the RISE Act is intended to encourage retirement savings, provide fairness for "mega Roth IRAs," simplify the required minimum distribution rules, and create anti-abuse rules for individual retirement accounts (IRAs). We thank the Senator for soliciting public feedback on the discussion draft.

ICI strongly supports efforts to promote savings and investment opportunities for American workers. We thank Senator Wyden for his past support of bipartisan retirement savings plan improvements, including provisions in the Pension Protection Act of 2006 (PPA) that made permanent the increased contribution limits and catch-up contributions for older workers introduced by the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA). Thanks in no small part to Congress' efforts to promote retirement savings, Americans currently have $24.5 trillion earmarked for retirement, with more than half of that amount in defined contribution (DC) plans and IRAs.[2] About half of DC plan and IRA assets is invested in mutual funds, which makes the mutual fund industry especially attuned to the needs of retirement savers.

A crucial component of the success of the US retirement system is the current retirement savings tax incentives, including the contribution limits, that motivate saving and encourage employers to maintain and contribute to employer-sponsored plans. Any assessment of available options for reforming the current system should bear this in mind, including the rough parity that exists between

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[1] The Investment Company Institute (ICI) is a leading global association of regulated funds, including mutual funds, exchange-traded funds (ETFs), closed-end funds, and unit investment trusts (UITs) in the United States, and similar funds offered to investors in jurisdictions worldwide. ICI seeks to encourage adherence to high ethical standards, promote public understanding, and otherwise advance the interests of funds, their shareholders, directors, and advisers. ICI's members manage total assets of US$18.2 trillion in the United States, serving more than 95 million US shareholders, and US$1.6 trillion in assets in other jurisdictions. ICI carries out its international work through ICI Global, with offices in London, Hong Kong, and Washington, DC.

[2] At the end of the second quarter of 2016, US retirement assets totaled $24.5 trillion, DC plan assets were $7.0 trillion and IRA assets were $7.5 trillion. *See* Investment Company Institute, "The US Retirement Market, Second Quarter 2016" (September 2016); available at www.ici.org/info/ret_16_q2_data.xls.

defined benefit (DB) and DC plan limits.[3] We urge Congress to maintain the current retirement savings tax incentives, including the contribution limits, and other features that successfully encourage millions of Americans to accumulate savings during their working lives and therefore generate adequate income in retirement. This is a key priority of ICI.

Executive Summary

Below we offer comments on selected provisions of the RISE Act discussion draft and additional suggestions to improve the voluntary retirement system.

- Changes to Saver's Credit. Expanding access to the credit and transforming it into a refundable match are laudable reforms, but we recommend consideration of certain administrative complexities that would result.
- Repeal maximum age for traditional IRA contributions. We support repealing the maximum age for traditional IRA contributions, which would allow taxpayers to continue making traditional and Roth IRA contributions after age 70½.
- Allow inherited plan and IRA balances to be rolled over within 60 days. We support allowing non-spouse beneficiaries to move assets to an inherited IRA through an indirect (60-day) rollover.
- Allow employers to make retirement matching contributions on student loan repayments. We support giving plan sponsors the option to make matching contributions to their retirement plans based on student loan repayments made by employees who did not otherwise contribute to the retirement plan.
- Cap on Roth IRA balances. While this provision is well-intended, we explain the significant administrative burdens that would result from such a cap and note that other anti-abuse provisions in the discussion draft would address the underlying concerns about large Roth IRA balances.
- Eliminate Roth conversions. We believe that eliminating Roth conversions entirely would remove valuable flexibility for retirement savers and instead suggest consideration of re-establishing income limits on conversions to eliminate the "back door" problem. Alternatively, we suggest eliminating all income limits on contributions to traditional and Roth IRAs to streamline eligibility rules and thereby encourage greater retirement savings among all workers.
- Increase required minimum distribution (RMD) age. We support increasing the RMD age from the current age 70½ to reflect changing patterns of retirement savings and increases to life expectancy. We suggest a more substantial initial increase (to age 75) than the gradual increase proposed in the discussion draft.

[3] *See* discussion of changes in the plan limits over time and the link between DB and DC plan limits in Brady, *How America Supports Retirement: Challenging the Conventional Wisdom on Who Benefits*, Washington, DC: Investment Company Institute (2016): 162–164; available at www.ici.org/pdf/rpt_16_america_supports_retirement.pdf.

