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Retiring the 401(K): A New Framework for Retirement Savings

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Americans attempting to save for retirement face a maze of account options, each with their own unique tax consequences. Unfortunately, this maze also limits access to tax-advantaged retirement savings and takes money out of savers' pockets. In this article, we recommend entirely eliminating traditional and Roth 401(k) accounts after a date to be specified by Congress. To compensate for dollars that workers formerly contributed to these accounts, we propose raising the current contribution limits to traditional and Roth Individual Retirement Accounts ("IRAs") proportionately. We argue that this reform would solve numerous inefficiencies and inequities in the current 401(k) system, would effectively expand lower- and middle-class workers' access to tax-advantaged retirement savings, and solve seven severe problems plaguing the 401(k). In addition, we explore the options for transitioning from the current regime to an all-IRA regime and address some preliminary objections to our proposal.

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INTRODUCTION

Throughout the 2020 presidential campaign, one of the most publicized proposals to come out of either camp was then-candidate Joe Biden's suggestion to reform the nation's retirement savings regime.[1] In a policy essay, his campaign lamented that the current system is "poorly designed to help low- and middle-income families" and that nearly two-thirds of tax benefits go to the wealthiest quintile.[2] Among other reforms, the campaign proposed substituting tax credits for the tax deductions usually

1. *E.g.*, Elizabeth Bauer, *Joe Biden Promises to End Traditional 401(k)-Style Retirement Savings Tax Benefits. What's That Mean?*, FORBES (Aug. 25, 2020), https://www.forbes.com/sites/ebauer/2020/08/25/joe-biden-promises-to-take-away-401k-style-retirement-savings-whats-that-mean/?sh=265aa9ee4eb0 [https://perma.cc/8J2R-2G9F]; Aaron Brown, *Biden Plan to Improve the 401(k) Does the Opposite*, BLOOMBERG (Sept. 7, 2020), https://www.bloomberg.com/opinion/articles/2020-09-07/biden-plan-to-improve-401-k-plans-does-the-opposite [https://perma.cc/828Y-XQVZ]; Katie Lobosco, *Biden Proposes 401(k) Changes to Give Low-Income Savers Bigger Tax Benefits*, CNN (Sept. 19, 2020), https://www.cnn.com/2020/09/19/politics/biden-plan-retirement-savings-tax-benefits/index.html [https://perma.cc/H2YP-8TFF].
2. Joe Biden, *The Biden Plan for Older Americans*, BIDEN HARRIS, https://joebiden.com/older-americans/ [https://perma.cc/V75R-KDCC].

accompanying contributions to two tax-advantaged retirement savings plans, traditional Individual Retirement Accounts ("IRAs") and 401(k)s.[3]

Although the Biden campaign should be applauded for bringing attention to retirement savings, the current system is so beleaguered that more fundamental reforms are necessary. In this Remark, we propose one such reform: eliminating the 401(k) entirely and correspondingly raising the contribution limits to IRAs. Under our proposal, the complicated current retirement regime would be whittled to just two accounts: traditional IRAs and Roth IRAs. This reform is noteworthy because it can attract bipartisan support. It will expand access to advantageous tax treatment for lower- and middle-class savers—thus appealing to progressives. Likewise, it will eliminate a confusing, fraught regulatory system and allow investors more control over their money—thus appealing to conservatives. Although the Biden proposal includes creating an "automatic 401(k)" for workers whose employers don't sponsor retirement plans, we argue that this doesn't go far enough.[4] Automatic 401(k)s would be plagued by many of the same problems that employer-sponsored 401(k)s experience, and so the Biden plan is only a half-step in the right direction.

In Part I, we provide a brief, general overview of tax-advantaged retirement savings accounts and their specific features. In Part II, we discuss seven core problems with the current 401(k) system and how moving to an all-IRA regime would remedy each one. In Part III, we address how to transition from the current retirement-savings regime to a new, all-IRA regime. We consider what to do with old 401(k) accounts and what the new contribution limits should be, and we explore a phase-in model that would soften the blow to the 401(k)-compliance industry. In Part IV, we describe and rebut a handful of preliminary objections to our proposal. We then conclude.

I. How Do Tax-Advantaged Retirement Savings Accounts Work?

The current retirement system is complicated for savers. Strictly speaking, there are more than a dozen types of tax-advantaged retirement

3. Bauer, *supra* note 1.

4. *See* Rodney Brooks, *President Biden's Proposed Changes to 401(k) Plans*, U.S. NEWS & WORLD REP. (Jan. 22, 2021), https://money.usnews.com/money/retirement/401ks/articles/president-bidens-proposed-changes-to-401-k-plans [https://perma.cc/JC2U-TTRY].

savings accounts. Many plans differ not in their financial mechanics but on what type of employer sponsors them. For example, for-profit employers sponsor 401(k)s, non-profits sponsor 403(b)s, and state and local governments sponsor 457(b)s.[5] This Remark focuses on the 401(k) as it is the dominant employer-sponsored retirement account. The other main type of tax-advantaged retirement-savings accounts, which do not require employer sponsorship, are referred to by the Internal Revenue Code as "individual retirement accounts" ("IRAs").[6]

Layered over this distinction between 401(k)s and IRAs is another: the type of tax advantage provided by the account. Tax advantages can be divided into two basic types, tax-deferred accounts ("traditional" accounts) and yield-exempt accounts ("Roth" accounts). The tax-deferred accounts provide the taxpayer an up-front tax deduction on any contributions made to the account. But the Code taxes the contributions as well as any earnings on the contributions when they're withdrawn during retirement. In contrast, the yield-exempt model does not provide an up-front tax deduction for contributions. At retirement, however, the contributions and whatever return they earned are withdrawn tax free. Thus, the difference between these two models is as follows. "Traditional" accounts allow a taxpayer to contribute pre-tax dollars, but the savings and earnings are taxed when they're withdrawn in retirement. "Roth" accounts allow a taxpayer to contribute post-tax dollars while exempting from taxation all withdrawals during retirement.

The distinctions we discuss here naturally lead to four basic types of retirement accounts: traditional 401(k)s, Roth 401(k)s, traditional IRAs, and Roth IRAs.

	Requires Employer Sponsorship	**Available to all Workers Without Employer Sponsorship**
Tax Deferred Model	Traditional 401(k)	Traditional IRA
Yield Exempt Model	Roth 401(k)	Roth IRA

The other central feature of these four types of accounts is that they each come with caps on annual contributions. Workers with a 401(k) of

5. *See* I.R.C. §§ 401(k), 403(b), 457(b) (2018). Each of these accounts comes in tax-deferred and yield-exempt varieties.

