

## **Fidelity Investments Statement for the Record**

### **To the U.S. House Education and Labor Subcommittee on Health, Employment, Labor and Pensions**

#### **Hearing on “Improving Retirement Security and Access to Mental Health Benefits”**

**March 1, 2022**

Fidelity Investments is pleased to submit this statement for the record to the U.S. House Education and Labor Subcommittee on Health, Employment, Labor and Pensions for the hearing entitled “Improving Retirement Security and Access to Mental Health Benefits.”

Fidelity is the nation’s largest provider of workplace savings plans, including defined contribution (DC), defined benefit (DB), health and welfare and stock plan services to 25,000+ employers with 34.8 million workplace participant accounts.<sup>1</sup> In addition, Fidelity supports a wide array of investors, including 12.3 million IRA accounts, with services including wealth management, retirement planning, brokerage services, workplace plan administration, college savings, and financial planning and engagement programs.<sup>2</sup>

Employer-sponsored retirement plans and IRAs are indispensable to the foundation of the U.S. retirement system. Savings and investment through retirement plans will provide trillions of dollars in retirement income, helping our nation’s workers achieve a more financially secure retirement. As the needs of families and individuals continue to evolve, there are ways Congress can help Americans achieve greater financial security including saving for emergencies, modernizing the client and participant experience, ensuring proper investor protections, and reducing burdens on both individuals and businesses. Notably, the retirement system in the United States is already helping tens of millions of savers prepare for retirement and following are a few areas we can build upon that success.

#### **Support for the RISE Act**

We applaud the Education and Labor Committee members for unanimously advancing the Retirement Improvement and Savings Enhancement (RISE) Act in November 2021. The legislation includes several reforms that would help ensure a strong and resilient retirement system for businesses and their employees. We are very supportive of the common-sense provision that would no longer require defined contribution plans to provide notices to unenrolled participants, other than an annual

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<sup>1</sup> Fidelity data as of December 31, 2021.

<sup>2</sup> Fidelity data as of December 31, 2021.

reminder notice of eligibility. This change will continue to encourage employees to enroll in their workplace plans without the cost and confusion caused by delivering voluminous information and detail that can be meaningful to active participants, but often can be overwhelming and stifling action among those not yet participating.

In addition, we support the provisions that would expand participation in Pooled Employer Plans (PEPs) to 403(b) retirement plans, and clarification of the duties of PEP trustees. PEPs are an excellent step toward addressing the retirement coverage gap by making it easier for small businesses to access retirement savings plans. Fidelity's PEP, the Fidelity Advantage 401(k), was created to help close the coverage gap. While other providers have chosen to offer PEPs to employers who already offer a plan, Fidelity's initial offering is deliberately focused on helping address the coverage gap by crafting a solution for small businesses who do not yet offer a retirement savings plan today. We have seen significant organic demand since its launch early last year. We believe that adopting a PEP can allow businesses to capitalize on the economies of scale of a larger plan, simplify administration, and provide their employees the coverage they need.

### **Emergency Savings**

Financial wellness has never been more important than it is right now, and the pandemic shed light on just how precarious many Americans' situations are when they need to respond to a financial emergency or immediate finance needs. Fidelity surveyed our participants who defined such emergencies to include home or car repair, loss of employment, a sudden housing change, pregnancy, medical emergencies, legal or travel expenses, and more. Notably, emergencies experienced by many Americans do not always align with the criteria for safe harbor "hardship withdrawal," which are more limited in scope and subject to income tax on the withdrawal in addition to a 10 percent penalty. Even where a participant can take a hardship withdrawal, if permitted by and in accordance with the retirement plan, the participant is not permitted to repay the amount of the withdrawal to their retirement account, eroding long-term retirement savings.

For participants without liquid savings, taking frequent early withdrawals may be their only way to address emergency expenses. However, repetitive withdrawal behaviors can cause severe impacts to retirement balances over time. The percentage of workers who made a withdrawal from their 401(k) plan, including hardship withdrawals, was 3.3 percent in the fourth quarter of 2021, an increase over previous 2021 quarters but still much lower than the 6.1 percent withdrawal rate witnessed during the first year of the pandemic. The average hardship distribution amount in Q4 was \$3,100, and the median amount was \$1,000.<sup>3</sup>

While the pandemic put a spotlight on this problem, families have been struggling with savings for emergencies for much longer. Families need emergency savings accounts to be more prepared for

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<sup>3</sup> Based on Fidelity analysis of 23,761 corporate DC plans (including advisor-sold DC) and 20.1 million participants (13.8 active participants) as of December 31, 2021.

addressing the unplanned, but unavoidable challenges of life, not only during a pandemic. Fidelity believes that employers can play a key role in helping workers accumulate short-term savings, and we have seen compelling innovation in this space across employers and financial services providers.