- Exception from RMD rules when retirement savings is less than $150,000. We support an exclusion from the RMD rules for small balance retirement savers in principle, but we note certain administrative complexities that are worth considering before moving forward with such a provision.
- Elimination of stretch IRAs. If Congress determines to apply a 5-year distribution rule after the death of a retirement saver, we strongly urge that any revenue resulting from enactment of this provision be used to support the tax incentives for retirement savings. The provision should not be used to offset the cost of other legislative changes not related to retirement savings. We also strongly oppose any additional exception from the 5-year rule for annuities beyond the limited grandfather relief for binding annuity contracts in effect on the date of enactment.

The additional suggestions described below would build upon the current system by expanding coverage, participation, and savings rates in DC plans and IRAs; improving the delivery and quality of information and education to plan participants and plan sponsors; enhancing flexibility in determining how and when to tap retirement savings; and eliminating unnecessary burdens in plan administration so that plans can function more effectively.

I. Comments on Selected RISE Act Provisions

A. **Changes to Saver's Credit**

Section 25B of the Internal Revenue Code (Code) currently provides for a nonrefundable tax credit—known as the Saver's Credit—for certain eligible taxpayers making elective deferrals to tax-qualified retirement plans or contributions to IRAs. As described in the Summary of the Discussion Draft, the discussion draft would increase the income levels at which the Saver's Credit is available, make the credit refundable, and require the credit amount be contributed directly to a retirement plan or IRA as a matching contribution. For example, a $1,000 contribution to a 401(k) plan would generate a $500 government matching contribution sent directly to that plan.

While we support the goal of the proposed changes to the Saver's Credit, we believe it is important to consider the administrative complexity that would result from making the credit refundable and requiring the credit to be provided in the form of a matching contribution to the retirement account.[4] In particular, proposals for a refundable credit combined with government matching contributions could incentivize workers with low marginal tax rates to churn contributions (*i.e.*, the worker would contribute to a retirement plan and then withdraw the contribution shortly thereafter, retaining the matching contribution). This is because the proposals effectively subsidize

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[4] For a more detailed discussion of the administrative complexity associated with proposals for refundable credits and government matching contributions, *see* Brady, *How America Supports Retirement: Challenging the Conventional Wisdom on Who Benefits*, Washington, DC: Investment Company Institute (2016): 143–150, 153, 165–174; available at www.ici.org/pdf/rpt_16_america_supports_retirement.pdf.

contributions but do not subsidize deferral of the contribution. That is, they provide a large incentive to contribute to a retirement plan, but provide no more incentive than current law to keep the contributions in the plan.

To counteract these new incentives, Congress would need to adopt new withdrawal penalties and the IRS would likely be required to track the behavior of taxpayers over time. (Existing penalties for early withdrawal would not be sufficient to discourage churning for those younger than age 59½ and would not apply to workers aged 59½ or older.) It would be difficult to design simple penalties that would discourage churning that were not also excessively punitive to those who needed to access their retirement accounts in a time of need. Instead, complex penalties would need to be developed or direct restrictions on access to retirement plan assets and benefits would be required. In either case, the IRS would need to expend additional resources to monitor retirement plan contributions and withdrawals made by individuals over time. These factors are important to consider in assessing the overall desirability of providing a refundable Saver's Credit.

B. Repeal of Maximum Age for Traditional IRA Contributions

Under Code section 219, taxpayers are prohibited from contributing to a traditional IRA beginning in the year they reach age 70½. This age limit does not apply to Roth IRA contributions under Code section 408A. The discussion draft would repeal the maximum age for traditional IRA contributions, which would allow taxpayers to continue making traditional and Roth IRA contributions after age 70½. We support the proposed change, along with the proposal described below to increase the age at which required minimum distributions must begin, in light of changing patterns of retirement savings and time spent in the work force, and increased life expectancies.

C. Allow All Inherited Plan and IRA Balances to Be Rolled Over Within 60 Days

Under Code sections 402(c)(11) and 408(d)(3), non-spouse beneficiaries may roll over inherited plan or IRA balances to an inherited IRA only through a direct rollover (or trustee-to-trustee transfer). The discussion draft would allow non-spouse beneficiaries under a qualified retirement plan or IRA to move assets to an inherited IRA through an indirect (60-day) rollover. This change would provide similar flexibility already available to spousal beneficiaries to non-spouse designated beneficiaries of plan and IRA assets. We support the proposed change.

