117TH CONGRESS 2d Session | HOUSE OF REPRESENTATIVES | REPT. 117–557 Part 1

PROTECTING AMERICA'S RETIREMENT SECURITY ACT OF 2022

NOVEMBER 14, 2022.—Ordered to be printed

Mr. SCOTT of Virginia, from the Committee on Education and Labor, submitted the following

R E P O R T

together with

MINORITY VIEWS

[To accompany H.R. 7310]

The Committee on Education and Labor, to whom was referred the bill (H.R. 7310) to protect America's retirement security, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

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The amendment is as follows:

Strike all after the enacting clause and insert the following:

39–006

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Protecting America's Retirement Security Act of 2022".

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. Defined contribution plan fee disclosure improvements.
Sec. 3. Personal finance education portal.
Sec. 4. Increasing spousal protection under defined contribution plans.
Sec. 5. Automatic reenrollment.
Sec. 6. Employee Ownership and Participation Initiative.
Sec. 7. Refund to Rainy Day Savings Program.

SEC. 2. DEFINED CONTRIBUTION PLAN FEE DISCLOSURE IMPROVEMENTS.

Not later than 2 years after the date of enactment of this Act, the Secretary of Labor shall review section 2550.404a-5 of title 29, Code of Federal Regulations, and explore how the content and design of the covered disclosures may be improved to enhance participants' understanding of fees and expenses as well as the cumulative effect of fees and expenses on retirement savings over time. As part of such review, the Secretary shall conduct outreach to stakeholders, including those representing plan sponsors and retirement plan participants.

SEC. 3. PERSONAL FINANCE EDUCATION PORTAL.

(a) IN GENERAL.—Not later than 3 years after the date of enactment of this Act, the Secretary of Education, in consultation with the Director of the Bureau of Consumer Financial Protection, the Secretary of the Treasury as chair of the Financial Literacy and Education Commission, and the Commissioner of Internal Revenue, shall create a personal finance education portal on a centralized and publicly available website of the Department of Education pertaining to Federal financial aid for voluntary use by recipients of aid awarded under title IV of the Higher Education Act of 1965.

(b) CONTENT OF PERSONAL FINANCE EDUCATION PORTAL.—The personal finance education portal created under subsection (a) shall include information on personal finance concepts, including the following:

(1) Core personal finance concepts, such as earning, saving, investing, spending, and borrowing, including—

(A) the concept of compound growth as it applies to savings and retirement savings, with information about the different types of retirement savings accounts; and

(B) budgeting and credit usage.

(2) Managing student loan repayment, including—

(A) the interaction between savings and retirement decisions and Federal student loan repayment plans;

(B) Federal student loan discharge or forgiveness options;

(C) the types of voluntary benefits employers may use to help workers while they are paying down student loan debt;

(D) tax credits or deductions that are relevant to student loan borrowers in repayment; and

(E) any other Federal policies that significantly impact student loan borrowers in repayment, as determined by the Secretary.

(3) Any other personal finance concepts determined relevant by the Secretary of Education, in consultation with the Director of the Bureau of Consumer Financial Protection, the Secretary of the Treasury as chair of the Financial Literacy and Education Commission, and the Commissioner of Internal Revenue.

(c) PROVISION OF CONTENT.—The personal finance content included under subsection (b) may be provided in an interactive format through text or video.

(d) ANALYTICS.—The Secretary of Education, in consultation with the Director of the Bureau of Consumer Financial Protection, the Secretary of the Treasury as chair of the Financial Literacy and Education Commission, and the Commissioner of Internal Revenue, shall review not less than once every three years the utilization of the portal, make recommendations to improve the portal, and make such findings and recommendations publicly available.

(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to carry out this section.

SEC. 4. INCREASING SPOUSAL PROTECTION UNDER DEFINED CONTRIBUTION PLANS.

(a) AMENDMENTS TO EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974.—

(1) IN GENERAL.—Part 2 of subtitle B of title I of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1051 et seq.) is amended by inserting after section 205 the following new section:

"SEC. 205A. ADDITIONAL SPOUSAL CONSENT REQUIREMENTS.

"(a) IN GENERAL.—Each individual account plan to which section 205 does not apply (but to which this title otherwise applies) shall provide that, except as provided in subsections (c) and (d), no distribution may be made under the plan unless the spousal consent requirements of subsection (e) are met.

"(b) COORDINATION WITH SECTION 205.—Nothing in this section shall be construed to exempt an individual account plan from the requirements of paragraph (1)(B), (1)(C), or (2) of section 205(b) with respect to any participant.

"(c) EXCEPTIONS FOR CERTAIN DISTRIBUTIONS.—Subsection (a) shall not apply to—

"(1) any distribution that is—

"(A) a minimum required distribution described in section 4974(b) of the Internal Revenue Code of 1986; or

"(B) permitted under section 203(e)(1) to be made without the consent of the participant;

"(2) any distribution in the form of a qualified joint and survivor annuity (as defined in section 205(d)(1)), a qualified optional survivor annuity (as defined in section 205(d)(2)), a qualified preretirement survivor annuity (as defined in section 205(e)), or a series of substantially equal periodic payments (not less frequently than annually) made for the joint lives (or life expectancies) of the participant and the participant's spouse; or

"(3) in the case of a participant who does not elect a form of benefit described in paragraph (2) under the plan or who is participating in a plan that does not provide such a form of benefit, any distribution of the participant's entire nonforfeitable accrued benefit if 50 percent of such accrued benefit is transferred to an individual retirement plan (as defined in section 7701(a)(37) of the Internal Revenue Code of 1986) of the spouse of the participant.

A transfer described in paragraph (3) to an individual retirement plan shall be treated in the same manner as a transfer under section 408(d)(6) of the Internal Revenue Code of 1986.

"(d) EXCEPTIONS FOR CERTAIN ROLLOVER CONTRIBUTIONS.—

"(1) IN GENERAL.—Subsection (a) shall not apply to any distribution that is an eligible rollover distribution (as defined in section 402(f)(2)(A) of the Internal Revenue Code of 1986) made in the form of a direct trustee-to-trustee transfer within the meaning of section 401(a)(31) of the Internal Revenue Code of 1986—

"(A) to a plan to which this section or section 205 applies; or

"(B) to an individual retirement plan (as defined in section 7701(a)(37) of the Internal Revenue Code of 1986) if—

"(i) the sole beneficiary of such plan is the spouse of the participant, or the spousal consent requirements of subsection (e) are met with respect to any designation of 1 or more other beneficiaries; and

"(ii) under the terms of the individual retirement plan, the beneficiary of such plan (whether the spouse or other beneficiary designated under subparagraph (A)) may not be changed unless—

"(I) the spousal consent requirements of subsection (e) are met with respect to any such change; or

"(II) the spousal consent under clause (i) to the designation of a beneficiary other than the spouse expressly permits such designation to be changed without the further consent of the spouse.

"(2) REGULATORY AUTHORITY.—The Secretary of the Treasury and the Secretary of Labor may jointly issue regulations to implement subparagraphs (A) and (B) of paragraph (1).

"(e) SPOUSAL CONSENT REQUIREMENTS.—

"(1) IN GENERAL.—For purposes of this section, except as provided in paragraph (2), the spousal consent requirements of this subsection are met with respect to any distribution or any designation or change of beneficiary if—

"(A) the plan provides to each participant, within a reasonable period of time before such distribution or designation or change of beneficiary is made and consistent with such regulations as the Secretary of the Treasury may prescribe, a written explanation of the rights of the participant and the participant's spouse under this section;

"(B) the spouse of the participant consents in writing to the distribution or designation or change of beneficiary;

"(C) in the case of a distribution, the written consent under subparagraph (B) is made during the consent period; and

"(D) the written consent under subparagraph (B)—

"(i) acknowledges the effect of such distribution or designation or change of beneficiary; and

"(ii) is witnessed by a plan representative or a notary public.

"(2) EXCEPTIONS.—The requirements of paragraph (1) (other than subparagraph (A) thereof) shall not apply with respect to any distribution or designation or change of beneficiary if a participant establishes to the satisfaction of the administrator that—

"(A) there is no spouse;

"(B) the participant and the participant's spouse have not been married for at least 1 year as of the date of the distribution or designation or change of beneficiary; or

"(C) such consent cannot be obtained because—

"(i) the spouse cannot be located after taking documented search efforts in accordance with guidance from the Secretary of Labor;

"(ii) due to exceptional circumstances, requiring the participant to seek the spouse's consent would be inappropriate; or

"(iii) of such other circumstances as the Secretary of the Treasury, in consultation with the Secretary of Labor, may by regulations prescribe.

The Secretary of Labor may issue regulations to implement this paragraph.

"(3) CONSENT LIMITED TO SPOUSE AND EVENT.—Any written consent by a spouse under paragraph (1), or the establishment by a participant that an exception under paragraph (2) applies with respect to a spouse, shall be effective only with respect to that spouse and to the distribution or designation or change of beneficiary to which it relates.

"(4) CONSENT PERIOD.—For purposes of this subsection, the term 'consent period' means, with respect to any distribution—

"(A) the 90-day period immediately preceding the date of such distribution; or

"(B) such other period as the Secretary of the Treasury may provide.

"(f) DISCHARGE OF PLAN FROM LIABILITY.—Rules similar to the rules of section 205(c)(6) shall apply for purposes of this section.".

(2) CLERICAL AMENDMENT.—The table of sections of part 2 of subtitle B of title I of the Employee Retirement Income Security Act of 1974 is amended by inserting after the item relating to section 205 the following new item:

"Sec. 205A. Additional spousal consent requirements.".

(3) PARALLEL AMENDMENT TO SECTION 205.—Section 205(c)(2)(B) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1055(c)(2)(B)) is amended by inserting ", because due to exceptional circumstances, requiring the participant to seek the spouse's consent would be inappropriate" after "located".

(b) CONFORMING AMENDMENT TO INTERNAL REVENUE CODE OF 1986.—Section 401(a) of the Internal Revenue Code of 1986 is amended by inserting after paragraph (17) the following new paragraph:

"(18) ADDITIONAL SPOUSAL CONSENT REQUIREMENTS.—

"(A) IN GENERAL.—To the extent paragraph (11) does not apply to a defined contribution plan to which title I of the Employee Retirement Income Security Act of 1974 applies, except as provided in subparagraphs (C) and (D), a trust forming part of such plan shall not constitute a qualified trust under this section unless no distribution may be made under the plan unless the spousal consent requirements of subparagraph (E) are met.

"(B) COORDINATION WITH PARAGRAPH (11).—Nothing in this paragraph shall be construed to exempt a defined contribution plan from the requirements of subparagraph (B)(ii), (B)(iii), or (C) of paragraph (11) with respect to any participant.

"(C) EXCEPTIONS FOR CERTAIN DISTRIBUTIONS.—Subparagraph (A) shall not apply to—

"(i) any distribution that is—

"(I) a minimum required distribution described in section 4974(b), or

"(II) permitted under section 411(a)(11) to be made without the consent of the participant,

"(ii) any distribution in the form of a qualified joint and survivor annuity (as defined in section 417(b)), a qualified optional survivor annuity (as defined in section 417(g)), a qualified preretirement survivor annuity (as defined in section 417(c)), or a series of substantially equal periodic payments (not less frequently than annually) made for the joint lives (or life expectancies) of the participant and the participant's spouse, or

"(iii) in the case of a participant who does not elect a form of benefit described in clause (ii) under the plan or who is participating in a plan that does not provide such a form of benefit, any distribution of the participant's entire nonforfeitable accrued benefit if 50 percent of such accrued benefit is directly transferred to an individual retirement plan of the spouse of the participant.

A transfer described in clause (iii) to an individual retirement plan shall be treated in the same manner as a transfer under section 408(d)(6) and shall be deemed not to violate paragraph (2) or (13).

"(D) EXCEPTIONS FOR CERTAIN ROLLOVER CONTRIBUTIONS.—

"(i) IN GENERAL.—Subparagraph (A) shall not apply to any distribution, involving a participant who has a spouse, that is an eligible rollover distribution (as defined in section 402(f)(2)(A)) made in the form of a direct trustee-to-trustee transfer within the meaning of paragraph (31)—

"(I) to a plan to which this paragraph or paragraph (11) applies; or

"(II) to an individual retirement plan if—

"(aa) the sole beneficiary of such plan is the spouse of the participant, or the spousal consent requirements of subparagraph (E) are met with respect to any designation of 1 or more other beneficiaries; and

"(bb) under the terms of the individual retirement plan, the beneficiary of such plan (whether the spouse or other beneficiary designated under clause (i)) may not be changed unless—

"(AA) the spousal consent requirements of subparagraph (E) are met with respect to any such change, or

"(BB) the spousal consent under subclause (I) to the designation of a beneficiary other than the spouse expressly permits such designation to be changed without the further consent of the spouse.

"(ii) REGULATORY AUTHORITY.—The Secretary of the Treasury, in consultation with the Secretary of Labor, may issue regulations to implement subparagraphs subclauses (I) and (II) or clause (i).

"(E) SPOUSAL CONSENT REQUIREMENTS.—

"(i) IN GENERAL.—For purposes of this paragraph, except as provided in clause (ii), the spousal consent requirements of this subparagraph are met with respect to any distribution or any designation or change of beneficiary if—

"(I) the plan provides to each participant, within a reasonable period of time before such distribution or designation or change of beneficiary is made and consistent with such regulations as the Secretary may prescribe, a written explanation of the rights of the participant and the participant's spouse under this paragraph,

"(II) the spouse of the participant consents in writing to the distribution or designation or change of beneficiary,

"(III) in the case of a distribution, the written consent under subclause (II) is made during the consent period, and

"(IV) the written consent under subclause (ii)—

"(aa) acknowledges the effect of such distribution or designation or change of beneficiary, and

"(bb) is witnessed by a plan representative or a notary public.

"(ii) EXCEPTIONS UNDER SECTION 417(A)(2)(B) TO APPLY.—The requirements of clause (i) (other than subclause (I) thereof) shall not apply with respect to any distribution or designation or change of beneficiary if a participant establishes to the satisfaction of the administrator that—

"(I) there is no spouse,

"(II) the participant and the participant's spouse have not been married for at least 1 year as of the date of the distribution or designation or change of beneficiary, or

"(III) such consent cannot be obtained because—

"(aa) the spouse cannot be located after taking documented search efforts in accordance with guidance from the Secretary of Labor;

"(bb) due to exceptional circumstances, requiring the participant to seek the spouse's consent would be inappropriate; or

"(cc) of such other circumstances as the Secretary, in consultation with the Secretary of Labor, may by regulations prescribe.

The Secretary, in consultation with the Secretary of Labor, may issue regulations to implement this clause.

"(iii) CONSENT LIMITED TO SPOUSE AND EVENT.—Any written consent by a spouse under clause (i), or the establishment by a participant that an exception under clause (ii) applies with respect to a spouse, shall be effective only with respect to that spouse and to the distribution or designation or change of beneficiary to which it relates.

"(iv) CONSENT PERIOD.—For purposes of this subparagraph, the term 'consent period' means, with respect to any distribution—

"(I) the 90-day period immediately preceding the date of such distribution, or

"(II) such other period as the Secretary may provide.".

SEC. 5. AUTOMATIC REENROLLMENT.

(a) ELIGIBLE AUTOMATIC CONTRIBUTION ARRANGEMENTS.—

(1) AMENDMENT TO THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974.—Section 514(e)(2) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1144(e)(2)) is amended—

(A) by redesignating subparagraphs (A) through (C) as clauses (i) through (iii), respectively, and moving the margins of such clauses 2 ems to the right,

(B) by striking "(2) For purposes of" and inserting "(2)(A) For purposes of", and

(C) by adding at the end the following:

"(B) In the case of an automatic contribution arrangement taking effect after December 31, 2024, the requirements of subparagraph (A)(ii) shall be treated as met only if, under the arrangement, at least every 3 years each employee—

"(i) who is eligible to participate in the arrangement, and

"(ii) who, at the time of the determination, has in effect an affirmative election pursuant to subparagraph (A)(ii) not to have contributions described in such subparagraph made,

is treated as having made the election at the uniform percentage of compensation described in subparagraph (A)(ii) unless the employee makes a new election under such subparagraph. Such determination may be made at one time for all employees described in the preceding sentence for a plan year, regardless of individual employee dates of enrollment.".

(2) AMENDMENT TO THE INTERNAL REVENUE CODE OF 1986.—Section 414(w)(3) of the Internal Revenue Code of 1986 is amended—

(A) by redesignating subparagraphs (A) through (C) as clauses (i) through (iii), respectively, and moving the margins of such clauses 2 ems to the right;

(B) by striking " For purposes of" and inserting the following:

"(A) IN GENERAL.—For purposes of"

(C) by adding at the end the following new subparagraph:

"(B) PERIODIC AUTOMATIC DEFERRAL REQUIRED.—In the case of an eligible automatic contribution arrangement taking effect after December 31, 2024, the requirements of this subsection shall be treated as met only if, under the arrangement, at least every 3 plan years each employee—

"(i) who is eligible to participate in the arrangement, and

"(ii) who, at the time of the determination, has in effect an affirmative election under subparagraph (A)(ii) not to have such contributions described in such subparagraph made,

is treated as having made the election at the uniform percentage level described in subparagraph (A)(ii) unless the employee makes a new election under such subparagraph. Such determination may be made at one time for all employees described in the preceding sentence for a plan year, regardless of individual employee dates of enrollment."

(b) QUALIFIED AUTOMATIC CONTRIBUTION ARRANGEMENTS.—

(1) IN GENERAL.—Section 401(k)(13)(C) of the Internal Revenue Code of 1986 is amended by adding at the end the following new clause:

"(v) PERIODIC AUTOMATIC DEFERRAL REQUIRED FOR POST-2024 ARRANGEMENTS.—In the case of a qualified automatic contribution arrangement which takes effect after December 31, 2024, the requirements of this subparagraph shall be treated as met only if, under the arrangement, at least every 3 plan years each employee—

"(I) who is eligible to participate in the arrangement, and

"(II) who, at the time of the determination, has in effect an affirmative election pursuant to clause (ii) not to have contributions described in clause (i) made,

is treated as having made the election described in clause (i) unless the employee makes a new affirmative election under clause (ii). Such determination may be made at one time for all employees described in the preceding sentence for a plan year, regardless of individual employee dates of enrollment."