6. *See* I.R.C. § 408(a) (2018).

either variety can contribute up to $19,500 per year to their account.[7] Separately, workers can also contribute up to $6,000 per year to an IRA of either variety, without the need for employer sponsorship.[8] Consequently, a worker with an employer-sponsored 401(k) plan can contribute up to $25,500 to tax-advantaged retirement savings accounts in total.[9] Finally, the Code permits "catch up" contributions for taxpayers over certain ages, thus raising the contribution limits for tax-advantaged retirement accounts.[10]

II. THE 401(K)'S MANY PROBLEMS—AND THE IRA SOLUTION

The current savings system, which includes both 401(k) and IRA accounts, causes seven significant problems for workers and employers: (1) many workers lack access to 401(k) accounts and therefore lose out on significant tax benefits; (2) workers face long waiting periods before they can contribute to their 401(k) accounts; (3) workers are offered limited investment options in their 401(k) accounts; (4) 401(k) investors face high-fee investment choices that negatively impact investment returns; (5) workers are harmed by savings leakage; (6) employers face high 401(k) litigation costs; and (7) workers face significant complexity when navigating the retirement savings regime. As a result, the 401(k) generates insurmountable problems.

This Remark proposes eliminating the 401(k) and shifting to an IRA-based system instead. We would accomplish this by simply increasing the maximum employee IRA contribution amount by an additional $19,500 while eliminating the 401(k) account (bringing the 401(k) limit down from $19,500 to zero).[11] This will keep the net retirement contribution limits the

7. I.R.S. Notice 2019-59, 2020 Limitations Adjusted as Provided in Section 315(d), etc. (Nov. 6, 2019), https://www.irs.gov/pub/irs-drop/n-19-59.pdf [https://perma.cc/2B2R-MYTN]. Employers are permitted to "match" an employee's contributions to a 401(k), so long as the combined contribution does not exceed $57,000.

8. *Id.* Note that Roth IRAs are only available to taxpayers whose modified gross adjusted income ("MAGI") is beneath certain thresholds. *Id.*

9. $19,500 to a 401(k) + $6,000 to an IRA = $25,500 in tax-advantaged retirement savings. If the employer offers matching contributions this total will be higher. *See supra* note 7.

10. *Id.*

11. The new IRA employee contribution limit would be $6,000 + $19,500 increase = $25,500.

same as they currently are. Our proposal simply shifts capital from the 401(k) system to the IRA system. As detailed in the rest of this Part, the shift to an all-IRA system will significantly improve many aspects of the retirement-savings system.

A. *Lack of Access*

First, millions of savers currently suffer from a lack of access to 401(k) accounts and therefore lose out on the significant retirement tax benefits that are only available in 401(k) accounts. Recall that employer-sponsored 401(k) account holders may contribute $19,500 annually in tax-advantaged savings. Moving to an IRA-only system will ensure that almost all workers have access to these tax savings, including those that don't currently have such access because their employers don't sponsor any 401(k) plan.

The 401(k)'s biggest problem is that the account requires employer sponsorship. But many employers simply do not sponsor 401(k)s. The Bureau of Labor Statistics recently found that twenty-three percent of full-time workers in the private sector and an even larger percentage of part-time workers do not have access to any employer-sponsored retirement plan.[12] As a result, almost 40 million workers are barred from the 401(k) system.[13]

401(k) access is highly inequitable. As more workers pursue part time work via the gig economy, the number of workers without access to 401(k)s may continue to grow. Moreover, workers in typically lower-income roles—such as construction, maintenance, sales, agriculture, and so on—are significantly less likely to have access to an employer-sponsored 401(k) account than are higher income workers, like management and professionals.[14] Workers without such employer 401(k) sponsorship lose

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12. Definition of "Employer" Under Section 3(5) of ERISA—Association Retirement Plans and Other Multiple-Employer Plans, 84 Fed. Reg. 37508 (July 31, 2019) (citing the U.S. Bureau of Labor Statistics).

13. *Id.* ("Approximately 38 million private-sector employees in the United States do not have access to a retirement plan through their employers.")

14. *Table 1. Retirement benefits: Access, participation, and take-up rates,* U.S. BUREAU OF LABOR STATISTICS (Sept. 24, 2020), https://www.bls.gov/news.release/ebs2.t01.htm#ncs_nb_table1.f.2 [https://perma.cc/G6SQ-475Y]

out on the ability to contribute $19,500 in tax-advantaged savings solely because their employers happen to not be sponsors.

Denying workers such 401(k) tax benefits on this basis is unjustifiable. Fundamentally, the tax benefits that accrue to 401(k) savings are awarded by the United States government, not any employer. Why, then, does the ability to access these tax savings depend on whether one's employer has sponsored a 401(k) plan? In contrast to 401(k)s, IRAs are readily available with minimal restrictions. Workers can directly open an IRA at any brokerage firm that offers the account. IRA accounts are available at Vanguard, Charles Schwab, Fidelity, TD Ameritrade, and E*TRADE, among others.[15]

Because employer sponsorship for IRA accounts is unnecessary, moving to an IRA-based system (with a larger contribution limit) will ensure that almost all workers have access to maximum retirement tax benefits, including those who don't currently have such access on account of their employers. IRAs are completely untethered to one's employer and workers who wish to open an IRA can easily do so with any of the brokerage firms listed above. In the IRA-based system that we propose employees would no longer miss out on significant retirement tax benefits solely because their employers don't sponsor a workplace retirement plan.

B. Waiting Periods and Entry Dates

Second, many 401(k) participants face an unnecessarily high 401(k) hurdle: waiting periods. Employers often don't allow workers to contribute to a 401(k) plan until a worker has worked for the employer for a specified length of time. Employers can impose a waiting period up to a full year.[16] Even after the waiting period is complete, employees may still not be able to contribute to the 401(k) until the employer's next 401(k) entry date.[17]

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15. *An IRA makes saving for the future less taxing*, VANGUARD, https://investor.vanguard.com/ira/iras [https://perma.cc/UNJ9-RU3Z]; CHARLES SCHWAB, https://www.schwab.com/ira [https://perma.cc/YF2K-SK6J]; *Retirement and IRAs*, FIDELITY, https://www.fidelity.com/retirement-ira/overview [https://perma.cc/5LFG-AQ7H]; *Open an IRA in 15 minutes*, TD AMERITRADE, https://www.tdameritrade.com/retirement-planning/retirement-suite.page [https://perma.cc/CV72-PZMD]; *Traditional IRA*, ETRADE, https://us.etrade.com/what-we-offer/our-accounts/traditional-ira [https://perma.cc/X6ZW-2AWC].