D. Allow Employers to Make Retirement Matching Contributions on Student Loan Repayments

The discussion draft would allow employers to make matching contributions to a 401(k) plan on behalf of an employee who made student loan payments but did not contribute to the 401(k) plan, by electing to treat student loan payments the same as an elective contribution to a 401(k) plan. As explained in the Summary of the Discussion Draft, it may be difficult for many Americans, especially younger workers, to save for retirement while also paying off their student loans. We support the

proposed change to allow plan sponsors to make 401(k) plan matching contributions tied to student loan repayments, as long as the provision is optional and not required for plan sponsors.

E. Cap on Roth IRA Balances

Code section 408A governs Roth IRAs, which is an IRA to which individuals can make after-tax contributions and take tax-free distributions of both basis and earnings in the account, if certain conditions (*e.g.*, a 5-year holding period) are met. The discussion draft would prohibit further contributions to a Roth IRA if the total value of an individual's Roth IRAs exceeds the greater of (i) $5 million (adjusted for increases in the cost of living after 2017) or (ii) the balance as of December 31, 2016. The discussion draft also would require distributions of amounts over the cap. In determining whether the total value of an individual's Roth IRAs exceeds the individual's Roth IRA "accumulation limit," the individual would calculate his or her aggregate account balances in all Roth IRAs determined as of the close of the preceding calendar year. This proposal is intended to engender "fairness" in the tax code by preventing the accumulation of very high balances in a tax-preferred vehicle, presumably through extraordinary investment gains. Because of the relatively low annual contribution limits to Roth IRAs ($5,500 in 2016) and the tax-free treatment of qualified Roth IRA distributions, the proposal assumes that Roth IRA owners with balances exceeding $5 million have somehow gamed the system and unfairly accumulated these amounts in their IRAs.

Although we certainly understand the goal of preventing unfairness or abuse of the special tax treatment accorded retirement savings, we question whether the relatively small number of taxpayers affected by this provision (unknown but estimated to be less than 5,000 taxpayers as of 2011)[5]—and the likely even smaller number of taxpayers who have generated such balances through abusive or unfair practices—would justify imposing greater administrative complexity on the administration of IRAs. As you know, IRAs are not just contributory vehicles but also receive rollover contributions from employer-sponsored plans, which have much higher contribution limits (especially considering the combined limits on employer and employee contributions). With the availability of designated Roth contributions to 401(k) and 403(b) plans since 2006, and the ability to make in-plan Roth rollovers of pre-tax contributions in these plans to designated Roth accounts since 2010, the accumulation of larger Roth IRAs through qualified plan contributions and "typical" investment gains is maybe more commonplace.[6]

We note that the discussion draft includes various provisions designed to prevent abuse relating to IRAs, including provisions that would prohibit the acquisition of assets within an IRA for less than fair market value and require a qualified appraisal for assets for which no public market value is

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[5] *See* Summary of Discussion Draft: Retirement Improvements and Savings Enhancements (RISE) Act of 2016; available at http://www.finance.senate.gov/imo/media/doc/RISE%20Act%20discussion%20draft%20long%20summary.pdf.

[6] Research finds that traditional IRAs with rollovers tend to be larger than traditional IRAs without rollovers. *See* Holden and Schrass, "The Role of IRAs in US Households' Saving for Retirement, 2015," *ICI Research Perspective* 22, no. 1 (February 2016); available at www.ici.org/pdf/per22-01.pdf.

available. These anti-abuse provisions address the same concerns and should be sufficient to prevent the type of abuse targeted by the "cap" provision, without the needless administrative burdens that would apply to a broader range of IRA owners under the cap.

F. Eliminate Roth Conversions

Code section 408A permits taxpayers to convert amounts held in a traditional IRA or an employer-sponsored plan to a Roth IRA (and get corresponding Roth treatment) through either a direct transfer or rollover. Any pre-tax amounts subject to the conversion are included in the taxpayer's income for the year of conversion (but generally no early distribution penalty would apply). Taxpayers who are not eligible to make contributions directly to a Roth IRA, due to applicable income limits, still have the ability to accomplish such a conversion to a Roth IRA. Likewise, under Code section 402A, 401(k), 403(b) and governmental 457(b) plans with designated Roth accounts may allow participants to transfer, via an in-plan or 60-day rollover, amounts not held in designated Roth accounts to a designated Roth account in the plan, paying income taxes on any otherwise taxable amounts included in the transfer. Unlike Roth IRAs, there are no income limits on contributions to a designated Roth account under a plan.