(2) CONFORMING AMENDMENTS.—Clause (iv) of section 401(k)(13)(C) of such Code is amended—

(A) in the heading, by inserting "for pre-2025 arrangements" after "required"; and

(B) by striking "Clause (i)" and inserting "In the case of a qualified automatic contribution arrangement in effect before January 1, 2025, clause (i)".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to arrangements taking effect after December 31, 2024.

SEC. 6. EMPLOYEE OWNERSHIP AND PARTICIPATION INITIATIVE.

(a) DEFINITIONS.—In this section:

(1) EXISTING PROGRAM.—The term "existing program" means a program, designed to promote employee ownership and employee participation in business decisionmaking, that exists on the date on which the Secretary is carrying out a responsibility authorized under this section.

(2) INITIATIVE.—The term "Initiative" means the Employee Ownership and Participation Initiative established under subsection (b).

(3) NEW PROGRAM.—The term "new program" means a program, designed to promote employee ownership and employee participation in business decisionmaking, that does not exist on the date on which the Secretary is carrying out a responsibility authorized under this section.

(4) SECRETARY.—The term "Secretary" means the Secretary of Labor.

(5) STATE.—The term "State" has the meaning given the term under section 3 of the Workforce Innovation and Opportunity Act (29 U.S.C. 3102).

(b) EMPLOYEE OWNERSHIP AND PARTICIPATION INITIATIVE.—

(1) ESTABLISHMENT.—The Secretary of Labor shall establish within the Department of Labor an Employee Ownership and Participation Initiative to promote employee ownership and employee participation in business decisionmaking.

(2) FUNCTIONS.—In carrying out the Initiative, the Secretary shall—

(A) support within the States existing programs designed to promote employee ownership and employee participation in business decisionmaking; and

(B) facilitate within the States the formation of new programs designed to promote employee ownership and employee participation in business decisionmaking.

(3) DUTIES.—To carry out the functions enumerated in paragraph (2), the Secretary shall—

(A) support new programs and existing programs by—

(i) making Federal grants authorized under subsection (d); and

(ii) acting as a clearinghouse on techniques employed by new programs and existing programs within the States, and disseminating information relating to those techniques to the programs; and

(B) facilitate the formation of new programs, in ways that include holding or funding an annual conference of representatives from States with existing programs, representatives from States developing new programs, and representatives from States without existing programs.

(c) PROGRAMS REGARDING EMPLOYEE OWNERSHIP AND PARTICIPATION.—

(1) ESTABLISHMENT OF PROGRAM.—Not later than 180 days after the date of enactment of this Act, the Secretary shall establish a program to encourage new programs and existing programs within the States to foster employee ownership and employee participation in business decisionmaking throughout the United States.

(2) PURPOSE OF PROGRAM.—The purpose of the program established under paragraph (1) is to encourage new and existing programs within the States that focus on—

(A) providing education and outreach to inform employees and employers about the possibilities and benefits of employee ownership, business ownership succession planning, and employee participation in business decisionmaking, including providing information about financial education, employee teams, open-book management, and other tools that enable employees to share ideas and information about how their businesses can succeed;

(B) providing technical assistance to assist employee efforts to become business owners, to enable employers and employees to explore and assess the feasibility of transferring full or partial ownership to employees, and to encourage employees and employers to start new employee-owned businesses; and

(C) training employees and employers with respect to methods of employee participation in open-book management, work teams, committees, and other approaches for seeking greater employee input.

(3) PROGRAM DETAILS.—The Secretary may include, in the program established under paragraph (1), provisions that—

(A) in the case of activities described in paragraph (2)(A)—

(i) target key groups, such as retiring business owners, senior managers, unions, trade associations, community organizations, and economic development organizations;

(ii) encourage cooperation in the organization of workshops and conferences; and

(iii) prepare and distribute materials concerning employee ownership and participation, and business ownership succession planning;

(B) in the case of activities described in paragraph (2)(B)—

(i) provide preliminary technical assistance to employee groups, managers, and retiring owners exploring the possibility of employee ownership;

(ii) provide for the performance of preliminary feasibility assessments;

(iii) assist in the funding of objective third-party feasibility studies and preliminary business valuations, and in selecting and monitoring professionals qualified to conduct such studies; and

(iv) provide a data bank to help employees find legal, financial, and technical advice in connection with business ownership;

(C) in the case of activities described in paragraph (2)(C)—

(i) provide for courses on employee participation; and

(ii) provide for the development and fostering of networks of employee-owned companies to spread the use of successful participation techniques; and

(D) in the case of training described in paragraph (2)(D)—

(i) provide for visits to existing programs by staff from new programs receiving funding under this section; and

(ii) provide materials to be used for such training.

(4) GUIDANCE.—The Secretary shall issue formal guidance, for recipients of grants awarded under subsection (d) and one-stop partners (as defined in section 3 of the Workforce Innovation and Opportunity Act (29 U.S.C. 3102)) affiliated with the workforce development systems (as so defined) of the States, proposing that programs and other activities funded under this section be—

(A) proactive in encouraging actions and activities that promote employee ownership of, and participation in, businesses; and

(B) comprehensive in emphasizing both employee ownership of, and participation in, businesses so as to increase productivity and broaden capital ownership.

(d) GRANTS.—

(1) IN GENERAL.—In carrying out the program established under subsection (c), the Secretary may make grants to States (except as provided in paragraph (5)) for use in connection with new programs and existing programs within a State for—

(A) education and outreach as provided in subsection (c)(2)(A);

(B) technical assistance as provided in subsection (c)(2)(B);

(C) training activities for employees and employers as provided in subsection (c)(2)(C);

(D) activities facilitating cooperation among employee-owned firms; and

(E) training as provided in subsection (c)(2)(D) for new programs provided by participants in existing programs dedicated to the objectives of this section, except that, for each fiscal year, the amount of the grants made for such training shall not exceed 10 percent of the total amount of the grants made under this section.

(2) AMOUNTS AND CONDITIONS.—The Secretary shall determine the amount and any conditions for a grant made under this subsection. The amount of the grant shall be subject to paragraph (6), and shall reflect the capacity of the applicant for the grant.

(3) APPLICATIONS.—Each entity desiring a grant under this subsection shall submit an application to the Secretary at such time, in such manner, and accompanied by such information as the Secretary may reasonably require.

(4) STATE APPLICATIONS.—Each State may sponsor and submit an application under paragraph (3) on behalf of any local entity consisting of a unit of State or local government, State-supported institution of higher education, or nonprofit organization, meeting the requirements of this section.

(5) APPLICATIONS BY ENTITIES.—

(A) ENTITY APPLICATIONS.—If a State fails to support or establish a program pursuant to this section during any fiscal year, the Secretary shall, in the subsequent fiscal years, allow local entities described in paragraph (4) from that State to make applications for grants under paragraph (3) on their own initiative.

(B) APPLICATION SCREENING.—In any case in which a local entity makes an application for a grant pursuant to subparagraph (A), the relevant State may take no actions to screen such application.

(6) LIMITATIONS.—A recipient of a grant made under this subsection shall not receive, during a fiscal year, in the aggregate, more than the following amounts:

(A) For fiscal year 2023, $300,000.

(B) For fiscal year 2024, $330,000.

(C) For fiscal year 2025, $363,000.

(D) For fiscal year 2026, $399,300.

(E) For fiscal year 2027, $439,200.

(7) ANNUAL REPORT.—For each year, each recipient of a grant under this subsection shall submit to the Secretary a report describing how grant funds allocated pursuant to this subsection were expended during the 12-month period preceding the date of the submission of the report.

(e) EVALUATIONS.—The Secretary is authorized to reserve not more than 10 percent of the funds appropriated for a fiscal year to carry out this section for the purposes of conducting evaluations of the grant programs identified in subsection (d) and to provide related technical assistance.

(f) REPORTING.—Not later than 36 months after the date of enactment of this Act, the Secretary shall prepare and submit to Congress a report—

(1) on progress related to employee ownership and participation in businesses in the United States; and

(2) containing an analysis of critical costs and benefits of activities carried out under this section.

(g) AUTHORIZATIONS OF APPROPRIATIONS.—

(1) IN GENERAL.—There are authorized to be appropriated for the purpose of making grants pursuant to subsection (d) the following:

(A) For fiscal year 2023, $4,000,000.

(B) For fiscal year 2024, $7,000,000.

(C) For fiscal year 2025, $10,000,000.

(D) For fiscal year 2026, $13,000,000.

(E) For fiscal year 2027, $16,000,000.

(2) ADMINISTRATIVE EXPENSES.—There are authorized to be appropriated for the purpose of funding the administrative expenses related to the Initiative, for each of fiscal years 2022 through 2026, an amount not in excess of the lesser of—

(A) $350,000; or

(B) 5.0 percent of the maximum amount available under paragraph (1) for that fiscal year.

SEC. 7. REFUND TO RAINY DAY SAVINGS PROGRAM.

(a) ESTABLISHMENT.—

(1) IN GENERAL.—Not later than December 31, 2024, the Secretary of the Treasury or the Secretary's delegate (referred to in this subsection as the "Secretary") shall establish and implement a program (referred to in this subsection as the "Refund to Rainy Day Savings Program") to allow participating taxpayers, pursuant to the requirements established under this section, to defer payment on 20 percent of the amount which would otherwise be refunded to such taxpayer as an overpayment (as described in section 6401 of the Internal Revenue Code of 1986).

(2) PERIOD OF DEFERRAL.—Except as provided under paragraph (3)(E), a participating taxpayer may elect to defer payment of the amount described in paragraph (1) and have such amount deposited in the Rainy Day Fund (as described in paragraph (3)).

(3) RAINY DAY FUND.—

(A) IN GENERAL.—The Secretary shall establish in the Treasury a fund, in such manner as the Secretary determines to be appropriate, to be known as the "Rainy Day Fund", consisting of any amounts described in paragraph (1) on which payment has been deferred by participating taxpayers.

(B) INVESTMENT.—Any amounts deposited in the Rainy Day Fund shall be invested by the Secretary, in United States Treasury securities issued under chapter 31 of title 31, United States Code, that are suitable for the needs of the Rainy Day Fund.

(C) DISBURSEMENTS FROM FUND.—

(i) IN GENERAL.—On the date that is 180 days after the date of deposit in the Rainy Day Fund of an amount deferred by such taxpayer under paragraph (1), the amounts in the Rainy Day Fund shall be made available to the Secretary to distribute to such taxpayer in an amount equal to such amount plus any interest accrued on such amount (as determined under subparagraph (D)).

(ii) DISTRIBUTED TO TAXPAYERS.—The amounts described in clause (i) shall be distributed to the account identified by the participating taxpayer under paragraph (4)(B).

(D) INTEREST ACCRUED.—The amount of interest accrued on the amount deferred by a participating taxpayer under subsection (a) shall be determined by the Secretary based upon the return on the investment of such amounts under subparagraph (B).

(E) EARLY WITHDRAWAL.—

(i) IN GENERAL.—As soon as possible after receipt by the Secretary of the individual income tax return of the participating taxpayer and October 15 of the applicable year, such taxpayer may elect to terminate the deferral of the amount described under paragraph (1) and receive a distribution from the Rainy Day Fund equal to such amount and any interest which has accrued on such amount up to that date.

(ii) COMPLETE WITHDRAWAL.—A participating taxpayer making an election under clause (i) must terminate deferral of the full amount described under paragraph (1), and such amount shall be distributed to the bank account identified by the participating taxpayer under paragraph (4)(B).

(4) PARTICIPATING TAXPAYER.—For purposes of this section, the term "participating taxpayer" means a taxpayer who—

(A) prior to the due date for filing the return of tax for such taxable year, elects to participate in the Refund to Rainy Day Savings Program, in accordance with regulations to be issued by the Secretary; and

(B) provides the Secretary with an account and routing number or any other financial information deemed necessary by the Secretary for purposes of subparagraphs (C)(ii) and (E)(ii) of paragraph (3).

(5) FORMS.—The Secretary shall ensure that the election to defer payment of the amount described in paragraph (1) may be claimed on appropriate tax forms.

(6) IMPLEMENTATION.—

(A) EDUCATIONAL MATERIALS AND OUTREACH.—The Secretary shall—

(i) design educational materials for taxpayers regarding financial savings and the Refund to Rainy Day Savings Program,

(ii) publicly disseminate and distribute such materials during the first calendar quarter of each calendar year and following disbursement of amounts described in paragraph (3)(C), and

(iii) engage in outreach regarding the Refund to Rainy Day Savings Program to the Volunteer Income Tax Assistance program and paid tax preparers.

(B) INFORMATION FOR PARTICIPATING TAXPAYERS.—The Secretary shall ensure that a participating taxpayer is able to electronically verify the status of the amount deferred by such taxpayer under paragraph (1), including any interest accrued on such amount and the status of any distribution.

(C) FEDERALLY FUNDED BENEFITS.—Any amounts described in paragraph (1) that are distributed to a participating taxpayer, including any interest accrued on such amount, shall be treated in the same manner as any refund made to such taxpayer under section 32 of the Internal Revenue Code of 1986 for purposes of determining the eligibility of such taxpayer for benefits or assistance, or the amount or extent of benefits or assistance, under any Federal program or under any State or local program financed in whole or in part with Federal funds.

(b) ASSETS FOR INDEPENDENCE INNOVATION DEMONSTRATION PROJECTS.—

(1) REAUTHORIZATION.—The Assets for Independence Act (42 U.S.C. 604 note) is amended—

(A) in section 416, by inserting ", and, subject to section 417, $25,000,000 for each of fiscal years 2024, 2025, 2026, 2027, and 2028, to remain available until expended"at the end before the period; and

(B) by adding at the end the following new section:

"SEC. 417. RESERVATION OF FUNDS.

"(a) IN GENERAL.—Subject to subsections (b) and (c), from the funds appropriated for each of fiscal years 2024, 2025, 2026, 2027, and 2028 under section 416, the Secretary shall reserve—

"(1) $3,000,000 for general research and evaluation; and

"(2) any amounts remaining after application of paragraph (1) to fund Assets for Independence innovation projects under section 418.

"(b) PILOT PROGRAM FUNDING.—From the amounts reserved under subsection (a) for each of fiscal years 2024, 2025, and 2026, the Secretary shall make available for operating the pilot program established under section 7(c) of the Protecting America's Retirement Security Act of 2022—

"(1) 50 percent of the amount reserved for the relevant fiscal year under paragraph (1) of subsection (a) (after any adjustment under subsection (c)); and

"(2) 25 percent of the amount reserved for the relevant fiscal year under paragraph (2) of subsection (a) (after any adjustment under subsection (c)).

"(c) PROPORTIONAL ADJUSTMENT.—In any of fiscal years 2024, 2025, 2026, 2027, and 2028, if the amount appropriated for such fiscal year is greater or less than the amount authorized for such fiscal year under section 416, the amounts reserved under subsection (a) shall be increased or decreased for such fiscal year so that each such amount bears the same proportion to the amount appropriated as each of the amounts reserved under such subsection bears to the amount authorized.".

(2) ESTABLISHMENT OF INNOVATION PROGRAM.—The Assets for Independence Act (42 U.S.C. 604 note), as amended by paragraph (1), is further amended by adding at the end the following new section:

"SEC. 418. ASSETS FOR INDEPENDENCE INNOVATION PROJECTS.

"(a) IN GENERAL.—The Secretary is authorized to make grants to qualified entities to conduct Assets for Independence innovation projects under this section.

"(b) DEFINITIONS.—For purposes of this section:

"(1) ASSETS FOR INDEPENDENCE INNOVATION PROJECT.—The term 'Assets for Independence innovation project' means a demonstration project carried out by a qualified entity under this section.

"(2) INNOVATION DEVELOPMENT ACCOUNT.—The term 'innovation development account' means an account that is established in a federally insured financial institution or a State insured financial institution and meets such other requirements as are established by the Secretary.

"(c) APPLICATION.—

"(1) CRITERIA AND PREFERENCES.—

"(A) IN GENERAL.—Subject to subparagraph (B), in considering an application to conduct an Assets for Independence innovation project, the Secretary shall apply subsections (c) and (d) of section 405 to the application in the same manner that such subsections apply to an application to conduct a demonstration project under section 405.

"(B) MODIFICATION.—For purposes of this paragraph, paragraph (1) of section 405(c) shall be applied without regard to the phrase 'through activities requiring one or more qualified expenses'.

"(2) APPROVAL OF ASSETS FOR INDEPENDENCE INNOVATION PROJECTS.—Not later than 12 months after the date of the enactment of this section, the Secretary shall, on a competitive basis, approve such applications to conduct Assets for Independence innovation projects as the Secretary considers to be appropriate, taking into account the considerations required by paragraph (1). The Secretary shall ensure, to the maximum extent practicable, that the applications that are approved involve a range of communities (spread out both geographically and in rural and urban areas) and diverse populations.

"(d) PROJECT DURATION AND GRANT AMOUNT.—

"(1) DURATION.—The Secretary shall award grants under this section for a period not to exceed 5 project years.

"(2) GRANT AMOUNT.—For each project year of an Assets for Independence innovation project approved under this section, the Secretary may make a grant to the qualified entity authorized to conduct the project. In making such a grant, the Secretary shall make the grant on the first day of the project year in an amount not to exceed the lesser of—

"(A) the aggregate amount of funds committed as matching contributions from non-Federal public or private sector sources; or

"(B) $1,000,000.

"(e) ELIGIBILITY AND SELECTION OF INDIVIDUALS TO PARTICIPATE IN AN ASSETS FOR INDEPENDENCE INNOVATION PROJECT.—

"(1) ELIGIBILITY CRITERIA.—Subject to the approval of the Secretary, each qualified entity conducting an Assets for Independence innovation project shall establish eligibility requirements for participants in the project. Such requirements shall—

"(A) be more expansive than the requirements established under section 408; and

"(B) ensure that eligibility is limited to low-income individuals.

"(2) SELECTION OF INDIVIDUALS TO PARTICIPATE.—Each qualified entity conducting an Assets for Independence innovation project shall select, from among the individuals that meet the eligibility requirements established by the entity under paragraph (1), the individuals—

"(A) that the qualified entity determines to be most appropriate to participate; and

"(B) to whom the qualified entity will make disbursements or deposits in accordance with subsection (f).