16. I.R.C. § 401(k)(2)(D) (2018).

17. I.R.C. § 410(a)(4).

Waiting periods and limited entry dates shrink the window during which employees can contribute to tax-advantaged accounts like the 401(k). Consequently, while 401(k) restrictions can save employers' money, they harm employees.

The IRA solves the waiting-period and entry-date problems. There are simply no waiting periods or entry date requirements for IRAs. An employee can log on to the website of any major brokerage firm and open an IRA at any time. Saving can begin the very same day. An IRA-based system would allow workers to begin saving for retirement as early as they wish, all with minimal restrictions.

C. Limited Investment Options

Third, 401(k)s limit savers' investment options. The employer-sponsor of the 401(k)—not the employee—decides which investment options are available within the account.[18] Employees are prohibited from investing in any investment vehicle not included by their employer in the workplace 401(k). In a 2016 analysis, BrightScope and the Investment Company Institute found that large 401(k) plans offered about twenty-seven total investment options, including thirteen equity fund options, three bond fund options, and seven target date fund options.[19] Smaller 401(k)s may offer even fewer options. According to FINRA, a brokerage firm and exchange market regulator, "[m]ost 401(k) plans provide at least three investment choices in your 401(k) plan, but some plans offer dozens. The average plan offers between 8 and 12 alternatives."[20] This suggests that some plans offer only one or two investment options for employees.

18. *See, e.g.*, Jane Meacham, *Basic Provisions of a 401(k) Plan,* The 401(k) Handbook § 103*,* 2014 WL 12882776 ("A defined contribution plan, including a 401(k) plan, is typically structured to provide a variety of investment choices. This places a burden on the fiduciaries of the plan to select appropriate investment opportunities.").

19. *The BrightScope/ICI Defined Contribution Plan Profile: A Close Look at 401(k) Plans, 2016*, INV. COMPANY INST 2 (June 2019), https://www.ici.org/pdf/19_ppr_dcplan_profile_401k.pdf [https://perma.cc/CG5P-QCRK].

20. *Investing in Your 401(k)*, FINRA, https://www.finra.org/investors/learn-to-invest/types-investments/retirement/401k-investing/investing-your-401k [https://perma.cc/4KPR-CL5B]

Employees, then, are stuck with the investment choices their employers offer, even if alternate investments fit their preferences. This is one of the reasons some financial advisors recommend using an IRA when possible. As one financial planner put it:

> To me, it almost always makes sense to move to an IRA [when retiring] if you are actively managing it yourself or if you have an adviser helping you. . . . You have complete flexibility to build a portfolio that meets your exact place in life and your exact needs.[21]

In contrast, IRA accounts have as many investment options as the brokerage houses decide to include—typically far more than an average 401(k). For example, Fidelity advertises that investors can select from the following investment options: mutual funds, exchange-traded funds, stocks, bonds and U.S. treasury bonds, annuities, and FDIC-insured certificates of deposit.[22] These are all general investment categories, each of which will have a variety of specific funds or sub-options for an investor to select. This far outstrips the number of offerings available in a typical 401(k) account. As one commentator explained: "[I]f you move your savings to an IRA, you get maximum flexibility in designing your portfolio and choosing investments."[23]

D. High Fees

Fourth, 401(k)s are plagued by high investment fees—significant because employees can only invest in the options designated by their employer, and thus cannot shop around for low-fee investment vehicles. Employees are therefore forced to pay whatever fees accrue to the investment options available in the plan. According to a recent TD

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21. Daisy Maxey, *What to Do With a 401(k) When Leaving a Job*, WALL ST. J. (April 19, 2020), https://www.wsj.com/articles/what-to-do-with-a-401-k-when-leaving-a-job-11587164723 [https://perma.cc/4PR9-CVTC] (brackets in original).

22. *Choosing investments for your IRA*, FIDELITY, https://www.fidelity.com/building-savings/learn-about-iras/ira-choosing-investments [https://perma.cc/5W7V-ZGFA].

23. Kelly Greene, *At Retirement, Keep Your 401(k) or Move to IRA?*, WALL ST. J. (Dec. 29, 2007), https://www.wsj.com/articles/SB119889640239257135 [https://perma.cc/YM9F-9LVG].

Ameritrade investor survey, about 37% of 401(k) account holders don't even know that 401(k) managers can charge fees.[24] This is deeply problematic as investors not only lose the amount of fees paid but also the compound growth they otherwise would have obtained. High 401(k) fees sharply reduce the amount of money workers have in retirement.[25]

Without competing investment options, investment plan providers don't face much market pressure to reduce fees. Indeed, Ian Ayres and Quinn Curtis explain that "reforms that reduce fees incurred by investors by only ten basis points on average would save more than $4.4 billion annually, and these savings compound over the course of investors' careers."[26] Shockingly, for a young employee, high fees in sixteen percent of analyzed plans altogether "consume[d] the tax benefits of investing in a 401(k)."[27]

An IRA-based system would allow workers to choose their own brokerage providers and investments. Many brokerage firms provide investors with near-zero fee investment options. Charles Schwab, for example, offers an exchange-traded fund at the tiny net expense ratio of 0.03%,[28] which allows for cheap diversification by opening ordinary investors' access to the 2,500 largest publicly traded U.S. companies.[29]

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24. Dan Rosenberg, *FeeX 401(k) Fee Calculator Helps Break Down 401(k) Plan Costs*, TD AMERITRADE: TICKERTAPE (July 28, 2020), https://tickertape.tdameritrade.com/retirement/compare-401k-fees-calculator-15627 [https://perma.cc/J6EN-VQ69].

25. *See, e.g.*, *Don't Let High Costs Eat Away Your Returns,* VANGUARD, https://investor.vanguard.com/ investing/how-to-invest/impact-of-costs [https://perma.cc/4FUJ-ATHZ]; Jakub W. Jurek, *The Tyranny of Compounding Costs,* WEALTHFRONT (Jan. 25, 2017), https://blog.wealthfront.com/tyranny-compounding-costs/ [https://perma.cc/S5EK-3RXV].

26. Ian Ayres & Quinn Curtis, *Beyond Diversification: The Pervasive Problem of Excessive Fees and "Dominated Funds" in 401(k) Plans*, 124 YALE L.J. 1476, 1480 (2015).

27. *Id.* at 1481.

28. *Schwab U.S. Broad Market ETF*, CHARLES SCHWAB, https://www.schwabfunds.com/products/schb [https://perma.cc/B495-EQSS].

