

April 5, 2022

The Honorable Bobby Scott
Chairman
Education & Labor Committee
United States House of Representatives
1176 Rayburn House Office Building
Washington, DC 20515

The Honorable Virginia Foxx
Ranking Member
Education & Labor Committee
United States House of Representatives
2101 Rayburn House Office Building
Washington, DC 20515

Re: Letter of Opposition to the *Protecting America's Retirement Security Act*

Dear Chairman Scott and Ranking Member Foxx:

On behalf of the over 30,000 members of the American Retirement Association (ARA), we hereby express our opposition to the *Protecting America's Retirement Security Act*. Our opposition to this legislation is based on both its substance and its process.

The ARA is the coordinating entity for its five underlying affiliate organizations representing the full spectrum of America's private retirement system – the American Society of Enrolled Actuaries (ASEA), the American Society of Pension Professionals and Actuaries (ASPPA), the National Association of Plan Advisors (NAPA), the National Tax-Deferred Savings Association (NTSA), and the Plan Sponsor Council of America (PSCA). The ARA's members and the organizations they are affiliated with support 95 percent of all the defined contribution plans - such as 401(k) plans - in the United States. The ARA and its underlying affiliate organizations are diverse in the roles they play, but united in their dedication to the success of America's private retirement system.

The ARA's mission is to help American workers bolster their retirement security by facilitating well-designed workplace retirement savings plans. We do that by both educating and informing retirement benefits professionals, and by advocating for policies that give every working American the opportunity to achieve a comfortable retirement. Workplace retirement savings plans are successful for those that have access to them. These plans provide long term economic growth and build financial security for the middle class.

The ARA is deeply concerned with Section 4 of the *Protecting America's Retirement Security Act*. Section 4 creates a new in-person notarized spousal consent requirement for nearly all distributions from individual account retirement plans, like 401(k) plans. While the ARA supports the policy goal behind this proposal, which is to protect the retirement security of a spouse, the proposal lacks sufficient research on whether it would do greater good to the retirement system than harm. Should the proposal be implemented, as is, it may have significant unintended consequences that damage those individuals the policy intends to protect.

- With tens of millions of individual participants in 401(k) plans, this law would require an in-person notarized consent for most distributions, putting an immense burden on the recordkeeping system and imposing significant barriers for individuals to obtain consent to access funds they contributed.
- If an individual needs to take a hardship distribution due to a medical emergency, repair their home following a disaster, or some other immediate financial need, this law would delay access to needed funds by days or even weeks due to the onerous consent requirements.
- Currently, an employer only needs to know whether an employee is married if the employee is seeking to have their spouse covered under health insurance. Otherwise, marital status is not necessarily a data field that an employer shares with their plan administrator. The proposal would make the HR

Department the potential arbiter of whether a marital relationship is strained if a participant seeks out one of the exceptions built into the proposal.

- Due to the exception requirements, an employer may unwillingly become aware of marital strain to disperse needed funds to an employee, or conversely, an employee may be unwilling to disclose a marital issue, preventing access to needed funds. An individual may be in an estranged relationship without the ability to contact their spouse (nor want to contact their spouse due to abuse) and would be unable to access their own funds without obtaining notarized consent from the estranged spouse. To obtain the funds, the individual would need to prove to the HR Representative that they cannot locate their spouse, an embarrassing situation that may simply prevent the individual from seeking this exception.
- The *Securing a Strong Retirement Act* has an important provision to protect victims of domestic abuse by allowing them to take a penalty-free distribution from their retirement account, financially enabling them to break free from an abusive relationship. Under this spousal consent provision, a victim of domestic abuse would need to obtain consent to access funds from the spouse that is potentially the abuser. Or it would require the employee to disclose to their company the abusive relationship, which is an embarrassing hurdle that could prevent the employee from accessing the funds.
- At this time, no study or data has been produced that shows how often a spouse uses 401(k) plan assets for non-retirement expenses without the knowledge of the other spouse. Is a blanket in-person notarized consent on all transactions the proper course of action?

The ARA supports the recent request by Senator Murray (D-WA) and Senator Burr (R-NC) for the GAO to study this issue and report back with proposed solutions. A new requirement imposed on all distributions that will disrupt the retirement system and participants should not be implemented if there is insufficient analysis on whether this proposed solution is the proper course of action.

Congress has an extensive history of bipartisan cooperation and legislating on retirement policy that has built upon the success of the workplace-based retirement savings system. Just last week that history continued when the House of Representatives voted overwhelmingly (414-5) to approve the *Securing a Strong Retirement Act of 2022*. This bill incorporated many elements from the bipartisan *Retirement Improvement and Savings Enhancement (RISE) Act* that the House Education and Labor Committee unanimously approved in November 2021. Action on this partisan and unstudied legislation so soon after the bipartisan triumph in this policy area is a step in the wrong direction.

The ARA urges all Members of the House Education and Labor Committee to oppose this unnecessary partisan exercise and to vote no on the *Protecting America's Retirement Security Act*.

Sincerely,



Brian H. Graff, Esq. APM
Executive Director/CEO
American Retirement Association