

117TH CONGRESS  
2D SESSION

# S. 4406

To amend the Internal Revenue Code of 1986 to provide incentives for the use of automatic portability arrangements under defined contribution plans, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

JUNE 15, 2022

Mr. SCOTT of South Carolina (for himself and Mr. BROWN) introduced the following bill; which was read twice and referred to the Committee on Finance

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## A BILL

To amend the Internal Revenue Code of 1986 to provide incentives for the use of automatic portability arrangements under defined contribution plans, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Advancing Auto-Port-  
5 ability Act of 2022”.

6 **SEC. 2. FINDINGS.**

7 Congress finds as follows:

1           (1) Up to \$105,000,000,000 of retirement sav-  
 2           ings leaves the defined contribution pension plan  
 3           system annually because employees cash out their  
 4           savings after a job change.

5           (2) Federal law should encourage the private  
 6           sector to reduce such cash-outs by developing auto-  
 7           mated solutions to improve defined contribution plan  
 8           portability.

9   **SEC. 3. PROHIBITED TRANSACTION EXEMPTION.**

10          (a) IN GENERAL.—Section 4975(d) of the Internal  
 11       Revenue Code of 1986 is amended—

12               (1) by striking “or” at the end of paragraph  
 13       (22)(I),

14               (2) by striking the period at the end of para-  
 15       graph (23) and inserting “, or”, and

16               (3) by adding at the end the following new  
 17       paragraph:

18               “(24) any transaction described in subpara-  
 19       graph (D) or (E) of subsection (c)(1) which consists  
 20       of the receipt of fees by an automatic portability  
 21       provider in connection with such provider’s exercise  
 22       of discretion with respect to an automatic portability  
 23       transaction.”.

1 (b) DEFINITIONS.—Section 4975(f) of the Internal  
 2 Revenue Code of 1986 is amended by adding at the end  
 3 the following new paragraph:

4 “(12) RULES RELATING TO AUTOMATIC PORT-  
 5 ABILITY TRANSACTIONS.—

6 “(A) IN GENERAL.—For purposes of sub-  
 7 section (d)(24)—

8 “(i) AUTOMATIC PORTABILITY TRANS-  
 9 ACTION.—An automatic portability trans-  
 10 action is a transfer of assets made—

11 “(I) from an individual retire-  
 12 ment plan which is established on be-  
 13 half of an individual and to which  
 14 amounts were transferred under sec-  
 15 tion 401(a)(31)(B)(i),

16 “(II) to an employer-sponsored  
 17 retirement plan described in clause  
 18 (iii), (iv), (v), or (vi) of section  
 19 402(c)(8)(B) (other than a defined  
 20 benefit plan) in which such individual  
 21 is an active participant, and

22 “(III) after such individual has  
 23 been given advance notice of the  
 24 transfer and has not affirmatively  
 25 opted out of such transfer.

1 “(ii) AUTOMATIC PORTABILITY PRO-  
2 VIDER.—An automatic portability provider  
3 is a person that executes transfers de-  
4 scribed in clause (i).

5 “(B) CONDITIONS FOR AUTOMATIC PORT-  
6 ABILITY TRANSACTIONS.—Subsection (d)(24)  
7 shall not apply to an automatic portability  
8 transaction unless the following requirements  
9 are satisfied:

10 “(i) ACKNOWLEDGMENT OF FIDU-  
11 CIARY STATUS.—An automatic portability  
12 provider shall acknowledge in writing, at  
13 such time and format as specified by the  
14 Secretary, that the provider is a fiduciary  
15 with respect to the individual on whose be-  
16 half the individual retirement plan de-  
17 scribed in subparagraph (A)(i)(I) is estab-  
18 lished.

19 “(ii) FEES.—The fees and compensa-  
20 tion received by the automatic portability  
21 provider in connection with the automatic  
22 portability transaction shall not exceed rea-  
23 sonable compensation and must be ap-  
24 proved in writing by the plan fiduciary for

1 the plan described in subparagraph  
2 (A)(i)(II).

3 “(iii) DATA USAGE.—The automatic  
4 portability provider shall not market or sell  
5 data relating to the individual retirement  
6 plan described in subparagraph (A)(i)(I).

7 “(iv) OPEN PARTICIPATION.—The  
8 automatic portability provider shall offer  
9 automatic portability transactions on the  
10 same terms to any plan described in sub-  
11 paragraph (A)(i)(II) regardless of whether  
12 the provider provides other services for  
13 such plan.

14 “(v) PRE-TRANSACTION NOTICE.—At  
15 least 30 days in advance of an automatic  
16 portability transaction, the automatic port-  
17 ability provider shall provide notice to the  
18 individual on whose behalf the individual  
19 retirement plan described in subparagraph  
20 (A)(i)(I) is established which includes—

21 “(I) a description of the auto-  
22 matic portability transaction and the  
23 fees which will be charged in connec-  
24 tion with the transaction,

1 “(II) a description of the individ-  
2 ual’s right to affirmatively elect not to  
3 participate in the transaction, the pro-  
4 cedures for such an election, and a  
5 telephone number at which the indi-  
6 vidual can contact the automatic port-  
7 ability provider, and

8 “(III) such other disclosures as  
9 the Secretary may require by regula-  
10 tion.