29. *Id.*

Likewise, Vanguard offers an S&P 500 ETF with an expense ratio of 0.03%.[30] This ETF's "[g]oal is to closely track the [S&P 500] index's return, which is considered a gauge of overall U.S. stock returns."[31]

Unlike in the 401(k) context, IRA investors can move their money to the brokerage firm that offers them the best deal. Our proposal, therefore, introduces market competition where it is currently sorely lacking. An IRA-based system will ensure that investors are no longer required to pay unreasonably high fees, while still allowing investors to benefit from all the tax benefits that accrue to retirement savings.

E. Retirement Savings Leakage

Fifth, because 401(k)s are linked to employers, "cashout leakage" often results when workers leave their jobs. Cashout leakage is "the voluntary, premature withdrawal of tax-qualified retirement savings following a job change, and prior to normal retirement age, which results in the payment of taxes and penalties."[32] Workers who withdraw their 401(k) savings after leaving a job obviously will not have that money available for retirement. Cashout leakage doubtlessly contributes to the amount of financial insecurity workers face in retirement.

Up to six million participants cash out their tax-qualified savings for purposes other than retirement annually,[33] leaving workers with a retirement account balance far lower than they otherwise might have had. Further, such workers may be required to pay income tax on the withdrawals and face an additional ten percent penalty.[34] The total amount of money cashed out every year is astronomical: The Employee Benefit

30. *Vanguard S&P 500 ETF*, VANGUARD, https://investor.vanguard.com/etf/profile/VOO [https://perma.cc/8USH-KSVN].

31. *Id.*

32. Thomas Hawkins, *Why 401(k) 'Cashout Leakage' is a Crisis*, 401(K) SPECIALIST (July 9, 2019), https://401kspecialistmag.com/why-401k-cashout-leakage-is-a-crisis/ [https://perma.cc/BMW5-P6VB].

33. *Id*.

34. *Retirement Topics - Termination of Employment*, IRS, https://www.irs.gov/retirement-plans/plan-participant-employee/retirement-topics-termination-of-employment [https://perma.cc/G4YU-SLDA].

Research Institute estimated a total retirement savings loss of $92.4 billion in 2015 due to cashout leakage.[35]

Moving to an IRA-based system will mitigate this problem. Because the IRA is not linked to one's employer, there is no need to open new IRA accounts for each new job.[36] Instead, workers can open one IRA account and deposit retirement money into that account, irrespective of current employer. Maintaining one IRA account means that employees will not be presented with the choice of cashing out when they leave one employer and join a new one, in contrast to what happens under the current 401(k) system. An IRA-based system will likely result in fewer workers choosing to cash out their retirement accounts when they switch jobs, thereby avoiding early withdrawal penalties.

Indeed, the Employee Benefit Research Institute studied how "auto portability"—in which retirement money would automatically move from a worker's old 401(k) to her new 401(k) upon a job change—would impact cashout leakage.[37] It found that:

> Considering auto portability as a standalone policy initiative, we project the present value of additional accumulations over 40 years resulting from "partial" auto portability (participant balances less than $5,000 adjusted for inflation) would be $1,509 billion, and the value would be $1,987 billion under "full" auto portability (all participant balances).[38]

Under our proposal, there would be no need for a separate "auto portability" regime to allow for 401(k) transfers upon a job change. Instead, each individual's retirement account (in the form of an IRA) would automatically follow them around regardless of where they work.

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35. Jack VanDerhei, *The Impact of Auto Portability on Preserving Retirement Savings Currently Lost to 401(k) Cashout Leakage*, EMP. BENEFIT RESEARCH INST. (Aug. 15, 2019), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3438999 [https://perma.cc/TYE6-JRKV].
36. This is in sharp contrast to the 401(k). When switching jobs, a worker would be required to open a 401(k) account with her new employer if she wishes to take advantage of the 401(k)'s tax savings.
37. VanDerhei, *supra* note 35.
38. *Id.*

F. Lawsuits and High Employer Costs

Sixth, the 401(k) regime also burdens employers with the costs of administering their workplace 401(k)s. As one of us explained in an another article, the retirement regulatory regime creates significant uncertainty for employers that offer 401(k)s, leaving them guessing regarding compliance with their legal duties.[39] The Employee Retirement Income Security Act of 1974 ("ERISA") governs 401(k)s and the Department of Labor ("DOL") is tasked with enforcing ERISA.[40] But ERISA compliance is difficult because of the law's complexity and the "rapid development of the law."[41] Similarly, the Supreme Court referred to ERISA as "an enormously complex and detailed statute."[42] The costs associated with administering 401(k) plans is one of the primary reasons employers choose not to offer 401(k)s,[43] and ERISA's complexity certainly doesn't help in that regard.

Despite the difficulty in complying with ERISA's requirements, employers that violate their fiduciary duties face large legal liability. In just 2016-17 alone, litigants filed over 100 lawsuits associated with 401(k) plans.[44] Such lawsuits can be very expensive. For example, Lockheed Martin

39. Michael Slomovics, *Reduce Income Inequality: Allow Retail Investors to Invest in Private Equity*, J. BUS. ENTREPRENEURSHIP & L. (forthcoming 2021) (manuscript at 29) (on file with author).

40. George S. Mellman & Geoffrey T. Sanzenbacher, *401(k) Lawsuits: What Are The Causes and Consequences?*, CTR. FOR RETIREMENT RSCH. AT BOSTON COLL. 2 (May 2018), https://crr.bc.edu/briefs/401k-lawsuits-what-are-the-causes-and-consequences/ [perma.cc/6TTM-FF8J].

41. José M. Jara, *ERISA: Thou Shall Not Pay Excessive Fees!*, AM. BAR ASS'N (Winter 2019), https://www.americanbar.org/groups/real_property_trust_estate/publications/ereport/rpte-ereport-winter-2019/erisa--thou-shall-not-pay-excessive-fees-/ [https://perma.cc/2J63-ZZSK].

42. Conkright v. Frommert, 559 U.S. 506, 509 (2010) (quoting Mertens v. Hewitt Associates, 508 U.S. 248, 262 (1993)).

43. Catherine Collinson et al., *Pre-Pandemic: U.S. Employer Benefits and Business Practices*, TRANSAMERICA CTR. FOR RETIREMENT STUD. 12 (Dec. 2020), https://transamericacenter.org/docs/default-source/retirement-survey-of-workers/tcrs2020_sr_pre-pandemic-us-employer-benefits-and-business-practices.pdf [https://perma.cc/2EUR-TDNU].