"(f) DISBURSEMENTS BY QUALIFIED ENTITIES.—

"(1) IN GENERAL.—Each qualified entity conducting an Assets for Independence innovation project shall, in a manner consistent with the program requirements established by such entity, disburse to a third-party or deposit into the innovation development account of each individual participating in the project from the funds described in subsection (d)(2), a matching contribution of not less than $0.50 and not more than $8 for every $1 deposited in the account by a project participant, except that the rate of matching shall be equal for all individuals participating in the project conducted by such qualified entity.

"(2) LIMITATION ON DISBURSEMENTS FOR AN INDIVIDUAL.—Not more than $5,000 from a grant made under subsection (d)(1) shall be provided to any one individual over the course of the Assets for Independence innovation project.

"(3) LIMITATION ON DISBURSEMENTS FOR A HOUSEHOLD.—Not more than $10,000 from a grant made under subsection (d)(1) shall be provided to any one household over the course of the Assets for Independence innovation project.

"(4) ADJUSTMENT FOR INFLATION.—

"(A) IN GENERAL.—For each calendar year after 2023, the dollar amounts in paragraphs (2) and (3) shall be increased by an amount equal to the product of—

"(i) such dollar amount, and

"(ii) the cost-of-living adjustment determined under section 1(f)(3) of the Internal Revenue Code of 1986 for the calendar year, determined by substituting '2022' for '2016' in subparagraph (A)(ii) thereof.

"(B) ROUNDING.—If any increase determined under subparagraph (A) is not a multiple of $50, such increase shall be rounded up to the next lowest multiple of $50.".

(3) CONFORMING AMENDMENTS.—The Assets for Independence Act (42 U.S.C. 604 note), as amended by paragraphs (1) and (2), is further amended—

(A) in section 404(2), by inserting "or section 418" before the period;

(B) in section 406—

(i) in subsection (a), by striking "to conduct a demonstration project under this title" and inserting "under section 405"; and

(ii) in subsection (b), by striking "conducted under this title" and inserting "approved under section 405";

(C) in section 407—

(i) in subsection (c)—

(I) in paragraph (1)—

(aa) in subparagraph (A), by inserting "or, in the case of a participant in a project conducted under section 418, other permitted expenses" after "qualified expenses"; and

(bb) in subparagraph (B), by inserting "or subsection (f) of section 418" after "section 410"; and

(II) in paragraph (3), by inserting "or section 418(d)(1)"after "section 406(b)"; and

(ii) in subsection (d)(2)(A), by inserting "or section 418(d)(1)" after "section 406(b)";

(D) in section 408, by striking "conducted under this title" each place it appears and inserting "approved under section 405";

(E) in section 409, by striking "conducted under this title" and inserting "approved under section 405";

(F) in section 410, by striking "under this title" and inserting "conducting a demonstration project approved under section 405";

(G) in section 413(a), by inserting "or section 418(c)" after "under section 405"; and

(H) in section 415, by inserting "or innovation development account" after "individual development account".

(c) MATCHED REFUND TO RAINY DAY SAVINGS PILOT PROGRAM.—

(1) IN GENERAL.—Not later than 6 months after the date of the enactment of this Act and using the funds made available pursuant to section 417(b) of the Assets for Independence Act, the Secretary of Health and Human Services, acting through the Director of Community Services (in this section referred to as "the Secretary"), shall establish under this subsection a matched savings account pilot program to encourage saving by eligible individuals. Under the pilot program, a qualified entity may apply to the Secretary for a grant to conduct a pilot project described in paragraph (2) (in this section referred to as a "pilot project"). The pilot program shall operate for a period of 3 years.

(2) PILOT PROJECT DESCRIBED.—

(A) IN GENERAL.—A pilot project is a project in which a qualified entity establishes a matched savings program that meets the requirements of subparagraph (B) for eligible individuals who are selected by the entity to participate in the program.

(B) REQUIREMENTS.—

(i) DEPOSITS INTO DIRECT DEPOSIT ACCOUNTS.—

(I) IN GENERAL.—A matched savings program established as part of a pilot project shall match amounts saved by each eligible individual participating in the pilot project—

(aa) with the amount matched to be equal to or less than the amount of any payment deferred by such individual under the Refund to Rainy Day Savings Program established in subsection (a)(1); and

(bb) with the rate of matching to be equal for all eligible individuals participating in the program.

(II) TIMING.—Any amount described in subclause (I) shall not be distributed to an eligible individual until the amounts described in subparagraphs (C)(ii) or (E)(ii) of subsection (a)(1) have been distributed to the bank account identified by such individual.

(ii) EVALUATION OF PROGRAM BY INDEPENDENT RESEARCH ORGANIZATION.—

(I) IN GENERAL.—From amounts made available under section 417(b)(2) of the Assets for Independence Act, as added by subsection (b)(1)(B), the Secretary shall enter into a contract with an independent research organization for purposes of evaluating pilot projects conducted under this section.

(II) COORDINATION.—Each qualified entity that establishes a matched savings program as part of a pilot project shall collaborate with the independent research organization described in subclause (I) to evaluate the outcomes and impact of the project.

(III) IMPACT.—The evaluation described in subclause (I) shall include an examination of the demographic characteristics of the individuals participating in the pilot project, such as gender, race, age, geographic location, and family makeup, and how the impacts of the project vary among different demographic groups and the effects of the pilot program on retirement savings for eligible individuals.

(IV) PROGRAM FEATURES.—The program features to be evaluated through the pilot projects conducted under this section may include—

(aa) different levels of matching contributions by qualified entities;

(bb) lock-out periods during which an eligible individual may not make withdrawals from their account; and

(cc) educational materials intended to promote savings.

(V) SAFEGUARDING PRIVACY.—Any contract entered into under this clause shall require the selected independent research organization to take all necessary and proper precautions to protect eligible individuals' privacy and personally identifiable information when conducting the evaluation.

(C) DURATION.—A pilot project shall be for a duration of not more than 3 years.

(D) FEDERALLY FUNDED BENEFITS.—Any amounts described in subparagraph (B)(i) which are distributed to an eligible individual shall be treated in the same manner as any refund made to such taxpayer under section 32 of the Internal Revenue Code of 1986 for purposes of determining the eligibility of such taxpayer for benefits or assistance, or the amount or extent of benefits or assistance, under any Federal program or under any State or local program financed in whole or in part with Federal funds.

(3) STRATEGIC COMMUNICATIONS PLAN.—The Secretary shall devise a strategic communications plan to ensure a successful pilot program.

(4) ANNUAL REPORT TO CONGRESS.—The Secretary shall submit an annual report to Congress on the progress and outcomes of the pilot program established under this section.

(5) DEFINITIONS.—In this subsection:

(A) ELIGIBLE INDIVIDUAL.—The term "eligible individual" means an individual who—

(i) has deferred payment of the amount described in subsection (a)(1) under the Refund to Rainy Day Savings Program established in such subsection, and

(ii) meets the eligibility requirements under section 408 of the Assets for Independence Act, except that subsection (a)(2) of such section shall not apply.

(B) QUALIFIED ENTITY.—

(i) IN GENERAL.—The term "qualified entity" means—

(I) one or more not-for-profit organizations described in section 501(c)(3) of the Internal Revenue Code of 1986 and exempt from taxation under section 501(a) of such Code;

(II) a State or local government agency, or a tribal government, submitting an application to conduct a pilot project jointly with an organization described in subclause (I);

(III) a site that offers free tax help to individuals who qualify through the Internal Revenue Service's Voluntary Income Tax Assistance or Tax Counseling for the Elderly programs; or

(IV) an entity that—

(aa) is—

(AA) a credit union designated as a low-income credit union by the National Credit Union Administration; or

(BB) an organization designated as a community development financial institution by the Secretary of the Treasury (or the Community Development Financial Institutions Fund); and

(bb) can demonstrate a collaborative relationship with a local community-based organization whose activities are designed to address poverty in the community and the needs of community members for economic independence and stability.

(V) RULE OF CONSTRUCTION.—Nothing in this paragraph shall be construed as preventing an organization described in clause (i)(I) from collaborating with a financial institution or for-profit community development corporation to carry out the purposes of this section.

PURPOSE AND SUMMARY

The purpose of H.R. 7310, the *Protecting America's Retirement Security Act (PARSA) of 2022*, is to strengthen America's retirement system and help workers and families plan and save for a secure retirement. It does so by requiring the Department of Labor (DOL) to review its fee disclosure rules to help workers better understand the fees they're paying on their retirement plan investments; directing the Department of Education to create a portal on its website to improve financial literacy; increasing spousal protections in 401(k) plans; providing workers additional opportunities to enroll in their workplace retirement plans; creating a grant program at DOL to support employee ownership initiatives; and, help-ing Americans build modest emergency savings for unexpected expenses.

The PARSA of 2022 has been endorsed by the Aspen Institute Financial Security Program, Change Machine, the ESOP Association, Golden State Opportunity, Local Initiatives Support Corporation (LISC), National Association for Latino Community Asset Builders (NALCAB), National Urban League (NUL), National Women's Law Center (NWLC), National Alliance of Community Economic Development Associations (NACEDA), Neighborhood Partnerships, NETWORK Lobby for Catholic Social Justice, Prosperity Now, and SaverLife.

Committee Action

115TH CONGRESS

On October 2, 2018, Rep. Jan Schakowsky (D–IL–9) introduced H.R. 7026, the *Women's Pension Protection Act of 2018*. H.R. 7026 was referred to the Committees on Education and the Workforce and Financial Services. No further action was taken.

116TH CONGRESS

On April 1, 2019, Rep. Lauren Underwood (D–IL–14) introduced H.R. 2005, the *Women's Retirement Protection Act of 2019*. H.R. 2005 was referred to the Committees on Education and Labor and Financial Services. No further action was taken.

117TH CONGRESS

On July 22, 2021, Rep. Lauren Underwood (D–IL–14) introduced H.R. 4678, the *Women's Retirement Protection Act*. H.R. 4678 was referred to the Committees on Education and Labor, Ways and Means, and Financial Services.

On August 6, 2021, Rep. Bonnie Watson Coleman (D–NJ–12) introduced H.R. 4986, the *Refund to Rainy Day Savings Act*. H.R. 4986 was referred to the Committee on Ways and Means.

On October 28, 2021, Rep. Teresa Leger Fernandez (D–NM–3) introduced H.R. 5779, the *Financial Fitness Act*. H.R. 5779 was referred to the Committee on Education and Labor.

On November 18, 2021, Rep. Joe Courtney (D–CT–2) introduced H.R. 6024, the *Work Act*. H.R. 6024 was referred to the Committee on Education and Labor.

On February 18, 2022, Rep. Kathy Manning (D–NC–6) introduced H.R. 6782, the *Auto Reenroll Act of 2022*. H.R. 6782 was referred to the Committees on Ways and Means and Education and Labor.

On March 1, 2022, the Committee on Education and Labor's (Committee) Subcommittee on Health, Employment, Labor, and Pensions (HELP Subcommittee) held a hearing entitled "Improving Retirement Security and Access to Mental Health Benefits" (March 1st Hearing). The witnesses were: Ms. Amy Matsui, Director of Income Security and Senior Counsel, National Women's Law Center, Washington, DC; Ms. Karen Handorf, Senior Counsel, Berger Montague, Alexandria, VA; Mr. Andrew Biggs, Senior Fellow, American Enterprise Institute, Washington, DC; and Mr. Aron Szapiro, Head of Retirement Studies and Public Policy, Morningstar, Inc. and Morningstar Investment Management LLC, Chicago, IL. Relevant to developing H.R. 7310, witnesses testified about requiring spousal consent in defined contribution plans and improving DOL's fee disclosure rules.

On March 29, 2022, the Senate Committee on Health, Education, Labor, and Pensions (HELP) held a hearing entitled "Rise and Shine: Improving Retirement and Enhancing Savings" (March 29th Senate HELP Hearing). The witnesses were: Mr. Petros Koumantaros, Managing Director and CEO, Spectrum Pension Consultants; Co-Founder and Chairperson, GROUPIA; Financial Consultant, Seattle, WA; Ms. Ida Rademacher, Vice President, Aspen Institute, Executive Director of Aspen Institute's Financial Security Program, Washington, DC; Ms. Cindy Hounsell, Founder and President, Women's Institute for a Secure Retirement (WISER), Washington, DC; and, Mr. Doug Chittenden, Head of Client Relationships, Teacher Insurance and Annuity Association of America (TIAA), Charlotte, NC. Relevant to H.R. 7310, the Senate HELP Committee heard testimony about the concept of auto re-enrollment in 401(k) plans. On March 30, 2022, Rep. Susan Wild (D–PA–7) introduced H.R. 7284, the *Informed Savers Act*. H.R. 7284 was referred to the Committee on Education and Labor.

On March 31, 2022, Rep. Lucy McBath (D–GA–6) introduced H.R. 7310, the *Protecting America's Retirement Security Act (PARSA) of 2022*. H.R. 7310 incorporated all or portions of H.R. 4678, H.R. 4986, H.R. 5779, H.R. 6024, H.R. 6782, and H.R. 7284. H.R. 7310 was referred to the Committees on Education and Labor and Ways and Means.

On April 5, 2022, the Committee marked up H.R. 7310. An Amendment in the Nature of a Substitute (ANS) was offered by Rep. Lucy McBath (D–GA–6) that incorporated the provisions of H.R. 7310, as introduced, and added "of 2022" to the short title of the bill.

Three amendments to the ANS were offered:

- Rep. Diana Harshbarger (R–TN–1) offered an amendment to strike Section 4, which requires spousal consent in defined contribution plans, and replace it with text to direct the Government Accountability Office (GAO) to study the effects of requiring spousal consent to a defined contribution plan. The amendment was defeated by a vote of 21 Yeas and 29 Nays.
- Rep. Tim Walberg (R–MI–7) offered an amendment to make several changes to Section 6, which establishes a grant program at DOL to support employee ownership. The amendment also directed DOL's ERISA Advisory Council to complete a review of the employee stock ownership plan stock plan appraisal enforcement program. The amendment was defeated by a vote of 21 Yeas and 29 Nays.
- Rep. Scott Fitzgerald (R–WI–5) offered an amendment to strike Section 5, which enables automatic reenrollment of applicable employees in workplace retirement plans at least every three years. The amendment was defeated by a vote of 21 Yeas and 29 Nays.

The ANS was adopted by voice vote. The Committee ordered H.R. 7910 to be reported favorably, as amended, to the House of Representatives by a vote of 29 Yeas and 21 Nays.

COMMITTEE VIEWS

The Committee has jurisdiction over the employer-sponsored retirement system and a history of advancing consequential legislation in this area. Additionally, in recent years, Congress has taken steps to improve workers' access to retirement savings plans and protect their pensions.

ACTIONS TO PROTECT AND STRENGTHEN AMERICANS' RETIREMENT SECURITY

In 2019, Congress passed the *Setting Every Community Up for Retirement Enhancement Act* (SECURE Act)[1], which provided tax credits to help small businesses provide 401(k)s to employees and removed barriers preventing unrelated businesses from forming multiple employer plans (MEPs).[2] According to AARP, the SECURE Act would "help close the gap" in the number of workers who are not offered retirement plans by their employers.[3]

In 2021, Congress passed the *American Rescue Plan Act (ARPA)*,[4] which, among other things, provided much-needed relief for failing multiemployer plans and fully protected participants' hard-earned benefits without cuts. The ARPA's multiemployer rescue solution was broadly supported by labor unions, retirees, retiree organizations, participating employers, and employer associations. Had Congress and the Biden Administration not acted, multiemployer plans would have faced insolvency and been unable to pay retirees' benefits. The Pension Benefit Guaranty Corporation's (PBGC) multiemployer pension insurance program, which, as of December 2020 only had $3.1 billion in assets to meet $66.9 billion in liabilities, would not have been able to backstop failed plans.[5] If plans failed, and if the PBGC's multiemployer insurance program became insolvent—which was on track to happen—retirees would have seen their pensions reduced to nearly zero. There also would have been catastrophic consequences for active workers. A conservative economist conducted a macroeconomic analysis of what would happen if Central States, the largest plan at risk, failed in 2025 as projected. The analysis found that there would be a loss of more than 55,000 jobs across the United States in one year.[6] Michigan and Missouri "would be hardest hit, each facing job losses of more than 4,000. Thirteen other states—California, Florida, Georgia, Illinois, Indiana, Iowa, Kentucky, Minnesota, North Carolina, Tennessee, Texas, Virginia, and Wisconsin—would each lose more than 1,000 jobs."[7] The impact of Central States' potential insolvency would have likely stretched beyond one year; the analysis acknowledged that the case study "could represent a lower-bound of the aggregate macroeconomic impact of the pending insol-

[1] Setting Every Community Up for Retirement Enhancement Act of 2019, Pub. L. No. 116–94, div. O, 133 Stat. 3137.
[2] 29 U.S.C. § 1002(43)(B).
[3] Kenneth Terrell, *House Passes Bill to Expand Access to Retirement Savings Options*, AARP (May 24, 2019), https://www.aarp.org/politics-society/advocacy/info-2019/house-passes-secure-act.html.
[4] 29 U.S.C. § 1432.
[5] Pension Benefit Guar. Corp., *Annual Performance & Financial Report 2020* (Dec. 2020), https://www.pbgc.gov/sites/default/files/pbgc-annual-report-2020.pdf.
[6] Alex Brill, *The Crisis Facing Multiemployer Pension Plans With a Macroeconomic Analysis of the Collapse of the Central States Pension Fund*, MGA, 1 (Aug. 2018), https://getmga.com/wp-content/uploads/2022/04/The-Crisis-Facing-Multiemployer-Pension-Plans-August-2018.pdf.
[7] *Id.* at 1.

vency of Central States."[8] In addition to the harm to retirees and workers, there would have been significant costs to the federal government. Specifically, if Congress and the Biden Administration took no action, total costs to taxpayers in terms of lost tax revenue and increased social safety net spending could have been between $170 billion and $240 billion over the ten-year budget window.[9] At the time of ARPA's passage, the Congressional Budget Office (CBO) estimated the cost of the multiemployer rescue program at $86 billion.[10]

On November 5, 2021, Education and Labor Committee Chairman Robert C. "Bobby" Scott (D–VA–3) and Ranking Member Virginia Foxx (R–NC–5), along with HELP Subcommittee Chairman Mark DeSaulnier (D–CA–11) and Ranking Member Rick Allen (R–GA–12), introduced H.R. 5891, the *Retirement Improvement and Savings Enhancement (RISE) Act of 2021*. The RISE Act of 2021 improves America's retirement system so it better serves workers, employers, and retirees. It does so by establishing an online, searchable database at DOL to help workers locate their retirement savings plans as they move from job to job; allowing 403(b) retirement plans to participate in MEPs and pooled employer plans; allowing more part-time workers to join retirement savings plans; clarifying rules regarding the recovery of inadvertent overpayments to retirees to minimize hardships; enabling employers to provide small financial incentives to their employees to incentivize their participation in workplace retirement plans; and simplifying and streamlining reporting and disclosure requirements related to retirement plans. On November 10, 2021, the Committee marked up the RISE Act of 2021 and ordered it to be reported favorably, as amended, to the House of Representatives by voice vote.

