NATIONAL TAXPAYERS UNION

To: Members of the Senate Committee on Finance
From: Andrew Lautz, Director of Federal Policy, National Taxpayers Union
Date: June 21, 2022
Subject: Regarding Amendments to the EARN Act to Be Considered at the Committee's June 22 Meeting

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I. Introduction and Key Taxpayer Considerations

On behalf of National Taxpayers Union (NTU), the nation's oldest taxpayer advocacy organization, I thank you for the opportunity to share some of NTU's views and considerations on the amendments the Committee is considering to the Enhancing American Retirement Now (EARN) Act at its June 22 executive session.

NTU supported the Setting Every Community Up for Retirement Enhancement (SECURE) Act in 2019, and we were glad to see its passage into law. Enactment of the SECURE Act provided millions of Americans greater flexibility and control over their finances when planning for their future retirement. The Committee is conducting important work in its follow-up to the SECURE Act, the EARN Act, as is the House Committee on Ways and Means and the Senate Committee on Health, Education, Labor, and Pensions (HELP).

NTU's team of experts and advocates is still evaluating the retirement proposals in the EARN Act. However, we have carefully vetted some of the proposed amendments to the EARN Act, and wish to share our views on those amendments below. Thank you for your attention to these important taxpayer considerations.

II. NTU's Vote Recommendations on EARN Act Amendments

NTU urges Committee members to **SUPPORT** the following provisions from the Master Amendment List:

- **Amendment #10 (Grassley/Daines/Lankford/Young/Barrasso #1), the Middle-Class Savings and Investment Act**: Upon endorsing this proposal earlier this month, NTU said that the legislation "would allow millions of American workers and families to invest more confidently for any number of major and long-term life expenses, and would reduce the taxes Americans owe on the earnings from those investments." We also appreciate that these tax cuts are responsibly paid for by extending the $10,000 cap on the state and local tax (SALT) deduction for three years.

- **Amendment #17 (Toomey #1), to permanently extend full expensing**: In January, NTU led a coalition of 17 organizations supporting Sen. Toomey's Accelerate Long-term Investment Growth Now (ALIGN) Act, which would extend the full and immediate expensing provisions of the Tax Cuts and Jobs Act (TCJA). The coalition wrote that "[t]his legislation is critical to ensuring U.S. companies can continue to confidently invest in the machinery, equipment, software, and additional tools that make U.S. workers and the U.S. economy more competitive and provide all Americans with valued goods and services." The Tax Foundation estimates that this proposal will raise U.S. gross domestic product by 0.5 percent, the wage rate by 0.4 percent, and U.S. capital stock by 0.9 percent, while creating more than 85,000 full-time equivalent jobs.

NTU urges Committee members to **OPPOSE** the following provisions from the Master Amendment List:

- **Amendment #5 (Casey #2), establishing National Children's Savings Accounts**: Though this proposal is well-intentioned, NTU is concerned that it could have a large budgetary impact by providing "every child born in the United States" with savings accounts funded in part by the U.S. government. The phase-out for this benefit begins at $100,000 for single filers and $120,000 for married filers, suggesting that the proposal is not narrowly tailored to children in families who are most in need.
- **Amendment #8 (Warren/Whitehouse #1), regarding expansion of Social Security**: This amendment, which appears to closely mirror the Social Security Expansion Act co-introduced by Sens. Warren and Whitehouse, would significantly delay Social Security insolvency, but would do so by raising taxes on Americans by trillions of dollars over the 75-year window. It would also not permanently delay Social Security's insolvency, in part because of the legislation's significant benefit expansions. The actuaries estimate that although the Trust Fund ratio will grow from 2023 through 2050 under this proposal, it plateaus at 214 percent and begins falling in 2054, until it reaches just 64 percent in 2097. Costs will exceed revenues under the Social Security Expansion Act in 60 years of the 75-year window. NTU is also concerned about the impacts that expanding the payroll tax earnings base and significantly expanding investment taxes will have on American entrepreneurs and economic growth.
- **Amendment #9 (Warren/Whitehouse #2), regarding retirement account limitations on high-income taxpayers**: These clunky proposals attempt to artificially control account balances in 401(k) and IRA accounts, requiring significant distributions for accounts with balances over $10 million. The rules only affect single filers making above $400,000 per year, and contain a marriage penalty by applying the rules to joint filers making above $450,000 per year.

NTU urges Committee members to **CONDUCT FURTHER WORK** on the following provision from the Master Amendment List:

- **Amendment #20 (Daines/Stabenow/Grassley #1), regarding the Charitable Conservation Easement Program Integrity Act (with modifications)**: NTU appreciates that Sen. Daines and his co-sponsors have modified the Act from prior iterations, specifically to remove retroactive application and enforcement of the legislation's provisions. This was a key concern we have long expressed, and represents important progress. However, additional pivotal questions remain unanswered. For example, how would evolving jurisprudence over notice and comment affect the amendment's prohibition on availability of the safe harbor and correction procedure to taxpayers whose cases fall under the listed transaction of Notice 2017-10? Furthermore, would it better serve the interests of the courts, the IRS, and taxpayers to permit the correction procedure for issues in cases currently under litigation? One could argue that doing so could concentrate resources on cases involving valuation, which is at the heart of many deduction claims under Section 170(h). We encourage Senators to continue deliberating the ramifications of this proposal as the legal landscape shifts and make appropriate modifications before holding a vote in the Committee. The impact of this issue on the entire system of tax administration demands the utmost care in designing legislative responses, even if that means more time than the current markup affords.

III. Contact Information

Should you have any questions about the recommendations in this memo, please do not hesitate to reach out to Andrew Lautz at alautz@ntu.org.