44. Mellman & Sanzenbacher, *supra* note 40.

and Boeing entered into $62 million and $57 million settlements respectively.[45] Since the 401(k) is an employer-sponsored plan, 401(k) litigation provides employees legal protection to ensure, for example, that they aren't charged excessive fees. Still, 401(k) litigation creates high costs for employers and disincentivizes employers from making 401(k) plans available to their workers.

Our proposal would mitigate the need for 401(k) litigation. In an all-IRA system, employers would not determine investment options for employees. Employers would no longer be administering the plan at all, so there would be no reason to hold employers liable. Instead, employees would select the brokerage firms and investments that are best for them.

G. Inconsistent and Complex Regulatory Regime

Finally, the 401(k) retirement regime is unnecessarily complex and difficult for savers to understand. Employees who save for retirement must currently choose from the following: a traditional 401(k), Roth 401(k), traditional IRA, and Roth IRA. Only thereafter does the worker decide which specific investments to select. This two-step process can itself be confusing.

The rules that govern these accounts also vary unjustifiably. Retirement savers can withdraw $10,000 penalty-free from their IRA accounts for their first home purchase,[46] but there is no such option for the 401(k).[47] Similarly, money can be withdrawn from an IRA penalty-free to help pay for education expenses, yet the same benefit doesn't apply to 401(k) accounts.[48] 401(k) accounts allow savers to borrow from their accounts, but IRA borrowing is prohibited.[49] The accounts also diverge with respect to creditor protection.[50] These distinctions create confusion and unnecessary complexity.

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45. David McCann, *Passive Aggression*, CFO (June 22, 2016), https://www.cfo.com/retirement-plans/2016/06/passive-investment-aggression/ [https://perma.cc/R4WA-RSSJ].

46. Laura Saunders, *The Little Differences Between 401(k)s and IRAs Can Cost Big Bucks*, WALL ST. J. (Aug. 30, 2019), https://www.wsj.com/articles/the-little-differences-between-401-k-s-and-iras-can-cost-big-bucks-11567157402 [https://perma.cc/H3Y5-U5YZ].

47. *Id.*

48. *Id.*

49. *Id.*

50. *Id.*

The all-IRA system we propose would leave just two account options: the traditional IRA and Roth IRA. Workers would no longer have to consider the traditional 401(k) or Roth 401(k). Further, the disparities between the IRA and 401(k) listed earlier would no longer apply, as there would only be one regulatory regime governing.

III. TRANSITIONING TO AN ALL-IRA REGIME

Having established that the current retirement-savings regime is complex and burdensome, we turn next to how to transition to an all-IRA regime. After all, proposals exist for upgrading plenty of government programs, yet those upgrades sometimes prove unworkable on account of the tremendous transition costs involved in establishing a new regulatory regime.[51] In this Part, we address the basic concern about how to move from the old to the new regime while minimizing transition costs. We argue that a transition that pleases all the essential parties involved can be effectuated.

A. New Contributions

To make the transition to an all-IRA regime a reality, we fix one basic rule: After a Congressionally determined date—say, January 1, 2025—all tax-advantaged retirement contributions must be made to a traditional or Roth IRA. Consequently, all contributions that formerly went to an

51. Take Social Security reform, for example. In 2005, President Bush launched a campaign to modernize and rescue Social Security, commonly understood at the time as a push toward privatization. *See* William A. Galston, *Why the 2005 Social Security Initiative Failed, and What it Means for the Future*, BROOKINGS INST. (Sep. 21, 2007), https://www.brookings.edu/research/why-the-2005-social-security-initiative-failed-and-what-it-means-for-the-future/ [https://perma.cc/D38S-RXNY]. The principal issue with privatizing Social Security, however, is that privatization involves shifting from a pay-as-you go program to a defined-contribution program. Thus, once privatization occurs, workers' payroll taxes will go to their personal retirement savings account, meaning those dollars no longer fund a current retiree's Social Security check. This leaves a huge transition cost. *See generally*, Peter Ferrara, *The Future of Social Security*, NAT'L AFFAIRS 85, 96 (Summer 2015) ("If a substantial portion of the money coming in were to go to personal accounts instead, additional funds would have to come from somewhere else to meet the obligations due to current retirees.").

employee's 401(k) would go to their IRA. Moreover, no new 401(k) accounts could be opened.

After January 1, 2025, employers will continue to withhold the portion of an employee's salary that the employee had previously elected to contribute to their 401(k). Rather than deposit those funds in the employee's 401(k), the employer will simply tender those funds to the employee's IRA. If an employee contributed to a traditional 401(k)—and thus received a tax deduction for contributions—the employee will continue receiving that deduction, since contributions will now be made to a traditional IRA. Effecting this change requires only that the employee furnish their IRA number and routing details to their employer in a timely fashion. So long as employees are given ample time to furnish their account details, this burden should be light, given that many employees already furnish their savings or checking account details to participate in salary direct-deposit programs.[52]

Two further elements of this transition deserve some comment: payroll processors and employer matching contributions.

Companies that provide payroll services already deduct employees' contributions to traditional 401(k)s from their pay stubs.[53] There shouldn't be any interruption to this tax benefit. Payroll processors will deduct the pre-tax contributions as they always have, with the proviso that the

52. In 2016, the National Automated Clearing House Association ("NACHA"), which administers the ACH Network, estimated that 82% of American workers participate in direct deposit. *See New Nacha Survey Shows Adoption and Awareness of Direct Deposit via ACH Continues to Build*, NACHA (April 18, 2016), https://www.nacha.org/news/new-nacha-survey-shows-adoption-and-awareness-direct-deposit-ach-continues-build [https://perma.cc/7WX7-JU4U]. In 2020, NACHA revised this figure up to 93%. *How Direct Deposit Works*, NACHA (April 6, 2020), https://www.nacha.org/content/how-direct-deposit-works [https://perma.cc/P7TU-G4U2].

53. Paychex, a leading provider of payroll and benefits services, encourages employers to integrate their payroll and 401(k) provider servers. The "payroll firm can integrate 401(k) plan tasks with payroll administration to automate transmission of contributions and the collection of required data," meaning "[r]ecordkeeping is streamlined, [and] paperwork is minimized." *How Combining Payroll and 401(k) Plans Can Benefit Your Business*, PAYCHEX (Jan. 25, 2019), https://www.paychex.com/articles/employee-benefits/combining-401k-plan-with-payroll-processing [https://perma.cc/78LJ-3DAB].

contributions will be deposited in the employee's traditional IRA rather than their 401(k). With ample statutory notice, payroll processors ought to be able to alter pay stubs and redirect funds with minimal hassle.