The discussion draft would eliminate the ability to convert any non-Roth amount held in a plan or IRA to a Roth IRA or designated Roth account under a plan. The Summary of the Discussion Draft explains that this change is intended to shut down the so-called "back door" Roth IRA and prevent other amounts not permitted to be contributed initially as Roth contributions to become Roth contributions in a Roth IRA or designated Roth account. We acknowledge the incongruity inherent in permitting Roth IRA conversions of traditional IRA contributions by individuals not eligible to make contributions directly to a Roth IRA. The proposed change, however, eliminates valuable flexibility for other individuals as well. One way to address the incongruity would be to re-establish income limits for Roth IRA conversions. This approach would eliminate the "back door" problem, while preserving the conversion option for others who could contribute to a Roth IRA anyway or for participants in plans that allow in-plan Roth rollovers (for which there are no income limits on the ability to make a designated Roth contribution to the plan in the first place).

Alternatively, rather than eliminating Roth conversions, we suggest considering the elimination of all income limits on contributions to traditional and Roth IRAs. Under this approach, there would be no additional benefit offered by converting traditional IRA amounts to Roth IRAs. This approach would have the added benefit of simplifying the IRA contribution rules and thereby encourage greater retirement savings, even among individuals who are not restricted by the current income limits. Evidence shows that when the income limits on deductible traditional IRA contributions were instituted in 1987, following a period when any worker could make deductible IRA contributions, the incidence of IRA contributions fell dramatically even among taxpayers who fell within the new income

limits.[7] This suggests that the complexity of the IRA income limits impacts all taxpayers in their retirement planning.

G. Increase the Required Minimum Distribution (RMD) Age

Workers are required to begin taking distributions from qualified retirement plans and IRAs at age 70½.[8] These "required minimum distributions" or RMDs were first added to the Code in 1962 to prevent business owners from using retirement vehicles for estate planning. Congress has since applied the RMD rule to virtually all tax-advantaged retirement accounts, but has never reexamined the required beginning age to reflect changing patterns of retirement savings or increases to life expectancy. The discussion draft would increase the RMD age from 70½ to 71 in 2018. The age would be increased further to 72 in 2023, 73 in 2028 and, thereafter, would be adjusted in a manner proportional to increases in life expectancy.

We support the proposed change and suggest a more substantial initial increase. Research shows that many workers roll their retirement savings into IRAs at retirement,[9] where they tend to preserve them until the law *forces* a distribution.[10] According to the Social Security Administration's Period Life Expectancy Table, the life expectancy of a person aged 65 in 2015 is a little more than five years longer for men and about four and a half years longer for women than it was in 1962 (when the 70½ rule was first added).[11] In fact, with a married couple both aged 65 in 2000, there is a 72 percent chance that one will live to age 85 and a 45 percent chance that one will live to age 90.[12] In light of this evidence, we believe that increasing the required beginning age from 70½ to at least 75 initially, and permitting those receiving RMDs to stop if they have not yet reached the new required beginning age, would be reasonable and appropriate.

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[7] *See* Figure 3 in Holden, Ireland, Leonard-Chambers, and Bogdan, "The Individual Retirement Account at Age 30: A Retrospective," *Investment Company Institute Perspective* 11, no. 1 (February 2005); available at www.ici.org/pdf/per11-01.pdf.

[8] *See* Code §§ 401(a)(9), 403(b)(1), 408(a)(6), 408(b)(3), and 457(d)(2).

[9] *See* Figure 107 and discussions in Utkus and Young, *How America Saves, 2016: Vanguard 2015 defined contribution plan data*, Vanguard Center for Retirement Research (2016); available at https://institutional.vanguard.com/iam/pdf/HAS2016.pdf.

[10] *See* Holden and Schrass, "The Role of IRAs in US Households' Saving for Retirement, 2015," *ICI Research Perspective* 22, no. 1 (February 2016); available at www.ici.org/pdf/per22-01.pdf.