Today, Fidelity enables thousands of employees to save for short-term goals including emergencies. Our “Goal Booster” platform provides savers with paths to a liquid savings and investing options, tracking tools and motivational insights to help them stay on track. While this is a good start to getting participants on track to cover immediate and short-term needs, we are exploring additional innovations that can be offered through the workplace and complement retirement plans—many of these ideas require legislative changes. Fidelity calls on Congress to advance policy changes that could help meet the emergency savings challenge. We strongly support legislation that will allow employers to provide a discretionary “match” in the employer-sponsored retirement plan on contributions made by the employee to an emergency savings account held outside of the employer’s retirement plan. We believe such legislation will effectively incent participants to accumulate short term savings through their workplace, while maintaining flexibility and privacy. This approach will also help participants to accrue long-term retirement savings by benefitting from an employer match in their retirement account, subject to all of the existing withdrawal and tax rules.

### **Modernization**

Modernization and innovation that allows us to evolve alongside the participants we support is critical to the continued success of the retirement system. The U.S. Department of Labor’s (DOL) 2020 electronic delivery (eDelivery) safe harbor rule was a significant step towards disclosure modernization for plan sponsors, recordkeepers, and the millions of ERISA plan participants. In fact, in a response to a Congressional review request, the DOL issued a report on the 2020 eDelivery safe harbor rule finding that the rule is “unlikely to have any negative impact” and notes that important safeguards are included in the rule, such as the requirement that “individuals who prefer to receive disclosures on paper can request paper copies of disclosures and opt out of electronic delivery entirely, at any time, and free of charge.” The DOL’s report also found that 93 percent of U.S. adults, including 99 percent of retirement plan participants, have internet access.<sup>4</sup>

Not only does eDelivery provide investors with access to their document in the most timely and effective manner, but it also encourages participants to engage with their investments, which can result in better outcomes, including higher deferral rates and improved retirement preparedness. Data from the SPARK Institute indicates that savers with eDelivery contribute 72 percent more and are three times as likely to be saving a sufficient amount for retirement than savers who receive paper disclosures.<sup>5</sup>

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<sup>4</sup> Report on Default Electronic Disclosure by Employee Pension Benefit Plans Under Employee Retirement Income Security Act, Department of Labor, February 1, 2022.

<sup>5</sup> Improving Outcomes with Electronic Delivery of Retirement Plan Documents, SPARK Institute (2015).

Electronic delivery is more accessible than paper, allowing retirement savers with disabilities to access information in a format that meets their unique needs. Nearly 72% of adults over the age of 65 report having a disability;<sup>6</sup> those experiencing vision loss later in life now have the assistance of new technological advances such as screen readers (e.g., Voice Over on iPhones, Talk Back on Android phones, and Narrator on Windows® 7 machines) to audibly receive the same information contained in a written disclosure. Moreover, having an electronic format for disclosure delivery allows participants with moderate vision impairment to easily enlarge the font on a computer or smart phone screen.

There are numerous other benefits to electronic delivery. Delivering plan information electronically is a faster, more efficient and effective way for participants to get the plan information they need. Electronic delivery is secure, with sensitive documents accessible when an investor securely logs-in to their account, rather than when an envelope is delivered by postal mail. It benefits the environment by significantly reducing paper use and printing and mailing resources. Electronic accessibility enables participants to receive communications in the digital manner they now expect. Communications can be sent and received instantly, without delay, and without the risk of getting lost or misplaced in the daily shuffle of paper mailings. With a digital-first approach, Fidelity supports the delivery of plan related materials in a manner requested by plan participants.

### **Automatic Portability**

A record number of individuals have left their jobs over the past year, often referred to as “the Great Resignation.” According to the U.S. Bureau of Labor Statistics, there are 10.9 million unfilled jobs across the nation.<sup>7</sup> Most turnover across participants is seen in the younger generations, while a large number of older workers exiting the workforce do not return. These younger generations in particular are at risk of cashing-out their retirement savings or experiencing “leakage” from their accounts when they change jobs.

To reduce the number of participant cash-outs, missing participants and abandoned savings, the concept of automatic portability for account balances less than \$5,000 would facilitate the movement of an employee’s 401(k) savings account from their former employer’s plan into their new employer’s plan. Fidelity believes that addressing industry-wide portability barriers will make it easier for all workers, particularly minority and low-income workers, to reduce premature cash-outs and preserve retirement savings.

Congress should adopt legislation that enables auto-portability solutions delivered through the private sector, such as allowing for the transfer of the participant’s small account balance (less than \$5,000) from their prior employer’s plan to their new employer’s plan upon negative consent as a ministerial (“non-fiduciary”) act.

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<sup>6</sup> U.S. Census Bureau, [American Community Survey, Disability Characteristics](#) (2018).

<sup>7</sup> U.S. Bureau of Labor Statistics, [Economic News Release: Job Openings and Labor Turnover December 2021](#), Released February 1, 2022.

## **Retirement Income**

The benefits of saving in a workplace plan are also recognized into retirement years. There is a growing population of individuals who choose to keep their savings in a previous employer's retirement plan, and 55% of retirees on Fidelity's platform keep their savings in a plan past the first year of retirement.<sup>8</sup> This shift has created the need for in-plan retirement solutions to help retirees draw down their savings. Employers are increasingly comfortable having workers keep their savings within the company's savings plan when they retire and are interested in offering a comprehensive in-plan retirement income solution for those individuals.