On March 29, 2022, the U.S. House of Representatives passed H.R. 2954, *Securing a Strong Retirement Act of 2021* (SECURE 2.0 Act), by a vote of 414 Yeas and five Nays. In addition to including the RISE Act of 2021, the SECURE 2.0 Act increases workers' access to retirement plans through mandating automatic enrollment in certain 401(k) plans. Automatic enrollment is a practice by which employers by default enroll employees into their workplace retirement plan unless they take the initiative to opt out of it. The bill's automatic enrollment requirements, which fall within the Committee on Ways and Means' jurisdiction, do not apply to existing 401(k) plans, small businesses with ten or fewer employees, new businesses (ones that have been in business for less than 3 years), church plans, and government plans. The SECURE 2.0 Act also includes provisions that create new tax incentives for small businesses to offer retirement plans; allows Americans to save for retirement longer by increasing the required minimum distribution age from 72 to 75; and gives individuals the option of paying down a student loan instead of contributing to a 401(k) plan while still

[8] *Id.* at 7.

[9] *The Cost of Inaction: Why Congress Must Address the Multiemployer Pension Crisis Before the H. Subcomm. on Health, Emp., Lab., & Pensions of the H. Comm. on Educ. & Lab.*, 116th Cong. 12 (2019) (written testimony of Mariah Becker, Director of Research and Education for the National Coordinating Committee for Multiemployer Plans), https://edlabor.house.gov/imo/media/doc/BeckerTestimony030719.pdf.

[10] Cong. Budget Off., Cost Estimate of Ways and Means Reconciliation Recommendations (Feb. 17, 2021), https://www.cbo.gov/system/files/2021-02/hwaysandmeansreconciliation.pdf.

promoting increased retirement savings through an employer match in their new retirement plan.

The PARSA of 2022 represents a continuation of the Committee's and Congress' efforts to protect workers' retirement savings and help them plan and save for a secure retirement.

STRENGTHENING FEE DISCLOSURE RULES

DOL requires 401(k) plans to provide participants with a disclosure of the fees they pay on their investments. In August 2018, the then-Ranking Member of the Committee, Rep. Robert C. "Bobby" Scott (D–VA–3), and then-Ranking Member of the Senate Health, Education, Labor, and Pensions (HELP) Committee, Senator Murray (D–WA), asked GAO to review DOL's fee disclosure rules to "assess whether they are working as intended or whether revisions are warranted to improve the rules' effectiveness." [11] In August 2020, GAO issued its report and revealed that almost forty percent of 401(k) plan participants do not fully understand the fees they are paying on their retirement accounts, with many unaware they are even paying fees.[12] GAO also found that consumers have difficulty understanding the information that DOL requires 401(k) plans to provide about their fees.[13] Mr. Aron Szapiro, who testified at the March 1st Hearing, echoed GAO's finding and said that "participants do not always understand the fees they pay." [14] GAO recommended that DOL's fee disclosure rules be improved to ensure participants are fully informed about how fees impact their retirement savings.

The PARSA of 2022 requires DOL to review the current fee disclosure regulations and explore how such regulations can be improved to enhance participants' understanding of fees and expenses as well as the cumulative effect of fees and expenses on retirement savings over time.

IMPROVING FINANCIAL LITERACY

Financial literacy—the ability to use knowledge and skills to manage financial resources and make prudent decisions—has become increasingly important, particularly when it comes to saving for retirement. According to the Insured Retirement Institute (IRI), an industry trade association that has done research and conducted surveys on Americans' retirement readiness, the "federal government has mandated financial counseling for federal student loan borrowers to improve their financial literacy when entering and exiting college." [15] However, IRI notes "these counseling sessions do not provide any information about the many workplace retirement

[11] Letter from Rep. Bobby Scott, Ranking Member, Comm. on Educ. & Workforce, and Sen. Patty Murray, Ranking Member, Comm. on Health, Educ., Lab., & Pensions to the U.S. Gov't Accountability Off. (Aug. 21, 2018), https://edlabor.house.gov/download/bicameral-letter-to-gao-on-401k-fee-disclosure.

[12] U.S. Gov't Accountability Off., GAO–21–357, *401(K) RETIREMENT PLANS Many Participants Do Not Understand Fee Information, but DOL Could Take Additional Steps to Help Them*, 54 (July 2021), https://www.gao.gov/assets/gao-210357.pdf.

[13] *Id.*

[14] *Improving Retirement Security and Access to Mental Health Benefits Before the Subcomm. on Health Emp., Lab., & Pensions of the H. Comm. on Educ. & Lab.*, 117th Cong., 4 (Mar. 1, 2022) (written testimony of Aron Szapiro, Head of Retirement Studies and Public Policy for Morningstar, Inc. and Morningstar Investment Management LLC), https://edlabor.house.gov/imo/media/doc/SzapiroAronTestimony%20030122.pdf.

[15] INSURED RETIREMENT INSTITUTE, *2022 Federal Retirement Security Blueprint*, 9 (2022), https://www.irionline.org/wp-content/uploads/2022/03/IRI_FederalBlueprint_2022.pdf.

savings choices presented when they graduate college and enter the workforce."[16] This "lack of education about workplace retirement savings options is also an issue for those individuals who have completed a federally funded job training or apprentice program as they enter the market searching for employment."[17] According to IRI:

> Making information about retirement savings available to all the recipients of these federal financial assistance and training programs will help them better understand the different types of retirement savings accounts and risk options and help them make well-informed decisions to develop their own sustainable retirement savings strategies during their working years.[18]

To improve financial literacy, the PARSA of 2022 requires the Secretary of Education to create a financial resources portal on a centralized Department of Education website. The portal shall include information describing core financial literacy concepts, such as earning, saving, investing, spending, and borrowing. The portal also shall educate people about the concept of compound interest as it applies to savings and retirement savings, among other relevant issues.

INCREASING SPOUSAL PROTECTIONS

The *Retirement Equity Act of 1984* (REA)[19] amended the *Employee Retirement Income Security Act of 1974* (ERISA)[20] to introduce mandatory spousal rights in traditional defined benefit (DB) pension plans. Specifically, the plan participant is required to obtain spousal consent when requesting a distribution in a form other than a joint and survivor annuity.

Since then, the retirement landscape has shifted. Now, when a private sector employer offers a retirement plan, it is likely a defined contribution (DC) plan, such as a 401(k). In fact, in 1975, there were a total of 103,346 DB plans in the United States compared with 207,748 DC plans that were offered by many private sector employers as a "supplemental way for employees to save for retirement in addition to their primary DB plan."[21] In contrast, according to DOL, as of 2019, the most recent year data is available, the number of total DB plans in the United States had decreased to 46,870, while the number of DC plans had increased to 686,809.[22] This shift to DC plans has transferred the risks and responsibilities of planning and managing retirement savings from the employer to the worker. For many Americans, their 401(k) plan is often their largest asset aside from their home, but 401(k) plans do not provide the same spousal rights and protections as those provided by traditional DB plans. As a result, one spouse could take a distribution or a loan from the 401(k) plan without the other

[16] *Id.*
[17] *Id.*
[18] *Id.*
[19] 29 U.S.C. § 1055
[20] 29 U.S.C. § 1001 et seq.
[21] Dep't of Lab., Emp. Benefits Sec. Admin., *Private Pension Plan Bulletin Historical Tables and Graphs 1975–2019* (Sept. 2021), https://www.dol.gov/sites/dolgov/files/ebsa/researchers/statistics/retirement-bulletins/private-pension-plan-bulletin-historical-tables-and-graphs.pdf.
[22] *Id.*

spouse's knowledge or consent, which could lead to negative financial consequences for the unknowing spouse and the family.

The lack of spousal rights in DC plans is particularly problematic for women's retirement security. According to Ms. Amy Matsui, Director of Income Security and Senior Counsel at the National Women's Law Center, who testified at the March 1st Hearing, "[w]omen face a higher risk of economic insecurity throughout their lives, especially in their later years."[23] Ms. Matsui noted that women who work year-round are typically paid only eighty-three cents on the dollar compared to their male counterparts, and women are "overrepresented among part-time workers and poorly paid workers."[24] These "income gaps and work-related disparities translate into lower lifetime earnings for women."[25] These gaps and disparities have a direct effect on women's retirement security, as "the primary sources of retirement income—Social Security, employer-sponsored pensions, and tax-favored retirement savings accounts—are based on employment and earnings."[26] Ms. Matsui further testified that "married women tend to rely more heavily on their spouses" income and savings than married men do," and spousal protections "are, understandably, more important when the spouse has fewer assets and retirement benefits on their own. As a result, while spousal protections are gender-neutral, they have tended to benefit women."[27]

During the Committee markup of H.R. 7310, Committee Republicans claimed the issue of requiring spousal consent in DC plans warranted further study prior to Congress acting. Rep. Diana Harshbarger (R–TN–1) offered an amendment to strike Section 4, which requires spousal consent in DC plans, and replace it with a requirement that GAO study the effects of requiring spousal consent to DC plans. Committee Democrats opposed this amendment. In 2014, GAO observed that, "[i]n a worst case scenario, the spouse who participates in the DC plan could withdraw all the assets and spend them in ways that do not provide for the couple's retirement security."[28] Addressing this point in her testimony at the March 1st Hearing, Ms. Matsui said, "[f]or example, the participant spouse could make risky investments, an extravagant purchase, or a gift that the other spouse did not consent to. He could lose the funds to a gambling habit or other addiction."[29] Ms. Matsui testified that "[i]n any of those cases, those retirement savings would be depleted and unavailable for retirement, to the spouse's detriment."[30] In voicing opposition to Rep. Harshbarger's amendment, Rep. Lucy McBath (D–GA–6) noted during the markup that an additional GAO report would "go a long way toward shining additional light on the problem and better informing the public about

[23] *Improving Retirement Security and Access to Mental Health Benefits Before the Subcomm. on Health, Emp., Lab.*, & Pensions of the H. Comm. on Educ. & Lab., 117th Cong. 1 (Mar. 1, 2022) [Herein Matsui Statement] (written testimony of Amy Matsui, Director of Income Security and Senior Counsel National Women's Law Center), https://edlabor.house.gov/imo/media/doc/MatsuiAmyTestimony030122.pdf.
[24] *Id.*
[25] *Id.*
[26] *Id.* at 2.
[27] *Id.* at 4.
[28] U.S. Gov't Accountability Off., *Trends in Marriage and Work Patterns May Increase Economic Vulnerability for Some Retirees*, 48 (Jan. 15, 2014), https://www.gao.gov/assets/gao-14-33.pdf.
[29] Matsui Statement, *supra* note 18 at 4.
[30] *Id.*

the scope of it,"[31] but "the problem itself has been well-established," and "Congress should not delay acting on it."[32]

To address this issue, the PARSA of 2022 extends spousal protections that are currently available for traditional DB plans to DC plans.

INCREASING WORKERS' OPPORTUNITIES TO PARTICIPATE IN WORKPLACE RETIREMENT SAVINGS PLANS

Over the years, 401(k) plan automatic features, such as automatic enrollment and auto escalation, have been voluntarily adopted by some plan sponsors. These features are intended to increase participation rates.

At the March 29th Senate HELP Hearing, Ms. Ida Rademacher, testified that workers are eighteen times more likely to save for retirement if their employers have automatic enrollment.[33] Some employers are adding an automatic *re-enrollment* option to their 401(k) plan design. As its name implies, 401(k) automatic re-enrollment is a process by which employers periodically "re-enroll" their employees in the retirement plan; the frequency is up to the employer to determine. According to Ms. Rademacher's testimony, "allowing for automatic re-enrollment into retirement savings plans is a promising policy that would build on the success of automatic enrollment to ensure we can provide multiple opportunities for workers to jump start their retirement savings."[34]

The PARSA of 2022 enables plans to auto re-enroll eligible employees at least once every three years. Plans would be permitted to re-enroll all eligible employees as a group, making it easier for plan record keepers to administer rather than re-enrolling each employee on their anniversary of employment. Employees would receive notice of this auto re-enrollment and retain the ability to opt out if they do not wish to participate in their employer's retirement plan. However, auto re-enrollment is intended to provide additional chances to employees who previously opted out to participate and prompt them to reconsider whether participating in their workplace retirement plan is right for them.

SUPPORTING EMPLOYEE OWNERSHIP

Many business owners do not have a succession plan, and some businesses may be sold to overseas investors or competitors. Employee ownership is one way to stop the practice of selling businesses overseas or to competitors and provides workers with other additional benefits. For instance, according to the ESOP Association, "employee ownership provides an important foundation for local job retention and economic stability as the 2.9 million baby boomer business owners begin to retire from the workforce. These

[31] *Markup of H.R. 7309, Workforce Innovation and Opportunity Act of 2022, and H.R. 7310, Protecting America's Retirement Security Act Before H. Comm. on Educ. & Lab.*, 117th Cong. (Apr. 5, 2022) (statement of Rep. Lucy McBath).

[32] *Id.*

[33] *Rise and Shine: Improving Retirement and Enhancing Savings Before S. Comm on Health, Educ, Lab., & Pensions*, 117th Cong. 5 (Mar. 29, 2022) (written testimony of Ida Rademacher, Vice President, Aspen Institute & Executive Director Financial Security Program), https://www.help.senate.gov/imo/media/doc/Rademacher.pdf.

[34] *Id.*

businesses represent over 32 million jobs, and more than $6.5 trillion in revenue."[35]

The PARSA of 2022 creates an Employee Ownership and Participation Initiative within DOL that would be authorized to award grants for employee ownership programs nationwide. These grants would fund outreach about employee ownership and business succession, technical assistance to those seeking to start new employee-owned businesses, and other training to support employee ownership. A total of $50 million is authorized over a five-year period for these grants.

ENCOURAGING EMERGENCY SAVINGS

According to the Federal Reserve, forty percent of American families do not have enough emergency savings to pay for an unexpected expense that is greater than $400, such as a flat tire or a burst pipe.[36]

The PARSA of 2022 helps encourage Americans to build emergency savings. Tax filers receiving a direct deposit tax refund would be allowed to defer twenty percent of their refund so that the savings would accumulate interest in a Treasury-held account before being transferred to the tax filer's direct deposit account six months later. The PARSA of 2022 also includes a five-year reauthorization of the *Assets for Independence Act*,[37] which is a grant program sponsored by the Department of Health and Human Services (HHS) to help low-income families build assets through savings accounts.

SECTION-BY-SECTION ANALYSIS

Sec. 1. Short title; Table of contents

This section states that the title of the bill is *Protecting America's Retirement Security Act of 2022* and includes a table of contents.

Sec. 2. Defined contribution plan fee disclosure improvements

This section specifies that, within two years after the date of enactment, the Secretary of Labor (Secretary) shall review the existing fee disclosure regulations and explore how the content and design of the disclosures may be improved to enhance participants' understanding of fees as well as the cumulative effect of fees on retirement savings over time.

Sec. 3. Personal Finance Education Portal

This section specifies that, within three years after the date of enactment, the Secretary of Education shall create a personal financial education portal on a centralized website of the Department of Education. The section specifies the kind of information that the portal shall include. The section requires the Secretary of Education to review the utilization of the portal at least once every three years and make public recommendations to improve the por-

[35] Press Release, The ESOP Ass'n, Rep. Lucy McBath Introduces the *Protecting America's Retirement Security Act* (Apr. 1, 2022), https://esopassociation.org/sites/tea-master/files/2022–04/McBath%20Release%20April%202022.pdf.

[36] Bd. of Governors of the Fed. Rsrv. Sys., *Report on the Economic Well-Being of U.S. Households in 2020—May 2021*, https://www.federalreserve.gov/publications/2021-economic-well-being-of-us-households-in-2020-dealing-with-unexpected-expenses.htm (last updated May 19, 2021).

[37] 42 U.S.C. § 604 note

tal. The section authorizes such sums that may be necessary to carry out this section.

Sec. 4. Increasing spousal protection under defined contribution plans

This section amends ERISA to extend spousal consent requirements that currently apply to defined benefit (DB) pension plans to defined contribution (DC) pension plans.

Sec. 5. Automatic reenrollment

This section amends ERISA and the Internal Revenue Code (IRC) to enable plan sponsors to reenroll non-participants at least once every three years.

Sec. 6. Employee Ownership and Participation Initiative

This section requires the Secretary to establish an Employee Ownership and Participation Initiative at DOL. The section requires the Secretary to support existing state programs designed to promote employee ownership and make federal grants. Such grants would fund initiatives, including outreach about employee ownership and business succession, technical assistance to those seeking to start new employee-owned businesses, and training to support employee participation. The section authorizes $50 million over a five-year period for these grants.

Sec. 7. Refund to Rainy Day Savings Program

This section requires the Internal Revenue Service (IRS) to establish and implement the Refund to Rainy Day Savings Program. This Program allows taxpayers to deposit 20 percent of their income tax refunds. This section also reauthorizes the Assets for Independence (AFI) Act for Fiscal Years 2023–2027. The IRS may make grants to qualified entities to conduct AFI innovation projects. The section authorizes $25 million for the AFI Act each year for five years. The section also directs the Department of Health and Human Services to establish a three-year matched savings account pilot program to encourage savings by participants in the savings program.

EXPLANATION OF AMENDMENTS

The amendments, including the Amendment in the Nature of a Substitute, are explained in the descriptive portions of this report.

APPLICATION OF LAW TO THE LEGISLATIVE BRANCH

Pursuant to section 102(b)(3) of the *Congressional Accountability Act of 1995*, Pub. L. No. 104–1, H.R. 7310 does not apply to terms and conditions of employment or to access to public services or accommodations within the legislative branch.