[11] For 1962 life expectancy at age 65, *see* "Table V.A3.—Period Life Expectancy" in *2014 OASDI Trustees Report,* Social Security Administration; available at www.ssa.gov/oact/TR/2014/lr5a3.html#hist. For the estimate of 2015 life expectancy at age 65, *see* "Table V.A4.—Period Life Expectancy" in *2016 OASDI Trustees Report*, Social Security Administration; available at www.ssa.gov/oact/tr/2016/V_A_demo.html#226697.

[12] *See* "Saving for Retirement: Plan for a long retirement;" available at https://personal.vanguard.com/us/insights/retirement/plan-for-a-long-retirement-tool.

H. Exception from RMD Rules When Retirement Savings Is Less Than $150,000

The discussion draft provides an exemption from the RMD rules for participants with an aggregate balance in their retirement plans of less than $150,000 on a specified measurement date. In calculating the $150,000 limit (which would be adjusted for inflation), all of an individual's IRAs and employer-sponsored tax-qualified retirement plans must be taken into account, except for benefits under a DB plan that have already begun payment in the form of a life annuity. The relevant measurement date would be the first day of the calendar year in which the individual reaches age 70½, or if earlier, the first day of the calendar year in which the individual dies. New contributions, rollovers, or transfers of amounts not previously taken into account would require a new measurement.

Although we support such an exclusion from the RMD rules in principle, we note that the aggregation aspect of the exclusion will result in administrative complexity for individuals wishing to take advantage of the exclusion. Because financial institutions and other service providers will not have knowledge of accounts or benefits of the taxpayer held with other providers, the taxpayer must be responsible for tracking eligibility for the exclusion, and regulations would need to specify that service providers would be able to accept self-certification of eligibility from the taxpayer.

In addition, if the exclusion is available with respect to the retirement accounts of a deceased taxpayer, which appears to be the case, it is unclear whether beneficiaries of these accounts will be able to accurately calculate the aggregate value of the decedent's accounts. Such beneficiaries may be unaware of the value of any accounts inherited by other beneficiaries, and therefore may not be able to determine whether they are eligible for the RMD relief. To make the $150,000 exclusion more workable, consideration should be given to restricting application of the exclusion to the taxpayer's accounts prior to the taxpayer's death. In such case, after the taxpayer's death, the otherwise applicable RMD rules would apply regardless of the aggregate balance in the accounts.

I. Elimination of Stretch IRAs

The current rules for RMDs after the death of a plan participant or IRA owner are complex but generally allow designated beneficiaries to spread distributions over the beneficiary's life.[13] Where there is no designated beneficiary and the plan participant or IRA owner dies before his or her required beginning date, the remaining interest of the decedent must be distributed by the end of the fifth calendar year following the individual's death.[14] The discussion draft would require retirement benefits under tax-qualified plans and IRAs (including DB plans and qualified annuities) to be distributed within five years of the death of the participant or IRA owner, unless the beneficiary is the surviving spouse, disabled or chronically ill, not more than 10 years younger than the participant or IRA owner, or a minor child of the participant or IRA owner. The discussion draft includes a special grandfather rule for qualified annuities (commercial or DB plan) that are binding annuity contracts in effect on the

[13] *See* Code § 401(a)(9)(B) and Treas. Reg. §1.401(a)(9)-5, A-5.

[14] *See* Code § 401(a)(9)(B)(ii) and Treas. Reg. § 1.401(a)(9)-3, A-2.

date of enactment and at all times thereafter, where the annuity payments are made in accordance with the otherwise applicable RMD rules.

We strongly urge that any revenue resulting from enactment of this provision be used to support the tax incentives for retirement savings. The provision should not be used to offset the cost of other legislative changes not related to retirement savings. As noted above, the tax incentives for retirement savings are crucial to ensuring the retirement security for millions of Americans.

We also strongly oppose any additional exception from the 5-year rule for annuities (whether payable under a commercial annuity contract or DB plan) beyond the limited grandfather relief for binding annuity contracts in effect on the date of enactment. A broader exclusion for certain financial products from the 5-year rule would allow for avoidance of the rule entirely and could negate the stated goals of the proposed change to "close an estate-tax planning loophole." A broader exclusion naturally could lead to individuals purchasing such a financial product to structure the terms of distribution consistent with the exclusion and would promote the use of these products as tax and estate planning vehicles rather than as vehicles for providing lifetime income in retirement.