What about employer contributions to employees' 401(k)s? These contributions can proceed unchanged, with a few caveats. First, employers should not be able to use the transition as an excuse to change their matching program to hurt employees. For example, if an employer requires an employee to work for six months before becoming eligible for matching contributions to their 401(k), and an employee is set to become eligible for such a benefit in, say, February 2025, then the employee should begin receiving matching funds in their IRA in February 2025.

Second, employers should not be able to take the opportunity to alter vesting schedules. Some employers offer matching 401(k) contributions that only "vest" – or come fully under the employee's ownership – after the employee has worked for a specified length of time.[54] Thus, if an employee is set to have some or all of an employer's prior contributions vest during 2025, those funds should vest at the same time. The IRS could retain its current vesting schedule authorization scheme, and employers could make such a change if they meet those requirements.[55]

What would happen to funds that an employer has already contributed to an employee's 401(k) but which have not yet vested? They'll stay in the employee's old 401(k) account until the vesting date arrives. New matching contributions, whether or not they vest immediately, will be put into the employee's IRA. Commercial brokers like Fidelity or Vanguard can develop a "vesting" component of the employee's IRA to segregate matching funds, much as 401(k) managers do now with unvested employer contributions. All in all, these changes do not represent a significant departure from the status quo from both the employer's and employee's perspectives; the only change affected by our plan is to which accounts the employee contributions and employer matching contributions are directed.

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54. Michael Rubin, *Understanding Your 401(k) Vesting Schedule for Retirement Planning*, BALANCE (Oct. 21, 2020), https://www.thebalance.com/know-the-impact-of-your-401k-vesting-schedule-2894176 [https://perma.cc/3347-VB5M].

55. I.R.S. Pub. 6389, Explanation No. 2 Minimum Vesting Standards Defined Contribution Plan (2017), https://www.irs.gov/pub/irs-pdf/p6389.pdf [https://perma.cc/KE4D-ZHWX].

B. *Past Contributions to Old 401(k)s*

A larger question looms about what to do with non-empty, pre-existing 401(k)s. Although our proposal requires that no further contributions be made to such accounts after January 1, 2025, no one should be forced to close their preexisting 401(k). In other words, if you like your 401(k), you can keep it. At the same time, the benefits provided by IRAs should be available to workers that, prior to the transition date, made contributions to 401(k)s. Thus, our proposal gives 401(k) account holders two options: do nothing or rollover.

Under the do-nothing option, employees (and employers) will do just that: nothing. An employee's 401(k) will remain as-is, invested in whatever vehicles it was invested in on December 31, 2024. As mentioned in the prior Section,[56] unvested employer matching contributions will remain in this account until the vesting date, at which point those funds vest and become the employee's property. Although Congress may decide differently, it would make sense to leave the current 401(k) rules in place for these grandfathered accounts. As a result, workers that choose to keep their traditional 401(k)s will start taking required minimum distributions at age seventy-two.[57] Moreover, employers that sponsored and managers that manage these accounts must continue complying with all relevant fiduciary duties.

Alternatively, employees with a 401(k) can rollover those funds into their IRA. Traditional 401(k) funds would be rolled into a traditional IRA, and Roth 401(k) funds would be rolled into a Roth IRA. In order to give employees a free choice, Congress will need to ban 401(k) managers from imposing additional penalties or fees for 401(k) holders who choose to "cash out" and roll over. Moreover, Congress should enact a non-recognition provision for these rollovers to ensure that the rollover doesn't create a taxable event[58]—a result that would defeat the very purpose of retirement

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56. *Supra* Part III.A.

57. *Retirement Topics—Required Minimum Distributions (RMDs)*, I.R.S., https://www.irs.gov/retirement-plans/plan-participant-employee/retirement-topics-required-minimum-distributions-rmds [https://perma.cc/94RZ-N698].

58. *See* I.R.C. § 1001(c) (stipulating that "[e]xcept as otherwise provided . . . the entire amount of gain or loss, determined under this section, on the sale or exchange of property shall be recognized").

savings accounts. Rollovers already exist for employees when they leave their jobs,[59] so implementing the rollover option is not beyond reach. Indeed, one could construe our proposal as simply making the rollover-upon-termination option the default rule for all tax-advantaged retirement savings.

C. Contribution Limits

One cornerstone of our proposal is that employees already contributing the maximum to their retirement accounts should remain unaffected, with the exception of where their contributions go. Since 401(k)s and IRAs currently have different contribution limits, we must find a way to combine them.

Under the current regime, an employee whose company sponsors a traditional 401(k) or Roth 401(k) plan may contribute up to $19,500 to those accounts.[60] After factoring in employer matching contributions, the combined limit comes to $57,000 per year.[61] In theory, then, an employee can contribute $1 to their 401(k), which is then "matched" by the employer at $56,999, bringing the total combined contribution to $57,000. Both traditional and Roth 401(k)s are subject to required minimum distributions ("RMDs") when the account holder reaches age 72.[62]

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59. Daisy Maxey, *What to Do With a 401(k) When Leaving a Job*, WALL ST. J. (April 19, 2020), https://www.wsj.com/articles/what-to-do-with-a-401-k-when-leaving-a-job-11587164723 [https://perma.cc/J5XZ-85NQ] ("Generally, a 401(k) plan participant leaving a job may choose to leave the money where it is; roll it over into a new employer's 401(k) plan; roll it in into an individual retirement account; or cash it out, which can be a costly move.").

60. I.R.S. Notice 2019-59, 2020 Limitations Adjusted As Provided in Section 315(d), etc. (Nov. 6, 2019), https://www.irs.gov/pub/irs-drop/n-19-59.pdf [https://perma.cc/2B2R-MYTN]. Note that workers over age fifty who participate in a 401(k) are eligible for an additional "catch-up" contribution of $6,500, bringing their total maximum contribution to $26,000. *Id.* In the interests of simplicity and conciseness, we do not incorporate catch-up contributions here. It suffices to say that when 401(k)s are eliminated and the cap on IRA contributions are raised, the cap for earners age fifty and over can be adjusted up by $6,500 on account of the lost 401(k) catch-up contributions.

61. *Id.*

62. *Retirement and IRA Required Minimum Distribution FAQs*, I.R.S. (Sep. 19, 2020), https://www.irs.gov/retirement-plans/retirement-plans-faqs-

The IRA picture looks quite different. An investor in 2020 may contribute only $6,000 to their Roth or traditional IRAs.[63] There are two wrinkles—one affecting Roth IRA contributions and the other affecting traditional IRA contributions. First, the maximum that a worker can contribute to a Roth IRA declines based on income, starting at a Modified Adjusted Gross Income ("MAGI") of $124,000 for single filers and $196,000 for married filers filing jointly.[64] Second, under certain circumstances, a contributor to a *traditional* IRA may not be able to deduct their contributions, even partially.[65] These deductions are disallowed if the taxpayer or their spouse is eligible for a 401(k)-type plan with their employer *and* makes over a certain income threshold per year.[66]

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regarding-required-minimum-distributions [https://perma.cc/279A-YTZN]. Note that if the taxpayer turned 70½ on or before December 31, 2019, RMDs must begin at age 70½. *Id*.