UNFUNDED MANDATE STATEMENT

Pursuant to Section 423 of the *Congressional Budget and Impoundment Control Act of 1974*, Pub. L. No. 93–344 (as amended by Section 101(a)(2) of the *Unfunded Mandates Reform Act of 1995*, Pub. L. No. 104–4), the Committee traditionally adopts as its own the cost estimate prepared by the Director of the Congressional

Budget Office (CBO) pursuant to section 402 of the *Congressional Budget and Impoundment Control Act of 1974*. The Committee reports that because this cost estimate was not timely submitted to the Committee before the filing of this report, the Committee is not in a position to make a cost estimate for H.R. 7310, as amended.

EARMARK STATEMENT

In accordance with clause 9 of rule XXI of the Rules of the House of Representatives, H.R. 7310 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as described in clauses 9(e), 9(f), and 9(g) of rule XXI.

ROLL CALL VOTES

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the Committee advises that the following roll call votes occurred during the Committee's consideration of H.R. 7310:

Date: 4/5/2022

COMMITTEE ON EDUCATION AND LABOR RECORD OF COMMITTEE VOTE

Roll Call: 1 Bill: H.R.7310 Amendment Number: 2

Disposition: Defeated by a roll call vote of 21-29

Sponsor/Amendment: Harshbarger / H7310_AMD_01

Name & State	Aye	No	Not Voting	Name & State	Aye	No	Not Voting
Mr. SCOTT (VA) (Chairman)		X		Mrs. FOXX (NC) (Ranking)	X		
Mr. GRIJALVA (AZ)		X		Mr. WILSON (SC)	X		
Mr. COURNTEY (CT)		X		Mr. THOMPSON (PA)	X		
Mr. SABLAN (MP)		X		Mr. WALBERG (MI)	X		
Ms. WILSON (FL)		X		Mr. GROTHMAN (WI)	X		
Ms. BONAMICI (OR)		X		Ms. STEFANIK (NY)	X		
Mr. TAKANO (CA)		X		Mr. ALLEN (GA)	X		
Ms. ADAMS (NC)		X		Mr. BANKS (IN)	X		
Mr. DESAULNIER (CA)		X		Mr. COMER (KY)	X		
Mr. NORCROSS (NJ)		X		Mr. FULCHER (ID)			X
Ms. JAYAPAL (WA)		X		Mr. KELLER (PA)	X		
Mr. MORELLE (NY)		X		Ms. MILLER-MEEKS (IA)	X		
Ms. WILD (PA)		X		Mr. OWENS (UT)	X		
Mrs. MCBATH (GA)		X		Mr. GOOD (VA)	X		
Mrs. HAYES (CT)		X		Mrs. MCCLAIN (MI)	X		
Mr. LEVIN (MI)		X		Mrs. HARSHBARGER (TN)	X		
Ms. OMAR (MN)		X		Mrs. MILLER (IL)	X		
Ms. STEVENS (MI)		X		Mrs. SPARTZ (IN)	X		
Ms. LEGER FERNÁNDEZ (NM)		X		Mr. FITZGERALD (WI)	X		
Mr. JONES (NY)		X		Mr. CAWTHORN (NC)			X
Ms. MANNING (NC)		X		Mrs. STEEL (CA)	X		
Mr. MRVAN (IN)		X		Ms. LETLOW (LA)	X		
Mr. BOWMAN (NY)		X		Mr. JACOBS (NY)	X		
Mrs. CHERFILUS-MCCORMICK (FL)		X		*Vacancy*			
Mr. POCAN (WI)		X					
Mr. CASTRO (TX)		X					
Ms. SHERRILL (NJ)		X					
Mr. ESPAILLAT (NY)		X					
Mr. KWEISI MFUME (MD)		X					

TOTALS: Ayes: 21 Nos: 29 Not Voting: 2

Total: 53 / Quorum: / Report:

(29 D - 24 R)

^Although not present for the recorded vote, Member expressed he/she would have voted AYE if present at time of vote.

*Although not present for the recorded vote, Member expressed he/she would have voted NO if present at time of vote.

Date: 4/5/2022

COMMITTEE ON EDUCATION AND LABOR RECORD OF COMMITTEE VOTE

Roll Call: 2 Bill: H.R.7310 Amendment Number: 3

Disposition: Defeated by a roll call vote of 21-29

Sponsor/Amendment: Walberg / H7310_AMD_04

Name & State	Aye	No	Not Voting	Name & State	Aye	No	Not Voting
Mr. SCOTT (VA) (Chairman)		X		Mrs. FOXX (NC) (Ranking)	X		
Mr. GRIJALVA (AZ)		X		Mr. WILSON (SC)	X		
Mr. COURNTEY (CT)		X		Mr. THOMPSON (PA)	X		
Mr. SABLAN (MP)		X		Mr. WALBERG (MI)	X		
Ms. WILSON (FL)		X		Mr. GROTHMAN (WI)	X		
Ms. BONAMICI (OR)		X		Ms. STEFANIK (NY)	X		
Mr. TAKANO (CA)		X		Mr. ALLEN (GA)	X		
Ms. ADAMS (NC)		X		Mr. BANKS (IN)	X		
Mr. DESAULNIER (CA)		X		Mr. COMER (KY)	X		
Mr. NORCROSS (NJ)		X		Mr. FULCHER (ID)			X
Ms. JAYAPAL (WA)		X		Mr. KELLER (PA)	X		
Mr. MORELLE (NY)		X		Ms. MILLER-MEEKS (IA)	X		
Ms. WILD (PA)		X		Mr. OWENS (UT)	X		
Mrs. MCBATH (GA)		X		Mr. GOOD (VA)	X		
Mrs. HAYES (CT)		X		Mrs. MCCLAIN (MI)	X		
Mr. LEVIN (MI)		X		Mrs. HARSHBARGER (TN)	X		
Ms. OMAR (MN)		X		Mrs. MILLER (IL)	X		
Ms. STEVENS (MI)		X		Mrs. SPARTZ (IN)	X		
Ms. LEGER FERNÁNDEZ (NM)		X		Mr. FITZGERALD (WI)	X		
Mr. JONES (NY)		X		Mr. CAWTHORN (NC)			X
Ms. MANNING (NC)		X		Mrs. STEEL (CA)	X		
Mr. MRVAN (IN)		X		Ms. LETLOW (LA)	X		
Mr. BOWMAN (NY)		X		Mr. JACOBS (NY)	X		
Mrs. CHERFILUS-MCCORMICK (FL)		X		*Vacancy*			
Mr. POCAN (WI)		X					
Mr. CASTRO (TX)		X					
Ms. SHERRILL (NJ)		X					
Mr. ESPAILLAT (NY)		X					
Mr. KWEISI MFUME (MD)		X					

TOTALS: Ayes: 21 Nos: 29 Not Voting: 2

Total: 53 / Quorum: / Report:

(29 D - 24 R)

^Although not present for the recorded vote, Member expressed he/she would have voted AYE if present at time of vote.

*Although not present for the recorded vote, Member expressed he/she would have voted NO if present at time of vote.

Date: 4/5/2022

COMMITTEE ON EDUCATION AND LABOR RECORD OF COMMITTEE VOTE

Roll Call:3 Bill: H.R.7310 Amendment Number:4

Disposition: Defeated by a roll call vote of 21-29

Sponsor/Amendment: Fitzgerald / H7310_AMD_02

Name & State	Aye	No	Not Voting	Name & State	Aye	No	Not Voting
Mr. SCOTT (VA) (Chairman)		X		Mrs. FOXX (NC) (Ranking)	X		
Mr. GRIJALVA (AZ)		X		Mr. WILSON (SC)	X		
Mr. COURNTEY (CT)		X		Mr. THOMPSON (PA)	X		
Mr. SABLAN (MP)		X		Mr. WALBERG (MI)	X		
Ms. WILSON (FL)		X		Mr. GROTHMAN (WI)	X		
Ms. BONAMICI (OR)		X		Ms. STEFANIK (NY)	X		
Mr. TAKANO (CA)		X		Mr. ALLEN (GA)	X		
Ms. ADAMS (NC)		X		Mr. BANKS (IN)	X		
Mr. DESAULNIER (CA)		X		Mr. COMER (KY)	X		
Mr. NORCROSS (NJ)		X		Mr. FULCHER (ID)			X
Ms. JAYAPAL (WA)		X		Mr. KELLER (PA)	X		
Mr. MORELLE (NY)		X		Ms. MILLER-MEEKS (IA)	X		
Ms. WILD (PA)		X		Mr. OWENS (UT)	X		
Mrs. MCBATH (GA)		X		Mr. GOOD (VA)	X		
Mrs. HAYES (CT)		X		Mrs. MCCLAIN (MI)	X		
Mr. LEVIN (MI)		X		Mrs. HARSHBARGER (TN)	X		
Ms. OMAR (MN)		X		Mrs. MILLER (IL)	X		
Ms. STEVENS (MI)		X		Mrs. SPARTZ (IN)	X		
Ms. LEGER FERNÁNDEZ (NM)		X		Mr. FITZGERALD (WI)	X		
Mr. JONES (NY)		X		Mr. CAWTHORN (NC)			X
Ms. MANNING (NC)		X		Mrs. STEEL (CA)	X		
Mr. MRVAN (IN)		X		Ms. LETLOW (LA)	X		
Mr. BOWMAN (NY)		X		Mr. JACOBS (NY)	X		
Mrs. CHERFILUS-MCCORMICK (FL)		X		*Vacancy*			
Mr. POCAN (WI)		X					
Mr. CASTRO (TX)		X					
Ms. SHERRILL (NJ)		X					
Mr. ESPAILLAT (NY)		X					
Mr. KWEISI MFUME (MD)		X					

TOTALS: Ayes: 21 Nos: 29 Not Voting: 2

Total: 53 / Quorum: / Report:

(29 D - 24 R)

^Although not present for the recorded vote, Member expressed he/she would have voted AYE if present at time of vote.

*Although not present for the recorded vote, Member expressed he/she would have voted NO if present at time of vote.

Date: 04/5/2022

COMMITTEE ON EDUCATION AND LABOR RECORD OF COMMITTEE VOTE

Roll Call: 4 Bill: 7310 Amendment Number: Motion

Disposition: Adopted by a Full Committee Roll Call Vote 29-21

Sponsor/Amendment: McBath motion to report H.R. 7310 to the House with an amendment and with the recommendation that the amendment be agreed to, and the bill as amended, do pass

Name & State	Aye	No	Not Voting	Name & State	Aye	No	Not Voting
Mr. SCOTT (VA) (Chairman)	X			Mrs. FOXX (NC) (Ranking)		X	
Mr. GRIJALVA (AZ)	X			Mr. WILSON (SC)		X	
Mr. COURNTEY (CT)	X			Mr. THOMPSON (PA)		X	
Mr. SABLAN (MP)	X			Mr. WALBERG (MI)		X	
Ms. WILSON (FL)	X			Mr. GROTHMAN (WI)		X	
Ms. BONAMICI (OR)	X			Ms. STEFANIK (NY)		X	
Mr. TAKANO (CA)	X			Mr. ALLEN (GA)		X	
Ms. ADAMS (NC)	X			Mr. BANKS (IN)		X	
Mr. DESAULNIER (CA)	X			Mr. COMER (KY)		X	
Mr. NORCROSS (NJ)	X			Mr. FULCHER (ID)			X
Ms. JAYAPAL (WA)	X			Mr. KELLER (PA)		X	
Mr. MORELLE (NY)	X			Ms. MILLER-MEEKS (IA)		X	
Ms. WILD (PA)	X			Mr. OWENS (UT)		X	
Mrs. MCBATH (GA)	X			Mr. GOOD (VA)		X	
Mrs. HAYES (CT)	X			Mrs. MCCLAIN (MI)		X	
Mr. LEVIN (MI)	X			Mrs. HARSHBARGER (TN)		X	
Ms. OMAR (MN)	X			Mrs. MILLER (IL)		X	
Ms. STEVENS (MI)	X			Mrs. SPARTZ (IN)		X	
Ms. LEGER FERNÁNDEZ (NM)	X			Mr. FITZGERALD (WI)		X	
Mr. JONES (NY)	X			Mr. CAWTHORN (NC)			X
Ms. MANNING (NC)	X			Mrs. STEEL (CA)		X	
Mr. MRVAN (IN)	X			Ms. LETLOW (LA)		X	
Mr. BOWMAN (NY)	X			Mr. JACOBS (NY)		X	
Mrs. CHERFILUS-MCCORMICK (FL)	X			*Vacancy*			
Mr. POCAN (WI)	X						
Mr. CASTRO (TX)	X						
Ms. SHERRILL (NJ)	X						
Mr. ESPAILLAT (NY)	X						
Mr. KWEISI MFUME (MD)	X						

TOTALS: Ayes: 29 Nos: 21 Not Voting: 2

Total: 53 / Quorum: / Report:

(29 D - 24 R)

^Although not present for the recorded vote, Member expressed he/she would have voted AYE if present at time of vote.

*Although not present for the recorded vote, Member expressed he/she would have voted NO if present at time of vote.

Statement of Performance Goals and Objectives

Pursuant to clause (3)(c) of rule XIII of the Rules of the House of Representatives, the goals of H.R. 7310 are to improve and enhance retirement savings plans for workers, employers, and retirees.

Duplication of Federal Programs

Pursuant to clause 3(c)(5) of rule XIII of the Rules of the House of Representatives, the Committee states that no provision of H.R. 7310 is known to be duplicative of another federal program, including any program that was included in a report to Congress pursuant to section 21 of Pub. L. No. 111–139 or the most recent Catalog of Federal Domestic Assistance.

Hearings

Pursuant to clause 3(c)(6) of rule XIII of the Rules of the House of Representatives, the Committee's Subcommittee on Health, Employment, Labor, and Pensions held a hearing on March 1, 2022, entitled "Improving Retirement Security and Access to Mental Health Benefits," which was used to develop H.R. 7310. The witnesses were: Ms. Amy Matsui, Director of Income Security and Senior Counsel, National Women's Law Center, Washington, DC; Ms. Karen Handorf, Senior Counsel, Berger Montague, Alexandria, VA; Mr. Andrew Biggs, Senior Fellow, American Enterprise Institute, Washington, DC; and Mr. Aron Szapiro, Head of Retirement Studies and Public Policy, Morningstar, Inc. and Morningstar Investment Management LLC, Chicago, IL. Relevant to developing H.R. 7310, the HELP Subcommittee heard testimony about requiring spousal consent in defined contribution plans and improving DOL's fee disclosure rules.

Statement of Oversight Findings and Recommendations of the Committee

In compliance with clause 3(c)(1) of rule XIII and clause 2(b)(1) of rule X of the Rules of the House of Representatives, the Committee's oversight findings and recommendations are reflected in the descriptive portions of this report.

New Budget Authority and CBO Cost Estimate

Pursuant to clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the *Congressional Budget and Impoundment Control Act of 1974*, and pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 402 of the *Congressional Budget and Impoundment Control Act of 1974*, the Committee has requested but not received a cost estimate for the bill from the Director of the Congressional Budget Office.

Committee Cost Estimate

Clause 3(d)(1) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison of the costs that would be incurred in carrying out H.R. 7310. However, clause

3(d)(2)(B) of that rule provides that this requirement does not apply when the committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the *Congressional Budget and Impoundment Control Act of 1974*. The Committee reports that because this cost estimate was not timely submitted to the Committee before the filing of this report, the Committee is not in a position to make a cost estimate for H.R. 7310, as amended.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, H.R. 7310, as reported, are shown as follows:

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, and existing law in which no change is proposed is shown in roman):

EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974

* * * * * * *

SHORT TITLE AND TABLE OF CONTENTS

SECTION 1. This Act may be cited as the "Employee Retirement Income Security Act of 1974".

TABLE OF CONTENTS

Sec. 1. Short title and table of contents.

TITLE I—PROTECTION OF EMPLOYEE BENEFIT RIGHTS

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Subtitle B—Regulatory Provisions

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PART 2—PARTICIPATION AND VESTING

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Sec. 205A. Additional spousal consent requirements.

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TITLE I—PROTECTION OF EMPLOYEE BENEFIT RIGHTS

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SUBTITLE B—REGULATORY PROVISIONS

* * * * * * *

PART 2—PARTICIPATION AND VESTING

* * * * * * *

REQUIREMENT OF JOINT AND SURVIVOR ANNUITY AND PRERETIREMENT SURVIVOR ANNUITY

SEC. 205. (a) Each pension plan to which this section applies shall provide that—

(1) in the case of a vested participant who does not die before the annuity starting date, the accrued benefit payable to such participant shall be provided in the form of a qualified joint and survivor annuity, and

(2) in the case of a vested participant who dies before the annuity starting date and who has a surviving spouse, a qualified preretirement survivor annuity shall be provided to the surviving spouse of such participant.

(b)(1) This section shall apply to—

(A) any defined benefit plan,

(B) any individual account plan which is subject to the funding standards of section 302, and

(C) any participant under any other individual account plan unless—

(i) such plan provides that the participant's nonforfeitable accrued benefit (reduced by any security interest held by the plan by reason of a loan outstanding to such participant) is payable in full, on the death of the participant, to the participant's surviving spouse (or, if there is no surviving spouse or the surviving spouse consents in the manner required under subsection (c)(2), to a designated beneficiary),

(ii) such participant does not elect the payment of benefits in the form of a life annuity, and

(iii) with respect to such participant, such plan is not a direct or indirect transferee (in a transfer after December 31, 1984) of a plan which is described in subparagraph (A) or (B) or to which this clause applied with respect to the participant.

Clause (iii) of subparagraph (C) shall apply only with respect to the transferred assets (and income therefrom) if the plan separately accounts for such assets and any income therefrom.

(2)(A) In the case of—

(i) a tax credit employee stock ownership plan (as defined in section 409(a) of the Internal Revenue Code of 1986), or

(ii) an employee stock ownership plan (as defined in section 4975(e)(7) of such Code),

subsection (a) shall not apply to that portion of the employee's accrued benefit to which the requirements of section 409(h) of such Code apply.

(B) Subparagraph (A) shall not apply with respect to any participant unless the requirements of clause (i), (ii), and (iii) of paragraph (1)(C) are met with respect to such participant.