II. Additional Reform Options to Build on the Existing System

Even with its many current strengths, the US retirement system can be strengthened further to help even more Americans achieve a secure retirement. In our April 15, 2015 submission to the Senate Finance Committee Working Group on Savings & Investment,[15] we included a set of proposals supported by ICI that would improve access to retirement savings opportunities and make retirement plans more efficient and effective. As summarized below, these reforms would build upon the current system by expanding coverage, participation, and savings rates in DC plans and IRAs; improving the delivery and quality of information and education to plan participants and plan sponsors; enhancing flexibility in determining how and when to tap retirement savings; and eliminating unnecessary burdens in plan administration so that plans can function more effectively.

A. Expand Coverage, Participation, and Savings

Included in ICI's reform proposals are the following relatively modest changes which would help bring more employers into the system and generate better outcomes for plan participants, importantly without detracting from the system's successful features.

New SIMPLE Plan. Small businesses often face particular challenges in establishing and maintaining retirement plans. While the SIMPLE IRA and other plan options offer a relatively simple solution to plan sponsorship, none of the existing plan options work well for workplaces where the majority of workers are focused on saving for goals other than retirement—such as education, a home,

[15] The Institute's submission to the Working Group on Savings & Investment is available at www.ici.org/pdf/15_senate_fin_saving_investment_wg.pdf.

or an emergency fund. Many small employers want to offer employees the option to contribute to a 401(k) or similar plan, but cannot meet the non-discrimination tests and do not have the capacity to make the required employer contributions associated with the safe harbor 401(k) plan or a SIMPLE plan. For employers whose workforces place less value on compensation paid as retirement benefits as opposed to take-home wages, the required employer contributions discourage the adoption of SIMPLE plans. Creating a new type of SIMPLE plan for small employers would encourage greater plan creation and coverage in smaller workplaces. The new plan would be modeled on existing SIMPLE plans, but would not require employer contributions. It would have contribution limits above traditional and Roth IRA limits, but below existing SIMPLE plan limits.[16] Such a plan would accommodate any employee who wants to save for retirement, while preserving the incentives for the employer to step up to a SIMPLE IRA or 401(k) plan.

Open MEPs for Small Employers. ICI also supports easing restrictions on "open" multiple employer plans (or "MEPs"), but targeting the provision to employers with no more than 100 employees—the employer segment most in need of solutions to encourage retirement plan sponsorship.[17] Allowing small employers to participate in a MEP—regardless of the employer's industry or any other preexisting relationship with other participating employers or the plan sponsor—will reduce administrative and compliance costs and burdens, and ultimately improve the availability of retirement plans to employees of small employers. In addition to administrative and compliance burdens, smaller employers may be challenged by the fiduciary responsibility and liability of selecting and monitoring service providers and plan investment options. By providing a level of liability relief for investment options offered under the plan, small employers would be encouraged to participate in a MEP, while at the same time ensuring that plan participants are protected. Our proposal also includes important safeguards for open MEP arrangements to ensure the legitimacy of the sponsoring entity and that fiduciary standards are met.

Automatic Enrollment Safe Harbors. Studies show that automatic enrollment has a particularly notable impact on the participation rates of lower-income and younger workers because these groups are typically less likely to participate in a DC plan where affirmative elections are required.[18] Employers should be encouraged to use automatic enrollment if appropriate for their

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[16] We note that a conceptually similar provision, referred to as the "starter k" plan, has been proposed by then Ranking Member Orrin Hatch (R-UT) in S. 1270, the "Secure Annuities for Employee (SAFE) Retirement Act of 2013."

[17] For a discussion of how pension coverage varies by plan size, *see* Brady and Bogdan, "Who Gets Retirement Plans and Why, 2013," *ICI Research Perspective* 20, no. 6 (October 2014); available at www.ici.org/pdf/per20-06.pdf. The Bureau of Labor Statistics National Compensation Survey (NCS) also finds that retirement plan coverage varies with plan size. For the most recent NCS data, *see* "Table 2. Retirement benefits: Access, participation, and take-up rates, private industry workers, March 2016;" available at www.bls.gov/ncs/ebs/benefits/2016/ownership/private/table02a.pdf.