63. *See* I.R.S. Pub. 590-A, Contributions to Individual Retirement Accounts (2019), https://www.irs.gov/publications/p590a [https://perma.cc/YZ8A-L4EC]. Note that earners aged fifty and over are eligible to contribute a "catch-up" contribution of $1,000 per year, bringing their total eligible IRA contributions to $7,000 per year. *Id.* In the interests of simplicity and conciseness, we do not incorporate catch-up contributions here. It suffices to say that when 401(k)s are eliminated and the cap on IRA contributions are raised, the cap for earners age fifty and over can be adjusted up by $1,000 on account of the IRA catch-up contributions.

64. *Id.* For a more simplified version, see *Amount of Roth IRA Contributions That You Can Make For 2020*, I.R.S., https://www.irs.gov/retirement-plans/plan-participant-employee/amount-of-roth-ira-contributions-that-you-can-make-for-2020 [https://perma.cc/AVN8-NJUQ]. Roth IRA contributions are phased out entirely for singles with MAGI greater than $139,000 and married couples with MAGI greater than $206,000. *Id.*

65. I.R.S. Pub. 590-A, *supra* note 63.

66. *Id.* Note that, even if a taxpayer cannot deduct contributions to their traditional IRA, they remain eligible to make the contributions. What's more, they can obtain the yield-exemption tax advantage characteristic of a Roth IRA—even if they earn too much to contribute directly to a Roth IRA—by using what industry has termed a "backdoor Roth." *See* Miranda Marquit, *What Is A Backdoor Roth IRA*, FORBES (Sep. 8, 2020), https://www.forbes.com/advisor/retirement/backdoor-roth-ira/ [https://perma.cc/A5E9-KNX7]. Because the funds originally contributed to the traditional IRA are post-tax dollars, they're functionally equivalent to the

Tying all this together, a single worker under the current regime can contribute $25,500 from their personal funds to retirement accounts in a single year. (This figure derives from the maximum IRA contribution, $6,000, added to the maximum employee contribution to a 401(k), $19,500.) That figure rises to a combined total of $63,000 if the employee participates in an unusually generous employer-match program.[67] In order to highlight the benefits of transitioning from 401(k)s to IRAs, we propose maintaining these overall limits as much as possible.[68] We therefore propose augmenting the IRA limits as follows.

If a single earner has MAGI less than $124,000—a figure derived from the current Roth IRA income limits—she should be able to contribute up to $25,500 per year to her IRAs under the new regime. (We set the limit at $25,500 because it is the sum of the current 401(k) employee-contribution cap ($19,500) and the current IRA cap ($6,000).) If her MAGI exceeds $124,000 per year, things get trickier. The overall contribution remains $25,500, but the maximum contribution to her *Roth* IRA declines to $19,500 as her MAGI increases. (This occurs because, under the current regime, a high-earning single taxpayer can contribute $19,500 to a 401(k) of any variety, $0 to a Roth IRA, and $6,000 to a traditional IRA.) Moreover, the remaining $6,000 of the allowable contribution would not be deductible, because such an employee under the current regime cannot deduct traditional IRA contributions. Employer contributions will remain unchanged. In theory, an employer can contribute $56,999. Yet if the employee contributes more than $6,000 to her new IRAs, the maximum employer contribution reduces dollar-for-dollar, up to the maximum employee contribution: $25,500.

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post-tax dollars that would be put directly into a Roth IRA by qualifying earners.

67. This figure derives from the maximum IRA contribution of $6,000 and a maximum 401(k) contribution of $57,000, $19,500 of which can be contributed by the employee. If the employee is lucky enough to work for an employer that will max out the 401(k) limit, then the employee will have a total of $57,000 contributed to his 401(k) and another $6,000 contributed to his IRA.

68. That said, we believe the $57,000 401(k) combined contribution limit to be far higher than it should be. Congress should consider lowering that number, irrespective of whether it chooses to eliminate or phase-out the 401(k).

D. *The 401(k) Compliance Industry*

Most of the costs created by transitioning to an all-IRA retirement regime are administrative—time and resources will inevitably be lost in the transition. Many of these costs, however, will be one-time and relatively small. A larger, more permanent cost remains: the elimination of the 401(k) compliance industry. As we stated earlier,[69] our proposal is beneficial for employee-investors in part because it will redirect funds currently paid to 401(k) account managers and lawyers back into the employee's pocket. As a result, those managers and lawyers stand to lose billions of dollars if our proposal succeeds. While we do not take the elimination of jobs lightly, we think our proposal remains better in the long run—after all, these financiers and lawyers are imposing a valueless rent on workers, effectively moving money from employees' (and employers') pockets to their own. What's more, some jobs will be created from the movement to an all-IRA regime—both to help with the transition and maintain it.

The effect of eliminating the compliance industry can be blunted by engineering a gradual transition rather than the sharp transition we have assumed so far. For a gradual transition, Congress could do three things. First, Congress could disallow the 401(k) to IRA rollover that we described in the prior Section. We disfavor this option—it essentially locks investors into an account that they may not prefer—but it deserves mention. Second, Congress could stagger the availability of higher IRA limits. For example, the new IRA contribution limits could go into effect on January 1, 2025 only for employees that do not have access to an employer-sponsored 401(k) account. The following year, on January 2, 2026, the new IRA contribution limits would go into effect for workers who already hold 401(k) accounts, and further contributions to 401(k)s would be disallowed. Third, Congress could reduce the cap on 401(k) contributions incrementally for everyone over the course of, say, ten years while proportionately increasing the contribution cap for IRAs over the same period.

Each of these proposals would lengthen the total transition time between the current retirement-savings regime and the new all-IRA regime, but would allow for a gradual elimination of the 401(k) compliance industry. Of course, whether or not the transition is quick or gradual, under our proposal contributions to 401(k)s will eventually be prohibited and the compliance industry will shrink. The question for Congress, ultimately a political one, is how quickly the transition should take place— and how long

69. *Supra* Part II.D & II.F

managers and lawyers should be able to continue diverting funds from investors to themselves.