(4) This section shall not apply to a plan which the Secretary of the Treasury or his delegate has determined is a plan described in section 404(c) of the Internal Revenue Code of 1986 (or a continuation thereof) in which participation is substantially limited to individuals who, before January 1, 1976, ceased employment covered by the plan.

(4) A plan shall not be treated as failing to meet the requirements of paragraph (1)(C) or (2) merely because the plan provides that benefits will not be payable to the surviving spouse of the participant unless the participant and such spouse had been married throughout the 1-year period ending on the earlier of the participant's annuity starting date or the date of the participant's death.

(c)(1) A plan meets the requirements of this section only if—

(A) under the plan, each participant—

(i) may elect at any time during the applicable election period to waive the qualified joint and survivor annuity form of benefit or the qualified preretirement survivor annuity form of benefit (or both),

(ii) if the participant elects a waiver under clause (i), may elect the qualified optional survivor annuity at any time during the applicable election period, and

(iii) may revoke any such election at any time during the applicable election period, and

(B) the plan meets the requirements of paragraphs (2), (3), and (4).

(2) Each plan shall provide that an election under paragraph (1)(A)(i) shall not take effect unless—

(A)(i) the spouse of the participant consents in writing to such election, (ii) such election designates a beneficiary (or a form of benefits) which may not be changed without spousal consent (or the consent of the spouse expressly permits designations by the participant without any requirement of further consent by the spouse), and (iii) the spouse's consent acknowledges the effect of such election and is witnessed by a plan representative or a notary public, or

(B) it is established to the satisfaction of a plan representative that the consent required under subparagraph (A) may not be obtained because there is no spouse, because the spouse cannot be located*, because due to exceptional circumstances, requiring the participant to seek the spouse's consent would be inappropriate*, or because of such other circumstances as the Secretary of the Treasury may by regulations prescribe.

Any consent by a spouse (or establishment that the consent of a spouse may not be obtained) under the preceding sentence shall be effective only with respect to such spouse.

(3)(A) Each plan shall provide to each participant, within a reasonable period of time before the annuity starting date (and consistent with such regulations as the Secretary of the Treasury may prescribe) a written explanation of—

(i) the terms and conditions of the qualified joint and survivor annuity and of the qualified optional survivor annuity,

(ii) the participant's right to make, and the effect of, an election under paragraph (1) to waive the joint and survivor annuity form of benefit,

(iii) the rights of the participant's spouse under paragraph (2), and

(iv) the right to make, and the effect of, a revocation of an election under paragraph (1).

(B)(i) Each plan shall provide to each participant, within the applicable period with respect to such participant (and consistent with such regulations as the Secretary may prescribe), a written explanation with respect to the qualified preretirement survivor annuity comparable to that required under subparagraph (A).

(ii) For purposes of clause (i), the term "applicable period" means, with respect to a participant, whichever of the following periods ends last:

(I) The period beginning with the first day of the plan year in which the participant attains age 32 and ending with the close of the plan year preceding the plan year in which the participant attains age 35.

(II) A reasonable period after the individual becomes a participant.

(III) A reasonable period ending after paragraph (5) ceases to apply to the participant.

(IV) A reasonable period ending after section 205 applies to the participant.

In the case of a participant who separates from service before attaining age 35, the applicable period shall be a reasonable period after separation.

(4) Each plan shall provide that, if this section applies to a participant when part or all of the participant's accrued benefit is to be used as security for a loan, no portion of the participant's accrued benefit may be used as security for such loan unless—

(A) the spouse of the participant (if any) consents in writing to such use during the 90-day period ending on the date on which the loan is to be so secured, and

(B) requirements comparable to the requirements of paragraph (2) are met with respect to such consent.

(5)(A) The requirements of this subsection shall not apply with respect to the qualified joint and survivor annuity form of benefit or the qualified preretirement survivor annuity form of benefit, as the case may be, if such benefit may not be waived (or another beneficiary selected) and if the plan fully subsidizes the costs of such benefit.

(B) For purposes of subparagraph (A), a plan fully subsidizes the costs of a benefit if under the plan the failure to waive such benefit by a participant would not result in a decrease in any plan benefits with respect to such participant and would not result in increased contributions from such participant.

(6) If a plan fiduciary acts in accordance with part 4 of this subtitle in—

(A) relying on a consent or revocation referred to in paragraph (1)(A), or

(B) making a determination under paragraph (2),

then such consent, revocation, or determination shall be treated as valid for purposes of discharging the plan from liability to the extent of payments made pursuant to such Act.

(7) For purposes of this subsection, the term "applicable election period" means—

(A) in the case of an election to waive the qualified joint and survivor annuity form of benefit, the 180-day period ending on the annuity starting date, or

(B) in the case of an election to waive the qualified preretirement survivor annuity, the period which begins on the first day of the plan year in which the participant attains age 35 and ends on the date of the participant's death.

In the case of a participant who is separated from service, the applicable election period under subparagraph (B) with respect to benefits accrued before the date of such separation from service shall not begin later than such date.

(8) Notwithstanding any other provision of this subsection—

(A)(i) A plan may provide the written explanation described in paragraph (3)(A) after the annuity starting date. In any case to which this subparagraph applies, the applicable election period under paragraph (7) shall not end before the 30th day after the date on which such explanation is provided.

(ii) The Secretary of the Treasury may by regulations limit the application of clause (i), except that such regulations may not limit the period of time by which the annuity starting date precedes the provision of the written explanation other than by providing that the annuity starting date may not be earlier than termination of employment.

(B) A plan may permit a participant to elect (with any applicable spousal consent) to waive any requirement that the written explanation be provided at least 30 days before the annuity starting date (or to waive the 30-day requirement under subparagraph (A)) if the distribution commences more than 7 days after such explanation is provided.

(d)(1) For purposes of this section, the term "qualified joint and survivor annuity" means an annuity—

(A) for the life of the participant with a survivor annuity for the life of the spouse which is not less than 50 percent of (and is not greater than 100 percent of) the amount of the annuity which is payable during the joint lives of the participant and the spouse, and

(B) which is the actuarial equivalent of a single annuity for the life of the participant.

Such term also includes any annuity in a form having the effect of an annuity described in the preceding sentence.

(2)(A) For purposes of this section, the term "qualified optional survivor annuity" means an annuity—

(i) for the life of the participant with a survivor annuity for the life of the spouse which is equal to the applicable percentage of the amount of the annuity which is payable during the joint lives of the participant and the spouse, and

(ii) which is the actuarial equivalent of a single annuity for the life of the participant.

Such term also includes any annuity in a form having the effect of an annuity described in the preceding sentence.

(B)(i) For purposes of subparagraph (A), if the survivor annuity percentage—

(I) is less than 75 percent, the applicable percentage is 75 percent, and

(II) is greater than or equal to 75 percent, the applicable percentage is 50 percent.

(ii) For purposes of clause (i), the term "survivor annuity percentage" means the percentage which the survivor annuity under the plan's qualified joint and survivor annuity bears to the annuity payable during the joint lives of the participant and the spouse.

(e) For purposes of this section—

(1) Except as provided in paragraph (2), the term "qualified preretirement survivor annuity" means a survivor annuity for the life of the surviving spouse of the participant if—

(A) the payments to the surviving spouse under such annuity are not less than the amounts which would be payable as a survivor annuity under the qualified joint and survivor annuity under the plan (or the actuarial equivalent thereof) if—

(i) in the case of a participant who dies after the date on which the participant attained the earliest retirement age, such participant had retired with an immediate qualified joint and survivor annuity on the day before the participant's date of death, or

(ii) in the case of a participant who dies on or before the date on which the participant would have attained the earliest retirement age, such participant had—

(I) separated from service on the date of death,

(II) survived to the earliest retirement age,

(III) retired with an immediate qualified joint and survivor annuity at the earliest retirement age, and

(IV) died on the day after the day on which such participant would have attained the earliest retirement age, and

(B) under the plan, the earliest period for which the surviving spouse may receive a payment under such annuity is not later than the month in which the participant would have attained the earliest retirement age under the plan.

In the case of an individual who separated from service before the date of such individual's death, subparagraph (A)(ii)(I) shall not apply.

(2) In the case of any individual account plan or participant described in subparagraph (B) or (C) of subsection (b)(1), the term "qualified preretirement survivor annuity" means an annuity for the life of the surviving spouse the actuarial equivalent of which is not less than 50 percent of the portion of the account balance of the participant (as of the date of death) to which the participant had a nonforfeitable right (within the meaning of section 203).

(3) For purposes of paragraphs (1) and (2), any security interest held by the plan by reason of a loan outstanding to the participant shall be taken into account in determining the amount of the qualified preretirement survivor annuity.

(f)(1) Except as provided in paragraph (2), a plan may provide that a qualified joint and survivor annuity (or a qualified preretirement survivor annuity) will not be provided unless the participant and spouse had been married throughout the 1-year period ending on the earlier of—

(A) the participant's annuity starting date, or

(B) the date of the participant's death.

(2) For purposes of paragraph (1), if—

(A) a participant marries within 1 year before the annuity starting date, and

(B) the participant and the participant's spouse in such marriage have been married for at least a 1-year period ending on or before the date of the participant's death,

such participant and such spouse shall be treated as having been married throughout the 1-year period ending on the participant's annuity starting date.

(g)(1) A plan may provide that the present value of a qualified joint and survivor annuity or a qualified preretirement survivor annuity will be immediately distributed if such value does not exceed the amount that can be distributed without the participant's consent under section 203(e). No distribution may be made under the preceding sentence after the annuity starting date unless the participant and the spouse of the participant (or where the participant has died, the surviving spouse) consent in writing to such distribution.

(2) If—

(A) the present value of the qualified joint and survivor annuity or the qualified preretirement survivor annuity exceeds the amount that can be distributed without the participant's consent under section 203(e), and

(B) the participant and the spouse of the participant (or where the participant has died, the surviving spouse) consent in writing to the distribution,

the plan may immediately distribute the present value of such annuity.

(3)(A) For purposes of paragraphs (1) and (2), the present value shall not be less than the present value calculated by using the applicable mortality table and the applicable interest rate.

(B) For purposes of subparagraph (A)—

(i) The term "applicable mortality table" means a mortality table, modified as appropriate by the Secretary of the Treasury, based on the mortality table specified for the plan year under subparagraph (A) of section 303(h)(3) (without regard to subparagraph (C) or (D) of such section).

(ii) The term "applicable interest rate" means the adjusted first, second, and third segment rates applied under rules similar to the rules of section 303(h)(2)(C) (determined by not taking into account any adjustment under clause (iv) thereof) for the month before the date of the distribution or such other time as the Secretary of the Treasury may by regulations prescribe.

(iii) For purposes of clause (ii), the adjusted first, second, and third segment rates are the first, second, and third segment rates which would be determined under section 303(h)(2)(C) (determined by not taking into account any adjustment under clause (iv) thereof) if section 303(h)(2)(D) were applied by substituting the average yields for the month described in clause (ii) for the average yields for the 24-month period described in such section.

(h) For purposes of this section—

(1) The term "vested participant" means any participant who has a nonforfeitable right (within the meaning of section 3(19)) to any portion of such participant's accrued benefit.

(2)(A) The term “annuity starting date” means—

(i) the first day of the first period for which an amount is payable as an annuity, or

(ii) in the case of a benefit not payable in the form of an annuity, the first day on which all events have occurred which entitle the participant to such benefit.

(B) For purposes of subparagraph (A), the first day of the first period for which a benefit is to be received by reason of disability shall be treated as the annuity starting date only if such benefit is not an auxiliary benefit.

(3) The term “earliest retirement age” means the earliest date on which, under the plan, the participant could elect to receive retirement benefits.

(i) A plan may take into account in any equitable manner (as determined by the Secretary of the Treasury) any increased costs resulting from providing a qualified joint or survivor annuity or a qualified preretirement survivor annuity.

(j) If the use of any participant’s accrued benefit (or any portion thereof) as security for a loan meets the requirements of subsection (c)(4), nothing in this section shall prevent any distribution required by reason of a failure to comply with the terms of such loan.

(k) No consent of a spouse shall be effective for purposes of subsection (g)(1) or (g)(2) (as the case may be) unless requirements comparable to the requirements for spousal consent to an election under subsection (c)(1)(A) are met.

(l) In prescribing regulations under this section, the Secretary of the Treasury shall consult with the Secretary of Labor.

SEC. 205A. ADDITIONAL SPOUSAL CONSENT REQUIREMENTS.

(a) IN GENERAL.—Each individual account plan to which section 205 does not apply (but to which this title otherwise applies) shall provide that, except as provided in subsections (c) and (d), no distribution may be made under the plan unless the spousal consent requirements of subsection (e) are met.

(b) COORDINATION WITH SECTION 205.—Nothing in this section shall be construed to exempt an individual account plan from the requirements of paragraph (1)(B), (1)(C), or (2) of section 205(b) with respect to any participant.

(c) EXCEPTIONS FOR CERTAIN DISTRIBUTIONS.—Subsection (a) shall not apply to—

(1) any distribution that is—

(A) a minimum required distribution described in section 4974(b) of the Internal Revenue Code of 1986; or

(B) permitted under section 203(e)(1) to be made without the consent of the participant;

(2) any distribution in the form of a qualified joint and survivor annuity (as defined in section 205(d)(1)), a qualified optional survivor annuity (as defined in section 205(d)(2)), a qualified preretirement survivor annuity (as defined in section 205(e)), or a series of substantially equal periodic payments (not less frequently than annually) made for the joint lives (or life expectancies) of the participant and the participant’s spouse; or

(3) in the case of a participant who does not elect a form of benefit described in paragraph (2) under the plan or who is participating in a plan that does not provide such a form of benefit, any distribution of the participant’s entire nonforfeit-

able accrued benefit if 50 percent of such accrued benefit is transferred to an individual retirement plan (as defined in section 7701(a)(37) of the Internal Revenue Code of 1986) of the spouse of the participant.

A transfer described in paragraph (3) to an individual retirement plan shall be treated in the same manner as a transfer under section 408(d)(6) of the Internal Revenue Code of 1986.

(d) EXCEPTIONS FOR CERTAIN ROLLOVER CONTRIBUTIONS.—

(1) IN GENERAL.—Subsection (a) shall not apply to any distribution that is an eligible rollover distribution (as defined in section 402(f)(2)(A) of the Internal Revenue Code of 1986) made in the form of a direct trustee-to-trustee transfer within the meaning of section 401(a)(31) of the Internal Revenue Code of 1986—

(A) to a plan to which this section or section 205 applies; or

(B) to an individual retirement plan (as defined in section 7701(a)(37) of the Internal Revenue Code of 1986) if—

(i) the sole beneficiary of such plan is the spouse of the participant, or the spousal consent requirements of subsection (e) are met with respect to any designation of 1 or more other beneficiaries; and

(ii) under the terms of the individual retirement plan, the beneficiary of such plan (whether the spouse or other beneficiary designated under subparagraph (A)) may not be changed unless—

(I) the spousal consent requirements of subsection (e) are met with respect to any such change; or

(II) the spousal consent under clause (i) to the designation of a beneficiary other than the spouse expressly permits such designation to be changed without the further consent of the spouse.

(2) REGULATORY AUTHORITY.—The Secretary of the Treasury and the Secretary of Labor may jointly issue regulations to implement subparagraphs (A) and (B) of paragraph (1).

(e) SPOUSAL CONSENT REQUIREMENTS.—

(1) IN GENERAL.—For purposes of this section, except as provided in paragraph (2), the spousal consent requirements of this subsection are met with respect to any distribution or any designation or change of beneficiary if—

(A) the plan provides to each participant, within a reasonable period of time before such distribution or designation or change of beneficiary is made and consistent with such regulations as the Secretary of the Treasury may prescribe, a written explanation of the rights of the participant and the participant's spouse under this section;

(B) the spouse of the participant consents in writing to the distribution or designation or change of beneficiary;

(C) in the case of a distribution, the written consent under subparagraph (B) is made during the consent period; and

(D) the written consent under subparagraph (B)—

(i) acknowledges the effect of such distribution or designation or change of beneficiary; and

(ii) is witnessed by a plan representative or a notary public.

(2) EXCEPTIONS.—The requirements of paragraph (1) (other than subparagraph (A) thereof) shall not apply with respect to any distribution or designation or change of beneficiary if a participant establishes to the satisfaction of the administrator that—

(A) there is no spouse;

(B) the participant and the participant's spouse have not been married for at least 1 year as of the date of the distribution or designation or change of beneficiary; or

(C) such consent cannot be obtained because—

(i) the spouse cannot be located after taking documented search efforts in accordance with guidance from the Secretary of Labor;

(ii) due to exceptional circumstances, requiring the participant to seek the spouse's consent would be inappropriate; or

(iii) of such other circumstances as the Secretary of the Treasury, in consultation with the Secretary of Labor, may by regulations prescribe.

The Secretary of Labor may issue regulations to implement this paragraph.

(3) CONSENT LIMITED TO SPOUSE AND EVENT.—Any written consent by a spouse under paragraph (1), or the establishment by a participant that an exception under paragraph (2) applies with respect to a spouse, shall be effective only with respect to that spouse and to the distribution or designation or change of beneficiary to which it relates.

(4) CONSENT PERIOD.—For purposes of this subsection, the term "consent period" means, with respect to any distribution—

(A) the 90-day period immediately preceding the date of such distribution; or

(B) such other period as the Secretary of the Treasury may provide.

(f) DISCHARGE OF PLAN FROM LIABILITY.—Rules similar to the rules of section 205(c)(6) shall apply for purposes of this section.

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PART 5—ADMINISTRATION AND ENFORCEMENT

* * * * * * *

EFFECT ON OTHER LAWS

SEC. 514. (a) Except as provided in subsection (b) of this section, the provisions of this title and title IV shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan described in section 4(a) and not exempt under section 4(b). This section shall take effect on January 1, 1975.

(b)(1) This section shall not apply with respect to any cause of action which arose, or any act or omission which occurred, before January 1, 1975.

(2)(A) Except as provided in subparagraph (B), nothing in this title shall be construed to exempt or relieve any person from any law of any State which regulates insurance, banking, or securities.