[18] The EBRI/ICI 401(k) Accumulation Projection Model demonstrates the increases in retirement income that can result from automatic enrollment. Replacement rates, modeled after adding automatic enrollment and investing contributions in a target date fund, increase significantly. *See* Holden and VanDerhei, "The Influence of Automatic-Enrollment, Catch-Up,

employee base. Employers may want to enroll their workers at higher levels of savings and escalate the savings more substantially than is perceived appropriate under current law. For plan sponsors that rely on the nondiscrimination testing safe harbor established under the PPA—the qualified automatic contribution arrangement or "QACA"—the 10 percent ceiling is a barrier to escalating automatic contributions to levels that in some cases may be more appropriate for ensuring retirement adequacy. (In fact, even plan sponsors that do not rely on the QACA safe harbor often perceive the rule's 10 percent as a ceiling.) Accordingly, there is broad agreement across the retirement plan community for removing the 10 percent cap on automatic escalation deferral rates for plan participants.

In addition, while the QACA safe harbor has been applauded for encouraging the use of automatic enrollment, many plan sponsors believe that the safe harbor default contribution levels are too low and that higher contribution levels are necessary to ensure a secure retirement for plan participants. Creating a new automatic enrollment safe harbor would give employers another option alongside the QACA safe harbor, with higher minimum default contribution rates and a "stretched" matching contribution formula to encourage participants to contribute at least 10 percent of pay. A tax credit might also be included to encourage small employers to adopt the new automatic enrollment safe harbor. Another incentive to adopt the new safe harbor could be the option to apply a three-year cliff vesting period to employer matching contributions. ICI believes that these changes would give employers more flexibility to design their plans to meet the needs of their particular workforces and ultimately increase participation and savings rates.

<u>Index IRA Catch-up Contributions</u>. Another modest change to improve savings rates described in our proposals would be to index IRA catch-up contribution limits for inflation. Since their creation in 1974, IRAs have played a vital role in building retirement security for workers without access to a retirement plan at work, for small business owners, and for non-working spouses. Like contribution limits for workplace plans, the general contribution limit for IRAs is indexed so that its value is not eroded over time. The catch-up contribution limit for 401(k), 403(b) and 457(b) plans also are all inflation indexed, but the catch-up contribution limit for IRAs—which was last adjusted to $1,000 per year in 2006—is not. We believe the catch-up contribution limit for IRAs should be indexed for inflation for the same reason—so that workers' ability to save for their future is not eroded by increases in the cost of living.

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and IRA Contributions on 401(k) Accumulations at Retirement," *Investment Company Institute Perspective* 11, no. 2, and *EBRI Issue Brief*, no. 283 (July 2005); available at www.ici.org/pdf/per11-02.pdf and www.ebri.org/pdf/briefspdf/EBRI_IB_07-20054.pdf. Furthermore, studies find that adopting an automatic enrollment feature has a particularly strong impact on improving participation rates among low-income and younger workers. *See, e.g.*, Utkus and Young, *How America Saves, 2016: Vanguard 2015 defined contribution plan data*, Vanguard Center for Retirement Research (2016); available at https://institutional.vanguard.com/iam/pdf/HAS2016.pdf.

B. Help Participants Make Informed Decisions

Policymakers, plan sponsors, and service providers strive to improve the ability of American workers to make sound decisions about retirement savings and investing. Congress was instrumental in encouraging rules that improved disclosure of 401(k) plan fees and associated investment information. Our proposals recommend that Congress go further by promoting electronic delivery of plan information and a more effective disclosure framework to help American workers understand their savings options.

E-delivery. Allowing plans to make e-delivery the default method for communicating with participants (but allowing participants to opt for paper) will enhance the effectiveness of ERISA communications and produce cost savings for the economy and plans that decide to opt for e-delivery. Under our proposal, any document that is required by ERISA or the Internal Revenue Code to be furnished to a participant, beneficiary or other individual (a "recipient") may be furnished electronically under a number of alternative methods:

- Direct delivery of the document to the recipient's email address;
- Posting on a continuously available website, if the recipient is notified that the document is available; or
- Any other electronic means reasonably calculated to ensure actual receipt.

The proposal includes robust safeguards for participants who prefer to receive documents in paper form. Recipients must be informed of the right to request delivery in paper format, and a recipient who requests delivery of a paper document would be entitled to receive it. Any electronically furnished document must be presented in a manner that is consistent with the style, format, and content requirements applicable to the particular document taking into account the electronic form of the document, and the system must incorporate measures reasonably designed to protect personal information.

