

August 26, 2024

The Honorable Ron Wyden
Chairman
U.S. Senate Committee on Finance
219 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Jason Smith
Chairman
U.S. House Committee on Ways & Means
1139 Longworth House Office Building
Washington, DC 20515

The Honorable Mike Crapo
Ranking Member
U.S. Senate Committee on Finance
219 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Richard Neal
Ranking Member
1139 Longworth House Office Building
1139 Longworth House Office Building
Washington, DC 20515

Dear Chairman Wyden, Chairman Smith, Ranking Member Crapo, and Ranking Member Neal:

On behalf of the undersigned organizations and their members across the country, we are writing to ask Congress to finalize and pass the SECURE 2.0 Technical Corrections Act of 2023 ("SECURE 2.0 Technicals"), with any applicable updates, as soon as possible this year to ensure that the SECURE 2.0 provisions addressed in that bill can be timely implemented in accordance with Congressional intent.

At the outset, we wanted to express our gratitude again for the passage of the SECURE 2.0 Act of 2022, which will usher in a new era of retirement security. We also thank you for the significant amount of work that has already been done by you and your staff to identify the SECURE 2.0 provisions in need of correction and the progress that has been made in preparing and refining draft technical correction legislation. Given the size and complexity of SECURE 2.0, we understand how much effort was involved. We also applaud the process, which was bipartisan in nature and open to comments and input from industry stakeholders.

As you know, the SECURE 2.0 Technicals package includes the corrections discussed in the letter you sent to Treasury Secretary Yellen and Internal Revenue Service (IRS) Commissioner Werfel last May, as well as other critical and time-sensitive fixes.

One example of a correction contained in the SECURE 2.0 Technicals package that highlights the urgency of passing the legislation as soon as possible relates to SECURE

2.0 Section 326. That section provides special tax treatment for distributions to terminally ill plan participants beginning on or after December 29, 2022. However, the provision does not create a new distribution trigger; thus, a terminally ill individual cannot receive a distribution from a plan solely because of the terminal illness. The individual must otherwise be eligible for a plan distribution (e.g., termination of service or age 59½). This undermines the purpose of the new provision and *could prevent a terminally ill individual from accessing assets critical to their medical and other care during this time.*

The lack of a distribution trigger is also inconsistent with other penalty-free distribution provisions added by SECURE 2.0 for emergency expenses, domestic abuse victims, and qualified disasters. *The SECURE 2.0 Technicals package would allow for distributions to be made on account of terminal illness and also allow participants to self-certify their eligibility. Passage of the SECURE 2.0 Technicals package is urgently needed to override conflicting Treasury/IRS guidance in Notice 2024-02 and restore Congressional intent.*

Also, there are a number of uncertainties in implementing SECURE 2.0 Section 101, which expands automatic enrollment in retirement plans. For example, it is unclear whether plans that were established before the enactment of SECURE 2.0 and are thus exempt from the new automatic enrollment rules, would lose their exemption upon merging into certain MEPs/PEPs. We understand that Congress intended for the exemption to be based on the date of establishment of the adopting employer's plan, not the date of establishment of the MEP/PEP. However, Treasury/IRS guidance might be read as basing the exemption on the MEP/PEP establishment date. This is currently causing unintended disruption and reduced choice in the MEP/PEP market. *We are hopeful that the updated SECURE 2.0 Technicals package will resolve this outstanding question from the Treasury guidance.*

Other corrections included in the SECURE 2.0 Technicals package – for example, clarifying that the limit on student loan payments that qualify for a match includes the catch-up contribution limit – are needed to give certainty to plan service providers so they can implement the provisions. There are also many more examples of important time-sensitive provisions in the SECURE 2.0 Technicals. For instance, without the SECURE Technicals, all SIMPLE and SEP contributions would reduce the Roth IRA limit, an issue that has no effect on high-income individuals, but can adversely affect many middle-income individuals. And the SECURE 2.0 Technicals would confirm that catch-up contributions were not eliminated and fix a still-unaddressed catch-up contribution problem for state and local government employees. And the SECURE 2.0 Technicals would clarify that SECURE 2.0 did not cut back employers' ability to use overfunded pension assets to provide retiree health and life insurance benefits.

We thank you again for your leadership in ushering through such important retirement legislation last Congress. If we can be of any assistance or provide additional

information regarding any of the issues mentioned within this letter, please do not hesitate to contact any of the below signatories.

Sincerely,

American Benefits Council
American Council of Life Insurers
The ERISA Industry Committee
Insured Retirement Institute
Investment Company Institute
Securities Industry and Financial Markets Association
The SPARK Institute
United States Chamber of Commerce
American Retirement Association

Cc:

The Honorable Chuck Schumer, Majority Leader, United States Senate
The Honorable Mitch McConnell, Republican Leader, United States Senate
The Honorable Mike Johnson, Speaker of the House, United States House of Representatives
The Honorable Hakeem Jeffries, Democratic Leader, United States House of Representatives
The Honorable Bernie Sanders, Chairman, Committee on Health, Education, Labor and Pensions
The Honorable Bill Cassidy, Ranking Member, Committee on Health, Education, Labor and Pensions
The Honorable Virginia Foxx, Chairwoman, House Committee on Education & the Workforce
The Honorable Bobby Scott, Ranking Member, House Committee on Education & the Workforce