IV. OBJECTIONS AND RESPONSES

In this Part, we describe three preliminary objections to our proposal and respond to each.

A. 401(k)s are Designed to Protect Workers

The first objection is that the compliance industry surrounding 401(k)s protects employee-investors and shifting to an all-IRA system will eliminate those protections. For example, employers and their agents are saddled with fiduciary obligations under statutes like ERISA.[70] Moreover, the high fees charged by many 401(k) administrators purport to purchase a higher return through active management.[71] According to this objection, retiring the 401(k) will possibly expose employee-investors to abuse and lower returns.

But if the additional protections provided by 401(k)s are essential to protecting employee-investors, it's not clear why our current system permits taxpayers to invest in IRAs or taxable brokerage accounts, which lack those additional protections. ERISA and other protections provided to 401(k) account holders are essential because employers are in a position to self-deal and manipulate employees' savings. But if retirement savings are untethered from employment—as we propose—then employers are no longer in such a position and many of these protections become beside the point.

70. *See* Employee Benefits Security Administration, *Meeting Your Fiduciary Responsibilities*, U.S. DEP'T OF LABOR (Sep. 2017), https://www.dol.gov/sites/dolgov/files/EBSA/about-ebsa/our-activities/resource-center/publications/meeting-your-fiduciary-responsibilities.pdf [https://perma.cc/56FP-NFXA] ("Employers often hire outside professionals . . . or, if applicable, use an internal administrative committee or human resources department to manage some or all of a plan's day-to-day operations. . . . These are the plan's fiduciaries."); *see also supra* Part II.F.

71. Richard M. Ennis, *Are Active Management Fees Too High?*, 61 FIN. ANALYSTS J. 44, 45 (2005) (posing the question whether "active management successfully exploits whatever security mispricing might exist" in the market).

Additionally, under our plan, investors can opt into some of these protections. A worker investing money in a traditional or Roth IRA can choose to pay high fees for an actively managed fund if they believe that doing so will provide a higher return on investment. What's more, an employee can opt to pay for financial advice from a professional broker or financial planner—which would create a fiduciary relationship—if they so choose. Note that many employers already offer professional financial advice as an employee benefit;[72] employers can certainly continue to do so under our proposal's retirement regime. Overall, under our proposal, employees will continue to have access to important protections, many at less expense than under the current 401(k) regime. Undoubtedly, they'll be more expensive for others. At the very least, employee-investors will retain the choice to opt in or opt out of active management and portfolio advice. This would be a sea-change from the current 401(k) model, which often channels employee-investors into investments that offer little in exchange for high fees.

B. Impact on Revenue

The second criticism of our proposal is that it will cost the federal government a mint. How does this occur? If our proposal were implemented, millions of workers would be able to contribute thousands more to tax-advantaged savings accounts. As a result, the public fisc would forego billions of dollars in tax revenue.

Keep two responses in mind. First, our proposal is a blueprint. Many details remain to be filled in by Congress and the IRS. Consequently, there are numerous opportunities to offset the costs of our proposal with revenue increases. For example, as aforementioned,[73] when 401(k) accounts are merged into IRAs the IRA contribution limits will have to be raised. How much these limits increase will be determined by Congressional bargaining, and it may make sense to reduce contributions by employers and the wealthy. Tinkering with details like these could offset the costs of our proposal.

72. Stephen Miller, *Financial Wellness Perks Expand to Address Employee Needs*, SHRM (June 11, 2018), https://www.shrm.org/ResourcesAndTools/hr-topics/benefits/Pages/financial-wellness-perks-expand.aspx [https://perma.cc/DNG5-9W9X].

73. *Supra* Part III.C.

Second, it's important to keep in mind that other 401(k) reform proposals also seem to be quite expensive. President Biden's campaign proposal, for example, suggests replacing the tax deductions that attend to most traditional 401(k) and traditional IRA contributions with a 26% tax credit.[74] While this reform would move retirement savings accounts toward more favorable treatment for middle-class workers, it is predicted to cost nearly $151 billion in lost revenue over the ten-year period spanning 2021 to 2030.[75]

C. *Piecemeal Reform*

The final criticism we address is that transitioning from the current regime to an all-IRA regime in one fell swoop is too much change, too quickly. It would be better, according to this criticism, to reform retirement accounts in a piecemeal fashion. Following this line of thought, Congress could first raise the cap on IRA contributions without tinkering with 401(k)s; then Congress could allow employer contributions to IRAs; only then would we limit (and eventually eliminate) 401(k) contributions. Other candidates for piecemeal reform include shifting from deductions to credits, as the Biden plan does, and lowering the income cap for Roth IRA contributors.

Each of these piecemeal proposals all point in the right direction, and they might be good alternatives should our proposal prove politically unworkable. Nevertheless, piecemeal reform is not a sufficient remedy. The current retirement savings account regime is already far too complicated, causing too many headaches for too many Americans. A reform that untethers retirement savings from employment and provides only two options—one for an immediate deduction and one that contains a yield exemption—is about as simple as tax-advantaged savings can be. What's more, each of the piecemeal reform proposals point in the direction of our

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74. Darla Mercado, *Biden Calls for an Overhaul of 401(k) Tax Breaks. What It Means for You*, CNBC (Oct. 8, 2020), https://www.cnbc.com/2020/09/22/biden-calls-for-401k-tax-break-overhaul-what-it-means-for-you.html [https://perma.cc/L4RC-8XBB].

75. Table T20-0246: Former Vice President Biden's Tax Plan: Impact on Tax Revenue, 2021-2030 by Fiscal Year and Total for FY 2031-40 (Revised Results), URBAN INST. & BROOKINGS INST.: TAX POL'Y CTR. (November 2020), https://www.taxpolicycenter.org/model-estimates/updated-analysis-former-vice-president-bidens-tax-plan-october-2020/t20-0246-former [https://perma.cc/2A5S-BUTW].

more comprehensive reform—if the political will is present to retire the 401(k), why wait?

CONCLUSION

President Biden, thankfully, understands the urgency of retirement-savings reform. The current system helps wealthier Americans save for retirement, while at the same time disallowing the same benefits to ordinary workers. Appetite for reform is high, and while the Biden plan would make for a significant improvement by expanding access, it may only entrench the complexities and inefficiencies of the current system. Congress should eliminate the main source of retirement-savings inefficiencies and inequities—the 401(k)—not push more savers into an antiquated system. Transitioning all tax-advantaged retirement savings into traditional and Roth IRAs will expand access, give investors more control over their retirement savings, eliminate the rents currently assessed by the 401(k)-compliance industry, and simplify the regime—a solution that should satisfy progressives and conservatives alike.