Consolidate Notices. Over the years, the number of notices that must be provided to participants and beneficiaries has exploded. When ERISA was enacted in 1974, Congress intended that one document—the summary plan description—would be the notice that informed participants of their rights and obligations. Since then, a large number of additional notices have been imposed on retirement plans under ERISA and the Internal Revenue Code—now numbering more than 30 that apply just to retirement plans. These include various safe harbor notices, the qualified default investment alternative (QDIA) notice, and fee disclosures for participant-directed plans. Many of these notices must be provided upon enrollment and annually thereafter, although the specific timing requirements vary according to applicable regulations. In implementing these rules, the Departments of Labor (DOL) and the Treasury have explicitly or implicitly discouraged combining these notices, even

though together the notices provide interrelated information about a 401(k) plan's features. This discourages an integrated communication approach, complicates plan administration, and inundates participants with information. Particularly with technical materials, more is often less, and the proliferation of notices, sent at different times, may serve to confuse many participants and cause many notices to be overlooked. We propose permitting plans to use a single notice (which could be referred to as the "Quick Start" notice) that would combine the information currently required under various separate rules, including the QDIA notice, participant fee disclosures, 401(k) safe harbor notice, automatic contribution arrangement notices, and investment advice notices. The proposal also would eliminate certain redundant or irrelevant notices, such as the summary annual report and deferred vested pension statement.

Target Date Fund Benchmarks. We also support a proposal to change current DOL rules for how performance information for target date funds must be compared to a benchmark, in order to simplify and make these benchmark comparisons more understandable to participants.

C. Permit Greater Flexibility for Participants

Two of our reform proposals would provide individuals with more flexibility to manage their retirement savings in a way that best meets their own individual needs. First, as described earlier, ICI's proposal would amend the Code to increase the required beginning age for RMDs from 70½ to at least 75, to reflect changing patterns of retirement savings and increases to life expectancy. Second, we support removing unnecessary administrative burdens on hardship distributions.

While retirement assets generally should be held for use in retirement, policymakers have recognized that allowing pre-retirement distributions for critical financial needs actually encourages savings because workers know that they can access their savings in an emergency.[19] Current IRS regulations impose a number of unnecessary administrative burdens on hardship distributions, which complicate plan administration. Our proposal would remove these restrictions by allowing earnings on contributions to be withdrawn in a hardship distribution; allowing hardship withdrawals from all employer contributions to a profit-sharing plan or stock bonus plan (including safe harbor contributions, qualified nonelective contributions, and qualified matching contributions); and eliminating the IRS safe harbor rule restricting employees from making contributions for six months after a hardship distribution. These restrictions are unnecessary to discourage hardship distributions because the Internal Revenue Code already applies a 10 percent penalty for any hardship distribution before age 59½.

[19] The existence of a loan feature may encourage workers to sign up for the plan in the first place, or to defer more of their salary into the plan. *See* discussion on page 24 and endnote 23 in BrightScope and Investment Company Institute, *The BrightScope/ICI Defined Contribution Plan Profile: A Close Look at 401(k) Plans, 2013*, San Diego, CA: BrightScope and Washington, DC: Investment Company Institute; available at www.ici.org/pdf/ppr_15_dcplan_profile_401k.pdf.

D. Improve Plan Administration

Finally, improvements can be made to the way plans are administered, and our proposals would ease the complicated administrative burdens that have accumulated over the years as the legal landscape has changed. As described in greater detail in our submission to the Working Group on Savings & Investment,[20] we believe that the following changes would improve plan administration and therefore reduce the compliance costs associated with plan sponsorship. For example, we support proposals to expand the IRS compliance program to better address common errors that are relatively easy to fix, such as allowing plans to self-correct plan loan errors and missed RMD payments and expanding the compliance program to IRAs. In addition, our proposal would fix a problematic aspect of current 403(b) regulations that, in some situations, can prevent an employer from effectively terminating its 403(b) plan (even if, for example, the sponsoring employer goes out of business).

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ICI greatly appreciates the opportunity to comment on the RISE Act discussion draft and looks forward to continuing to work with Senator Wyden and the Committee as it considers these proposals.

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[20] *See* note 15, *supra*.