(B) Neither an employee benefit plan described in section 4(a), which is not exempt under section 4(b) (other than a plan established primarily for the purpose of providing death benefits), nor any trust established under such a plan, shall be deemed to be an insurance company or other insurer, bank, trust company, or investment company or to be engaged in the business of insurance or banking for purposes of any law of any State purporting to regulate insurance companies, insurance contracts, banks, trust companies, or investment companies.

(3) Nothing in this section shall be construed to prohibit use by the Secretary of services or facilities of a State agency as permitted under section 506 of this Act.

(4) Subsection (a) shall not apply to any generally applicable criminal law of a State.

(5)(A) Except as provided in subparagraph (B), subsection (a) shall not apply to the Hawaii Prepaid Health Care Act (Haw. Rev. Stat. §§ 393–1 through 393–51).

(B) Nothing in subparagraph (A) shall be construed to exempt from subsection (a)—

(i) any State tax law relating to employee benefit plans, or

(ii) any amendment of the Hawaii Prepaid Health Care Act enacted after September 2, 1974, to the extent it provides for more than the effective administration of such Act as in effect on such date.

(C) Notwithstanding subparagraph (A), parts 1 and 4 of this subtitle, and the preceding sections of this part to the extent they govern matters which are governed by the provisions of such parts 1 and 4, shall supersede the Hawaii Prepaid Health Care Act (as in effect on or after the date of the enactment of this paragraph), but the Secretary may enter into cooperative arrangements under this paragraph and section 506 with officials of the State of Hawaii to assist them in effectuating the policies of provisions of such Act which are superseded by such parts 1 and 4 and the preceding sections of this part.

(6)(A) Notwithstanding any other provision of this section—

(i) in the case of an employee welfare benefit plan which is a multiple employer welfare arrangement and is fully insured (or which is a multiple employer welfare arrangement subject to an exemption under subparagraph (B)), any law of any State which regulates insurance may apply to such arrangement to the extent that such law provides—

(I) standards, requiring the maintenance of specified levels of reserves and specified levels of contributions, which any such plan, or any trust established under such a plan, must meet in order to be considered under such law able to pay benefits in full when due, and

(II) provisions to enforce such standards, and

(ii) in the case of any other employee welfare benefit plan which is a multiple employer welfare arrangement, in addition to this title, any law of any State which regulates insurance may apply to the extent not inconsistent with the preceding sections of this title.

(B) The Secretary may, under regulations which may be prescribed by the Secretary, exempt from subparagraph (A)(ii), individually or by class, multiple employer welfare arrangements which are not fully insured. Any such exemption may be granted with respect to any arrangement or class of arrangements only if such arrangement or each arrangement which is a member of such class meets the requirements of section 3(1) and section 4 necessary to be considered an employee welfare benefit plan to which this title applies.

(C) Nothing in subparagraph (A) shall affect the manner or extent to which the provisions of this title apply to an employee welfare benefit plan which is not a multiple employer welfare arrangement and which is a plan, fund, or program participating in, subscribing to, or otherwise using a multiple employer welfare arrangement to fund or administer benefits to such plan's participants and beneficiaries.

(D) For purposes of this paragraph, a multiple employer welfare arrangement shall be considered fully insured only if the terms of the arrangement provide for benefits the amount of all of which the Secretary determines are guaranteed under a contract, or policy of insurance, issued by an insurance company, insurance service, or insurance organization, qualified to conduct business in a State.

(7) Subsection (a) shall not apply to qualified domestic relations orders (within the meaning of section 206(d)(3)(B)(i)), qualified medical child support orders (within the meaning of section 609(a)(2)(A)), and the provisions of law referred to in section 609(a)(2)(B)(ii) to the extent they apply to qualified medical child support orders.

(8) Subsection (a) of this section shall not be construed to preclude any State cause of action—

(A) with respect to which the State exercises its acquired rights under section 609(b)(3) with respect to a group health plan (as defined in section 607(1)), or

(B) for recoupment of payment with respect to items or services pursuant to a State plan for medical assistance approved under title XIX of the Social Security Act which would not have been payable if such acquired rights had been executed before payment with respect to such items or services by the group health plan.

(9) For additional provisions relating to group health plans, see section 731.

(c) For purposes of this section:

(1) The term "State law" includes all laws, decisions, rules, regulations, or other State action having the effect of law, of any State. A law of the United States applicable only to the District of Columbia shall be treated as a State law rather than a law of the United States.

(2) The term "State" includes a State, any political subdivisions thereof, or any agency or instrumentality of either, which purports to regulate, directly or indirectly, the terms and conditions of employee benefit plans covered by this title.

(d) Nothing in this title shall be construed to alter, amend, modify, invalidate, impair, or supersede any law of the United States (except as provided in sections 111 and 507(b)) or any rule or regulation issued under any such law.

(e)(1) Notwithstanding any other provision of this section, this title shall supersede any law of a State which would directly or indirectly prohibit or restrict the inclusion in any plan of an automatic contribution arrangement. The Secretary may prescribe regulations which would establish minimum standards that such an arrangement would be required to satisfy in order for this subsection to apply in the case of such arrangement.

(2) [For purposes of] *(A) For purposes of* this subsection, the term "automatic contribution arrangement" means an arrangement—

[(A)] *(i)* under which a participant may elect to have the plan sponsor make payments as contributions under the plan on behalf of the participant, or to the participant directly in cash,

[(B)] *(ii)* under which a participant is treated as having elected to have the plan sponsor make such contributions in an amount equal to a uniform percentage of compensation provided under the plan until the participant specifically elects not to have such contributions made (or specifically elects to have such contributions made at a different percentage), and

[(C)] *(iii)* under which such contributions are invested in accordance with regulations prescribed by the Secretary under section 404(c)(5).

(B) In the case of an automatic contribution arrangement taking effect after December 31, 2024, the requirements of subparagraph (A)(ii) shall be treated as met only if, under the arrangement, at least every 3 years each employee—

(i) who is eligible to participate in the arrangement, and

(ii) who, at the time of the determination, has in effect an affirmative election pursuant to subparagraph (A)(ii) not to have contributions described in such subparagraph made,

is treated as having made the election at the uniform percentage of compensation described in subparagraph (A)(ii) unless the employee makes a new election under such subparagraph. Such determination may be made at one time for all employees described in the preceding sentence for a plan year, regardless of individual employee dates of enrollment.

(3)(A) The plan administrator of an automatic contribution arrangement shall, within a reasonable period before such plan year, provide to each participant to whom the arrangement applies for such plan year notice of the participant's rights and obligations under the arrangement which—

(i) is sufficiently accurate and comprehensive to apprise the participant of such rights and obligations, and

(ii) is written in a manner calculated to be understood by the average participant to whom the arrangement applies.

(B) A notice shall not be treated as meeting the requirements of subparagraph (A) with respect to a participant unless—

(i) the notice includes an explanation of the participant's right under the arrangement not to have elective contributions made on the participant's behalf (or to elect to have such contributions made at a different percentage),

(ii) the participant has a reasonable period of time, after receipt of the notice described in clause (i) and before the first elective contribution is made, to make such election, and

(iii) the notice explains how contributions made under the arrangement will be invested in the absence of any investment election by the participant.

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INTERNAL REVENUE CODE OF 1986

Subtitle A—Income Taxes

CHAPTER 1—NORMAL TAXES AND SURTAXES

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Subchapter D—DEFERRED COMPENSATION, ETC.

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PART I—PENSION, PROFIT-SHARING, STOCK BONUS PLANS, ETC.

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Subpart A—GENERAL RULE

SEC. 401. QUALIFIED PENSION, PROFIT-SHARING, AND STOCK BONUS PLANS.

(a) REQUIREMENTS FOR QUALIFICATION.—A trust created or organized in the United States and forming part of a stock bonus, pension, or profit-sharing plan of an employer for the exclusive benefit of his employees or their beneficiaries shall constitute a qualified trust under this section—

(1) if contributions are made to the trust by such employer, or employees, or both, or by another employer who is entitled to deduct his contributions under section 404(a)(3)(B) (relating to deduction for contributions to profit-sharing and stock bonus plans), or by a charitable remainder trust pursuant to a qualified gratuitous transfer (as defined in section 664(g)(1)), for the purpose of distributing to such employees or their beneficiaries the corpus and income of the fund accumulated by the trust in accordance with such plan;

(2) if under the trust instrument it is impossible, at any time prior to the satisfaction of all liabilities with respect to employees and their beneficiaries under the trust, for any part of the corpus or income to be (within the taxable year or thereafter) used for, or diverted to, purposes other than for the exclusive benefit of his employees or their beneficiaries (but this paragraph shall not be construed, in the case of a multiemployer plan, to prohibit the return of a contribution within 6 months after the plan administrator determines that the contribution was made by a mistake of fact or law (other than a mistake

relating to whether the plan is described in section 401(a) or the trust which is part of such plan is exempt from taxation under section 501(a), or the return of any withdrawal liability payment determined to be an overpayment within 6 months of such determination));

(3) if the plan of which such trust is a part satisfies the requirements of section 410 (relating to minimum participation standards); and

(4) if the contributions or benefits provided under the plan do not discriminate in favor of highly compensated employees (within the meaning of section 414(q)). For purposes of this paragraph, there shall be excluded from consideration employees described in section 410(b)(3)(A) and (C).

(5) SPECIAL RULES RELATING TO NONDISCRIMINATION REQUIREMENTS.—

(A) SALARIED OR CLERICAL EMPLOYEES.—A classification shall not be considered discriminatory within the meaning of paragraph (4) or section 410(b)(2)(A)(i) merely because it is limited to salaried or clerical employees.

(B) CONTRIBUTIONS AND BENEFITS MAY BEAR UNIFORM RELATIONSHIP TO COMPENSATION.—A plan shall not be considered discriminatory within the meaning of paragraph (4) merely because the contributions or benefits of, or on behalf of, the employees under the plan bear a uniform relationship to the compensation (within the meaning of section 414(s)) of such employees.

(C) CERTAIN DISPARITY PERMITTED.—A plan shall not be considered discriminatory within the meaning of paragraph (4) merely because the contributions or benefits of, or on behalf of, the employees under the plan favor highly compensated employees (as defined in section 414(q)) in the manner permitted under subsection (l).

(D) INTEGRATED DEFINED BENEFIT PLAN.—

(i) IN GENERAL.—A defined benefit plan shall not be considered discriminatory within the meaning of paragraph (4) merely because the plan provides that the employer-derived accrued retirement benefit for any participant under the plan may not exceed the excess (if any) of—

(I) the participant's final pay with the employer, over

(II) the employer-derived retirement benefit created under Federal law attributable to service by the participant with the employer.

For purposes of this clause, the employer-derived retirement benefit created under Federal law shall be treated as accruing ratably over 35 years.

(ii) FINAL PAY.—For purposes of this subparagraph, the participant's final pay is the compensation (as defined in section 414(q)(4)) paid to the participant by the employer for any year—

(I) which ends during the 5-year period ending with the year in which the participant separated from service for the employer, and

(II) for which the participant's total compensation from the employer was highest.

(E) 2 OR MORE PLANS TREATED AS SINGLE PLAN.—For purposes of determining whether 2 or more plans of an employer satisfy the requirements of paragraph (4) when considered as a single plan—

(i) CONTRIBUTIONS.—If the amount of contributions on behalf of the employees allowed as a deduction under section 404 for the taxable year with respect to such plans, taken together, bears a uniform relationship to the compensation (within the meaning of section 414(s)) of such employees, the plans shall not be considered discriminatory merely because the rights of employees to, or derived from, the employer contributions under the separate plans do not become nonforfeitable at the same rate.

(ii) BENEFITS.—If the employees' rights to benefits under the separate plans do not become nonforfeitable at the same rate, but the levels of benefits provided by the separate plans satisfy the requirements of regulations prescribed by the Secretary to take account of the differences in such rates, the plans shall not be considered discriminatory merely because of the difference in such rates.

(F) SOCIAL SECURITY RETIREMENT AGE.—For purposes of testing for discrimination under paragraph (4)—

(i) the social security retirement age (as defined in section 415(b)(8)) shall be treated as a uniform retirement age, and

(ii) subsidized early retirement benefits and joint and survivor annuities shall not be treated as being unavailable to employees on the same terms merely because such benefits or annuities are based in whole or in part on an employee's social security retirement age (as so defined).

(G) GOVERNMENTAL PLANS.—Paragraphs (3) and (4) shall not apply to a governmental plan (within the meaning of section 414(d)).

(6) A plan shall be considered as meeting the requirements of paragraph (3) during the whole of any taxable year of the plan if on one day in each quarter it satisfied such requirements.

(7) A trust shall not constitute a qualified trust under this section unless the plan of which such trust is a part satisfies the requirements of section 411 (relating to minimum vesting standards).

(8) A trust forming part of a defined benefit plan shall not constitute a qualified trust under this section unless the plan provides that forfeitures must not be applied to increase the benefits any employee would otherwise receive under the plan.

(9) REQUIRED DISTRIBUTIONS.—

(A) IN GENERAL.—A trust shall not constitute a qualified trust under this subsection unless the plan provides that the entire interest of each employee—

(i) will be distributed to such employee not later than the required beginning date, or

(ii) will be distributed, beginning not later than the required beginning date, in accordance with regulations, over the life of such employee or over the lives of such employee and a designated beneficiary (or over a period not extending beyond the life expectancy of such employee or the life expectancy of such employee and a designated beneficiary).

(B) REQUIRED DISTRIBUTION WHERE EMPLOYEE DIES BEFORE ENTIRE INTEREST IS DISTRIBUTED.—

(i) WHERE DISTRIBUTIONS HAVE BEGUN UNDER SUBPARAGRAPH (A)(II).—A trust shall not constitute a qualified trust under this section unless the plan provides that if—

(I) the distribution of the employee's interest has begun in accordance with subparagraph (A)(ii), and

(II) the employee dies before his entire interest has been distributed to him,

the remaining portion of such interest will be distributed at least as rapidly as under the method of distributions being used under subparagraph (A)(ii) as of the date of his death.

(ii) 5-YEAR RULE FOR OTHER CASES.—A trust shall not constitute a qualified trust under this section unless the plan provides that, if an employee dies before the distribution of the employee's interest has begun in accordance with subparagraph (A)(ii), the entire interest of the employee will be distributed within 5 years after the death of such employee.

(iii) EXCEPTION TO 5-YEAR RULE FOR CERTAIN AMOUNTS PAYABLE OVER LIFE OF BENEFICIARY.—If—

(I) any portion of the employee's interest is payable to (or for the benefit of) a designated beneficiary,

(II) such portion will be distributed (in accordance with regulations) over the life of such designated beneficiary (or over a period not extending beyond the life expectancy of such beneficiary), and

(III) such distributions begin not later than 1 year after the date of the employee's death or such later date as the Secretary may by regulations prescribe,

for purposes of clause (ii), the portion referred to in subclause (I) shall be treated as distributed on the date on which such distributions begin.

(iv) SPECIAL RULE FOR SURVIVING SPOUSE OF EMPLOYEE.—If the designated beneficiary referred to in clause (iii)(I) is the surviving spouse of the employee—

(I) the date on which the distributions are required to begin under clause (iii)(III) shall not be earlier than the date on which the employee would have attained age 72, and

(II) if the surviving spouse dies before the distributions to such spouse begin, this subparagraph shall be applied as if the surviving spouse were the employee.

(C) REQUIRED BEGINNING DATE.—For purposes of this paragraph—

(i) IN GENERAL.—The term "required beginning date" means April 1 of the calendar year following the later of—

(I) the calendar year in which the employee attains age 72, or

(II) the calendar year in which the employee retires.

(ii) EXCEPTION.—Subclause (II) of clause (i) shall not apply—

(I) except as provided in section 409(d), in the case of an employee who is a 5-percent owner (as defined in section 416) with respect to the plan year ending in the calendar year in which the employee attains age 72, or

(II) for purposes of section 408(a)(6) or (b)(3).

(iii) ACTUARIAL ADJUSTMENT.—In the case of an employee to whom clause (i)(II) applies who retires in a calendar year after the calendar year in which the employee attains age 701/2, the employee's accrued benefit shall be actuarially increased to take into account the period after age 701/2 in which the employee was not receiving any benefits under the plan.

(iv) EXCEPTION FOR GOVERNMENTAL AND CHURCH PLANS.—Clauses (ii) and (iii) shall not apply in the case of a governmental plan or church plan. For purposes of this clause, the term "church plan" means a plan maintained by a church for church employees, and the term "church" means any church (as defined in section 3121(w)(3)(A)) or qualified church-controlled organization (as defined in section 3121(w)(3)(B)).

(D) LIFE EXPECTANCY.—For purposes of this paragraph, the life expectancy of an employee and the employee's spouse (other than in the case of a life annuity) may be redetermined but not more frequently than annually.

(E) DEFINITIONS AND RULES RELATING TO DESIGNATED BENEFICIARIES.—For purposes of this paragraph—

(i) DESIGNATED BENEFICIARY.—The term "designated beneficiary" means any individual designated as a beneficiary by the employee.

(ii) ELIGIBLE DESIGNATED BENEFICIARY.—The term "eligible designated beneficiary" means, with respect to any employee, any designated beneficiary who is—

(I) the surviving spouse of the employee,

(II) subject to clause (iii), a child of the employee who has not reached majority (within the meaning of subparagraph (F)),

(III) disabled (within the meaning of section 72(m)(7)),

(IV) a chronically ill individual (within the meaning of section 7702B(c)(2), except that the requirements of subparagraph (A)(i) thereof shall only be treated as met if there is a certification that, as of such date, the period of inability described in such subparagraph with respect to the individual is an indefinite one which is reasonably expected to be lengthy in nature), or

(V) an individual not described in any of the preceding subclauses who is not more than 10 years younger than the employee.

The determination of whether a designated beneficiary is an eligible designated beneficiary shall be made as of the date of death of the employee.

(iii) SPECIAL RULE FOR CHILDREN.—Subject to subparagraph (F), an individual described in clause (ii)(II) shall cease to be an eligible designated beneficiary as of the date the individual reaches majority and any remainder of the portion of the individual's interest to which subparagraph (H)(ii) applies shall be distributed within 10 years after such date.

(F) TREATMENT OF PAYMENTS TO CHILDREN.—Under regulations prescribed by the Secretary, for purposes of this paragraph, any amount paid to a child shall be treated as if it had been paid to the surviving spouse if such amount will become payable to the surviving spouse upon such child reaching majority (or other designated event permitted under regulations).