11 “(vi) POST-TRANSACTION NOTICE.—  
12 Not later than 3 business days after an  
13 automatic portability transaction, the auto-  
14 matic portability provider shall provide no-  
15 tice to the individual on whose behalf the  
16 individual retirement plan described in  
17 subparagraph (A)(i)(I) is established of—

18 “(I) the actions taken by the  
19 automatic portability provider with re-  
20 spect to the individual’s account,

21 “(II) all relevant information re-  
22 garding the location and amount of  
23 any transferred assets,

24 “(III) a statement of fees  
25 charged against the account by the

1           automatic portability provider or its  
2           affiliates in connection with the trans-  
3           fer,

4           “(IV) a telephone number at  
5           which the individual can contact the  
6           automatic portability provider, and

7           “(V) such other disclosures as  
8           the Secretary may require by regula-  
9           tion.

10          “(vii) NOTICE REQUIREMENTS.—The  
11          notices required under clauses (v) and (vi)  
12          shall be written in a manner calculated to  
13          be understood by the average intended re-  
14          cipient and shall not include materially  
15          misleading statements.

16          “(viii) TIMELINESS OF EXECUTION.—  
17          After liquidating the assets of an indi-  
18          vidual retirement plan described in sub-  
19          paragraph (A)(i)(I) to cash, an automatic  
20          portability provider shall transfer the ac-  
21          count balance of such plan as soon as  
22          practicable to the plan described in sub-  
23          paragraph (A)(i)(II).

24          “(ix) RECORD RETENTION AND AU-  
25          DITS.—

1                   “(I) IN GENERAL.—An automatic  
 2                   portability provider shall, for 6 years,  
 3                   maintain the records sufficient to  
 4                   demonstrate the terms of this sub-  
 5                   paragraph have been met.

6                   “(II) AUDITS.—An automatic  
 7                   portability provider shall conduct an  
 8                   annual audit of automatic portability  
 9                   transactions occurring during the cal-  
 10                  endar year to demonstrate compliance  
 11                  with this subparagraph, and shall sub-  
 12                  mit such audit annually to the Sec-  
 13                  retary, in such form and manner as  
 14                  specified by the Secretary.”.

15           (c) EFFECTIVE DATE.—The amendments made by  
 16 this section shall apply to transactions occurring after De-  
 17 cember 31, 2023.

18 **SEC. 4. EMPLOYER AUTOMATIC PORTABILITY ARRANGE-**  
 19 **MENT TAX CREDIT.**

20           (a) IN GENERAL.—Subpart D of part IV of sub-  
 21 chapter A of chapter 1 of the Internal Revenue Code of  
 22 1986 is amended by adding at the end the following new  
 23 section:



1 **“SEC. 45U. EMPLOYER AUTOMATIC PORTABILITY AR-**  
 2 **RANGEMENT CREDIT.**

3 “(a) IN GENERAL.—For purposes of section 38, in  
 4 the case of an eligible employer, the automatic portability  
 5 arrangement credit determined under this section for the  
 6 adoption year is an amount equal to \$500.

7 “(b) ELIGIBLE EMPLOYER.—For purposes of this  
 8 section, the term ‘eligible employer’ has the meaning given  
 9 the term by section 408(p)(2)(C)(i) (without regard to  
 10 subclause (II) thereof).

11 “(c) ADOPTION YEAR.—For purposes of this sec-  
 12 tion—

13 “(1) IN GENERAL.—The term ‘adoption year’  
 14 means the taxable year during which the eligible em-  
 15 ployer adopts an automatic portability arrangement  
 16 as part of an eligible plan maintained by the em-  
 17 ployer.

18 “(2) AUTOMATIC PORTABILITY ARRANGE-  
 19 MENT.—

20 “(A) IN GENERAL.—The term ‘automatic  
 21 portability arrangement’ means an arrangement  
 22 providing for automatic portability transactions.

23 “(B) AUTOMATIC PORTABILITY TRANS-  
 24 ACTION.—The term ‘automatic portability  
 25 transaction’ means a transaction in which  
 26 amounts distributed pursuant to section

1           401(a)(31)(B)(i) from a plan to an individual  
 2           retirement plan established on behalf of an indi-  
 3           vidual are subsequently transferred to an eligi-  
 4           ble plan in which such individual is an active  
 5           participant, after such individual has been given  
 6           advance notice of the transfer and has not af-  
 7           firmatively opted out of such transfer.

8           “(3) ELIGIBLE PLAN.—The term ‘eligible plan’  
 9           means a qualified employer plan as defined in sec-  
 10          tion 4972(d)(1), other than a defined benefit plan.”.

11          (b) CREDIT TO BE PART OF GENERAL BUSINESS  
 12 CREDIT.—Subsection (b) of section 38 of the Internal  
 13 Revenue Code of 1986 is amended by striking “plus” at  
 14 the end of paragraph (32), by striking the period at the  
 15 end of paragraph (33) and inserting “, plus”, and by add-  
 16 ing at the end the following new paragraph:

17           “(34) in the case of an eligible employer (as de-  
 18          fined in section 45U(b)), the automatic portability  
 19          arrangement credit determined under section  
 20          45U(a).”.

21          (c) CLERICAL AMENDMENT.—The table of sections  
 22 for subpart D of part IV of subchapter A of chapter 1  
 23 of the Internal Revenue Code of 1986 is amended by add-  
 24 ing at the end the following new item:

“Sec. 45U. Employer automatic portability arrangement credit.”.

1       (d) EFFECTIVE DATE.—The amendments made by  
2 this section shall apply to taxable years beginning after  
3 the date of the enactment of this Act.

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