We support giving participants flexibility and choice, especially when making irreversible decisions to invest in an annuity. Proposals that would default participants into liquidity-restricted annuities as a qualified default investment alternative (QDIA) raise concerns for participants who do not want to be locked into the annuity contract, resulting in potentially suboptimal asset allocations that may not provide enough growth. Particularly in today's economy with employees making more frequent job changes, we are concerned that such a QDIA could result in significantly less portability for participants. For sponsors who want to enable participants to purchase guaranteed income with retirement assets, qualified plan distribution annuity providers can be selected at the time of distribution – not potentially decades before. There are also rollover individual retirement annuity products on the market that could provide more options to participants and tailored guaranteed income streams.

## **Spousal Consent**

The longstanding rules for ERISA qualified retirement plans require a married participant to obtain written spousal consent if the participant wishes to name a primary beneficiary other than the spouse. Defined benefit and money purchase plans require spousal consent under additional circumstances, including taking a cash distribution, hardship withdrawal or plan loan. Expansion of spousal consent rules for distributions and loans to all qualified retirement plans and IRAs has been floated as a potential policy change, although such an expansion raises several questions and trepidations given the lack of data supporting a change.

Additional spousal consent rules could delay participant receipt of funds that are often needed in a timely manner, as is the case in many emergencies. In addition, the requirement is burdensome not only on participants and their spouses, but also on recordkeepers that will need to capture and maintain documentation of legal marital status and date of marriage for every participant. This is further complicated if participants do not have formal documentation of their legal marital status due to residency in a common law state or those in a same-sex marriage that may not be recognized in their state of residence. For these reasons, we do not believe spousal consent requirements should be expanded beyond the current rules.

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<sup>8</sup> Fidelity Investments; stay-in-plan rates as of December 2018

## **Telehealth Benefits Through HSAs**

As one of the leading service providers for Health Savings Accounts (HSAs), Fidelity is committed to helping workers and their families save for current and future health care expenses. It is estimated that a couple retiring today will need \$300,000 to cover medical expenses throughout retirement, an 88% increase since 2002, based on the annual Fidelity Retiree Health Care Cost Estimate.<sup>9</sup> Employers are moving toward HSA-eligible health plans and today, 2 out of 3 large firms offer an HSA-eligible health plan with a savings option.<sup>10</sup> This not only helps reduce employers' costs, but these plans also offer individuals and families the benefit of saving through an HSA.

HSAs are also becoming more popular for U.S. workers across all income levels, and HSA holders seek to use those funds for a variety of healthcare needs including access to mental health care. The long-term value of an HSA can position a family for greater financial security, and Fidelity supports legislation that would expand eligible benefits through HSAs such as telehealth access.

## **Investment Advice Standards**

In July 2020, the U.S. Securities and Exchange Commission (SEC) strengthened the standard of conduct for brokers providing recommendations to retail customers through its Regulation Best Interest (Reg BI). Reg BI elevates the customer's best interest as the overarching standard of care for broker dealers. In late 2020, the Department of Labor (DOL) adopted a new prohibited transaction exemption (PTE) enabling investment advice under ERISA and, in the preamble to that exemption, outlined a reinterpretation of the "five-part test" for investment advice under ERISA, expanding the universe of retirement activities, including rollover recommendations, that are subject to ERISA's fiduciary duties.

Fidelity believes the PTE provides a broad and workable exemption that allows retirement investors to maintain access to investment advice. While the reinterpretation of the "five-part test" is a departure from the DOL's long standing approach to defining fiduciary advice, the reinterpretation

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<sup>9</sup> Estimate based on a hypothetical couple retiring in 2021, 65-years-old, with life expectancies that align with Society of Actuaries RP-2014 Mortality Table Healthy Annuitants rates projected with Mortality Improvement Scale MP-2020 as of 2021. Actual assets needed may be more or less depending on actual health status, area of residence, and longevity. Estimate is net of taxes. The Fidelity Retiree Health Care Cost Estimate assumes individuals do not have employer-provided retiree health care coverage, but do qualify for the federal government's insurance program, Original Medicare. The calculation takes into account cost-sharing provisions (such as deductibles and coinsurance) associated with Medicare Part A and Part B (inpatient and outpatient medical insurance). It also considers Medicare Part D (prescription drug coverage) premiums and out-of-pocket costs, as well as certain services excluded by Original Medicare. The estimate does not include other health-related expenses, such as over-the-counter medications, most dental services and long-term care.

<sup>10</sup> Kaiser Family Foundation annual survey of employer-sponsored health benefits, 2020. Includes companies that offer either an HSA-eligible HDHP or an HDP with an HRA. Based on companies with more than 1,000 employees.

coupled with the PTE represents an effective regulatory regime that protects investors. Fidelity supports DOL action to ensure a level playing field and a consistent standard applicable to all broker-dealers.

### **Conclusion**

On behalf of Fidelity and the millions of Americans we serve, we appreciate the opportunity to share our views and contribute to this important dialog to build a better future through retirement security. We look forward to continuing to work with Members of Congress to further American workers' retirement security now and for the future.

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