(G) TREATMENT OF INCIDENTAL DEATH BENEFIT DISTRIBUTIONS.—For purposes of this title, any distribution required under the incidental death benefit requirements of this subsection shall be treated as a distribution required under this paragraph.

(H) SPECIAL RULES FOR CERTAIN DEFINED CONTRIBUTION PLANS.—In the case of a defined contribution plan, if an employee dies before the distribution of the employee's entire interest—

(i) IN GENERAL.—Except in the case of a beneficiary who is not a designated beneficiary, subparagraph (B)(ii)—

(I) shall be applied by substituting "10 years" for "5 years", and

(II) shall apply whether or not distributions of the employee's interests have begun in accordance with subparagraph (A).

(ii) EXCEPTION FOR ELIGIBLE DESIGNATED BENEFICIARIES.—Subparagraph (B)(iii) shall apply only in the case of an eligible designated beneficiary.

(iii) RULES UPON DEATH OF ELIGIBLE DESIGNATED BENEFICIARY.—If an eligible designated beneficiary dies before the portion of the employee's interest to which this subparagraph applies is entirely distributed, the exception under clause (ii) shall not apply to any beneficiary of such eligible designated beneficiary and the remainder of such portion shall be distributed within 10 years after the death of such eligible designated beneficiary.

(iv) SPECIAL RULE IN CASE OF CERTAIN TRUSTS FOR DISABLED OR CHRONICALLY ILL BENEFICIARIES.—In the case of an applicable multi-beneficiary trust, if under the terms of the trust—

(I) it is to be divided immediately upon the death of the employee into separate trusts for each beneficiary, or

(II) no individual (other than a eligible designated beneficiary described in subclause (III) or (IV) of subparagraph (E)(ii)) has any right to the employee's interest in the plan until the death of all such eligible designated beneficiaries with respect to the trust,

for purposes of a trust described in subclause (I), clause (ii) shall be applied separately with respect to the portion of the employee's interest that is payable to any eligible designated beneficiary described in subclause (III) or (IV) of subparagraph (E)(ii); and, for purposes of a trust described in subclause (II), subparagraph (B)(iii) shall apply to the distribution of the employee's interest and any beneficiary who is not such an eligible designated beneficiary shall be treated as a beneficiary of the eligible designated beneficiary upon the death of such eligible designated beneficiary.

(v) APPLICABLE MULTI-BENEFICIARY TRUST.—For purposes of this subparagraph, the term "applicable multi-beneficiary trust" means a trust—

(I) which has more than one beneficiary,

(II) all of the beneficiaries of which are treated as designated beneficiaries for purposes of determining the distribution period pursuant to this paragraph, and

(III) at least one of the beneficiaries of which is an eligible designated beneficiary described in subclause (III) or (IV) of subparagraph (E)(ii).

(vi) APPLICATION TO CERTAIN ELIGIBLE RETIREMENT PLANS.—For purposes of applying the provisions of this subparagraph in determining amounts required to be distributed pursuant to this paragraph, all eligible retirement plans (as defined in section 402(c)(8)(B), other than a defined benefit plan described in clause (iv) or (v) thereof or a qualified trust which is a part of a defined benefit plan) shall be treated as a defined contribution plan.

(I) TEMPORARY WAIVER OF MINIMUM REQUIRED DISTRIBUTION.—

(i) IN GENERAL.—The requirements of this paragraph shall not apply for calendar year 2020 to—

(I) a defined contribution plan which is described in this subsection or in section 403(a) or 403(b),

(II) a defined contribution plan which is an eligible deferred compensation plan described in section 457(b) but only if such plan is maintained by an employer described in section 457(e)(1)(A), or

(III) an individual retirement plan.

(ii) SPECIAL RULE FOR REQUIRED BEGINNING DATES IN 2020.—Clause (i) shall apply to any distribution which is required to be made in calendar year 2020 by reason of—

(I) a required beginning date occurring in such calendar year, and

(II) such distribution not having been made before January 1, 2020.

(iii) SPECIAL RULES REGARDING WAIVER PERIOD.—For purposes of this paragraph—

(I) the required beginning date with respect to any individual shall be determined without regard to this subparagraph for purposes of applying this paragraph for calendar years after 2020, and

(II) if clause (ii) of subparagraph (B) applies, the 5-year period described in such clause shall be determined without regard to calendar year 2020.

(10) OTHER REQUIREMENTS.—

(A) PLANS BENEFITING OWNER-EMPLOYEES.—In the case of any plan which provides contributions or benefits for employees some or all of whom are owner-employees (as defined in subsection (c)(3)), a trust forming part of such plan shall constitute a qualified trust under this section only if the requirements of subsection (d) are also met.

(B) TOP-HEAVY PLANS.—

(i) IN GENERAL.—In the case of any top-heavy plan, a trust forming part of such plan shall constitute a qualified trust under this section only if the requirements of section 416 are met.

(ii) PLANS WHICH MAY BECOME TOP-HEAVY.—Except to the extent provided in regulations, a trust forming part of a plan (whether or not a top-heavy plan) shall constitute a qualified trust under this section only if such plan contains provisions—

(I) which will take effect if such plan becomes a top-heavy plan, and

(II) which meet the requirements of section 416.

(iii) EXEMPTION FOR GOVERNMENTAL PLANS.—This subparagraph shall not apply to any governmental plan.

(11) REQUIREMENT OF JOINT AND SURVIVOR ANNUITY AND PRERETIREMENT SURVIVOR ANNUITY.—

(A) IN GENERAL.—In the case of any plan to which this paragraph applies, except as provided in section 417, a trust forming part of such plan shall not constitute a qualified trust under this section unless—

(i) in the case of a vested participant who does not die before the annuity starting date, the accrued benefit payable to such participant is provided in the form of a qualified joint and survivor annuity, and

(ii) in the case of a vested participant who dies before the annuity starting date and who has a surviving spouse, a qualified preretirement survivor annuity is provided to the surviving spouse of such participant.

(B) PLANS TO WHICH PARAGRAPH APPLIES.—This paragraph shall apply to—

(i) any defined benefit plan,

(ii) any defined contribution plan which is subject to the funding standards of section 412, and

(iii) any participant under any other defined contribution plan unless—

(I) such plan provides that the participant's nonforfeitable accrued benefit (reduced by any security interest held by the plan by reason of a loan outstanding to such participant) is payable in full, on the death of the participant, to the participant's surviving spouse (or, if there is no surviving spouse or the surviving spouse consents in the manner required under section 417(a)(2), to a designated beneficiary),

(II) such participant does not elect a payment of benefits in the form of a life annuity, and

(III) with respect to such participant, such plan is not a direct or indirect transferee (in a transfer after December 31, 1984) of a plan which is described in clause (i) or (ii) or to which this clause applied with respect to the participant.

Clause (iii)(III) shall apply only with respect to the transferred assets (and income therefrom) if the plan separately accounts for such assets and any income therefrom.

(C) EXCEPTION FOR CERTAIN ESOP BENEFITS.—

(i) IN GENERAL.—In the case of—

(I) a tax credit employee stock ownership plan (as defined in section 409(a)), or

(II) an employee stock ownership plan (as defined in section 4975(e)(7)),

subparagraph (A) shall not apply to that portion of the employee's accrued benefit to which the requirements of section 409(h) apply.

(ii) NONFORFEITABLE BENEFIT MUST BE PAID IN FULL, ETC.—In the case of any participant, clause (i) shall apply only if the requirements of subclauses (I), (II), and (III) of subparagraph (B)(iii) are met with respect to such participant.

(D) SPECIAL RULE WHERE PARTICIPANT AND SPOUSE MARRIED LESS THAN 1 YEAR.—A plan shall not be treated as failing to meet the requirements of subparagraphs (B)(iii) or (C) merely because the plan provides that benefits will not be payable to the surviving spouse of the participant unless the participant and such spouse had been married throughout the 1-year period ending on the earlier of the participant's annuity starting date or the date of the participant's death.

(E) EXCEPTION FOR PLANS DESCRIBED IN SECTION 404(C).—This paragraph shall not apply to a plan which the Secretary has determined is a plan described in section 404(c) (or a continuation thereof) in which participation is substantially limited to individuals who, before January 1, 1976, ceased employment covered by the plan.

(F) CROSS REFERENCE.—For—

(i) provisions under which participants may elect to waive the requirements of this paragraph, and

(ii) other definitions and special rules for purposes of this paragraph,

see section 417.

(12) A trust shall not constitute a qualified trust under this section unless the plan of which such trust is a part provides that in the case of any merger or consolidation with, or transfer of assets or liabilities to, any other plan after September 2, 1974, each participant in the plan would (if the plan then terminated) receive a benefit immediately after the merger, consolidation, or transfer which is equal to or greater than the benefit he would have been entitled to receive immediately before the merger, consolidation, or transfer (if the plan had then terminated). The preceding sentence does not apply to any multiemployer plan with respect to any transaction to the extent that participants either before or after the transaction are covered under a multiemployer plan to which title IV of the Employee Retirement Income Security Act of 1974 applies.

(13) ASSIGNMENT AND ALIENATION.—

(A) IN GENERAL.—A trust shall not constitute a qualified trust under this section unless the plan of which such trust is a part provides that benefits provided under the plan may not be assigned or alienated. For purposes of the preceding sentence, there shall not be taken into account any voluntary and revocable assignment of not to exceed 10 percent of any benefit payment made by any participant who is receiving benefits under the plan unless the assignment or alienation is made for purposes of defraying plan administration costs. For purposes of this paragraph a loan made to a participant or beneficiary shall not be treated as an assignment or alienation if such loan is secured by the participant's accrued nonforfeitable benefit and is exempt from the tax imposed by section 4975 (relating to tax on prohibited transactions) by reason of section 4975(d)(1). This paragraph shall take effect on January 1, 1976 and shall not apply to assignments which were irrevocable on September 2, 1974.

(B) SPECIAL RULES FOR DOMESTIC RELATIONS ORDERS.—Subparagraph (A) shall apply to the creation, assignment, or recognition of a right to any benefit payable with respect to a participant pursuant to a domestic relations order, except that subparagraph (A) shall not apply if the order is determined to be a qualified domestic relations order.

(C) SPECIAL RULE FOR CERTAIN JUDGMENTS AND SETTLEMENTS.—Subparagraph (A) shall not apply to any offset of a participant's benefits provided under a plan against an amount that the participant is ordered or required to pay to the plan if—

(i) the order or requirement to pay arises—

(I) under a judgment of conviction for a crime involving such plan,

(II) under a civil judgment (including a consent order or decree) entered by a court in an action brought in connection with a violation (or alleged violation) of part 4 of subtitle B of title I of the Employee Retirement Income Security Act of 1974, or

(III) pursuant to a settlement agreement between the Secretary of Labor and the participant, or a settlement agreement between the Pension Benefit Guaranty Corporation and the participant, in connection with a violation (or alleged violation) of part 4 of such subtitle by a fiduciary or any other person,

(ii) the judgment, order, decree, or settlement agreement expressly provides for the offset of all or part of the amount ordered or required to be paid to the plan against the participant's benefits provided under the plan, and

(iii) in a case in which the survivor annuity requirements of section 401(a)(11) apply with respect to distributions from the plan to the participant, if the participant has a spouse at the time at which the offset is to be made—

(I) either such spouse has consented in writing to such offset and such consent is witnessed by a notary public or representative of the plan (or it is established to the satisfaction of a plan representative that such consent may not be obtained by reason of circumstances described in section 417(a)(2)(B)), or an election to waive the right of the spouse to either a qualified joint and survivor annuity or a qualified preretirement survivor annuity is in effect in accordance with the requirements of section 417(a),

(II) such spouse is ordered or required in such judgment, order, decree, or settlement to pay an amount to the plan in connection with a violation of part 4 of such subtitle, or

(III) in such judgment, order, decree, or settlement, such spouse retains the right to receive the survivor annuity under a qualified joint and survivor annuity provided pursuant to section 401(a)(11)(A)(i) and under a qualified preretirement survivor annuity provided pursuant to section 401(a)(11)(A)(ii), determined in accordance with subparagraph (D).

A plan shall not be treated as failing to meet the requirements of this subsection, subsection (k), section 403(b), or section 409(d) solely by reason of an offset described in this subparagraph.

(D) SURVIVOR ANNUITY.—

(i) IN GENERAL.—The survivor annuity described in subparagraph (C)(iii)(III) shall be determined as if—

(I) the participant terminated employment on the date of the offset,

(II) there was no offset,

(III) the plan permitted commencement of benefits only on or after normal retirement age,

(IV) the plan provided only the minimum-required qualified joint and survivor annuity, and

(V) the amount of the qualified preretirement survivor annuity under the plan is equal to the amount of the survivor annuity payable under the minimum-required qualified joint and survivor annuity.

(ii) DEFINITION.—For purposes of this subparagraph, the term "minimum-required qualified joint and survivor annuity" means the qualified joint and survivor annuity which is the actuarial equivalent of the participant's accrued benefit (within the meaning of section 411(a)(7)) and under which the survivor annuity is 50 percent of the amount of the annuity which is payable during the joint lives of the participant and the spouse.

(14) A trust shall not constitute a qualified trust under this section unless the plan of which such trust is a part provides that, unless the participant otherwise elects, the payment of benefits under the plan to the participant will begin not later than the 60th day after the latest of the close of the plan year in which—

(A) the date on which the participant attains the earlier of age 65 or the normal retirement age specified under the plan,

(B) occurs the 10th anniversary of the year in which the participant commenced participation in the plan, or

(C) the participant terminates his service with the employer.

In the case of a plan which provides for the payment of an early retirement benefit, a trust forming a part of such plan shall not constitute a qualified trust under this section unless a participant who satisfied the service requirements for such early retirement benefit, but separated from the service (with any nonforfeitable right to an accrued benefit) before satisfying the age requirement for such early retirement benefit, is entitled upon satisfaction of such age requirement to receive a benefit not less than the benefit to which he would be entitled at the normal retirement age, actuarially, reduced under regulations prescribed by the Secretary.

(15) A trust shall not constitute a qualified trust under this section unless under the plan of which such trust is a part—

(A) in the case of a participant or beneficiary who is receiving benefits under such plan, or

(B) in the case of a participant who is separated from the service and who has nonforfeitable rights to benefits,

such benefits are not decreased by reason of any increase in the benefit levels payable under title II of the Social Security Act or any increase in the wage base under such title II, if such increase takes place after September 2, 1974, or (if later) the earlier of the date of first receipt of such benefits or the date of such separation, as the case may be.

(16) A trust shall not constitute a qualified trust under this section if the plan of which such trust is a part provides for benefits or contributions which exceed the limitations of section 415.

(17) COMPENSATION LIMIT.—

(A) IN GENERAL.—A trust shall not constitute a qualified trust under this section unless, under the plan of which such trust is a part, the annual compensation of each employee taken into account under the plan for any year does not exceed $200,000.

(B) COST-OF-LIVING ADJUSTMENT.—The Secretary shall adjust annually the $200,000 amount in subparagraph (A) for increases in the cost-of-living at the same time and in the same manner as adjustments under section 415(d); except that the base period shall be the calendar quarter beginning July 1, 2001, and any increase which is not a multiple of $5,000 shall be rounded to the next lowest multiple of $5,000.

(18) ADDITIONAL SPOUSAL CONSENT REQUIREMENTS.—

(A) IN GENERAL.—To the extent paragraph (11) does not apply to a defined contribution plan to which title I of the Employee Retirement Income Security Act of 1974 applies, except as provided in subparagraphs (C) and (D), a trust forming part of such plan shall not constitute a qualified trust under this section unless no distribution may be made under the plan unless the spousal consent requirements of subparagraph (E) are met.

(B) COORDINATION WITH PARAGRAPH (11).—Nothing in this paragraph shall be construed to exempt a defined contribution plan from the requirements of subparagraph (B)(ii), (B)(iii), or (C) of paragraph (11) with respect to any participant.

(C) EXCEPTIONS FOR CERTAIN DISTRIBUTIONS.—Subparagraph (A) shall not apply to—

(i) any distribution that is—

(I) a minimum required distribution described in section 4974(b), or

(II) permitted under section 411(a)(11) to be made without the consent of the participant,

(ii) any distribution in the form of a qualified joint and survivor annuity (as defined in section 417(b)), a qualified optional survivor annuity (as defined in section 417(g)), a qualified preretirement survivor annuity (as defined in section 417(c)), or a series of substantially equal periodic payments (not less frequently than annually) made for the joint lives (or life expectancies) of the participant and the participant's spouse, or

(iii) in the case of a participant who does not elect a form of benefit described in clause (ii) under the plan or who is participating in a plan that does not provide such a form of benefit, any distribution of the participant's entire nonforfeitable accrued benefit if 50 percent of such accrued benefit is directly transferred to an in-

dividual retirement plan of the spouse of the participant.

A transfer described in clause (iii) to an individual retirement plan shall be treated in the same manner as a transfer under section 408(d)(6) and shall be deemed not to violate paragraph (2) or (13).

(D) EXCEPTIONS FOR CERTAIN ROLLOVER CONTRIBUTIONS.—

(i) IN GENERAL.—Subparagraph (A) shall not apply to any distribution, involving a participant who has a spouse, that is an eligible rollover distribution (as defined in section 402(f)(2)(A)) made in the form of a direct trustee-to-trustee transfer within the meaning of paragraph (31)—

(I) to a plan to which this paragraph or paragraph (11) applies; or

(II) to an individual retirement plan if—

(aa) the sole beneficiary of such plan is the spouse of the participant, or the spousal consent requirements of subparagraph (E) are met with respect to any designation of 1 or more other beneficiaries; and

(bb) under the terms of the individual retirement plan, the beneficiary of such plan (whether the spouse or other beneficiary designated under clause (i)) may not be changed unless—

(AA) the spousal consent requirements of subparagraph (E) are met with respect to any such change, or

(BB) the spousal consent under subclause (I) to the designation of a beneficiary other than the spouse expressly permits such designation to be changed without the further consent of the spouse.

(ii) REGULATORY AUTHORITY.—The Secretary of the Treasury, in consultation with the Secretary of Labor, may issue regulations to implement subparagraphs subclauses (I) and (II) or clause (i).

(E) SPOUSAL CONSENT REQUIREMENTS.—

(i) IN GENERAL.—For purposes of this paragraph, except as provided in clause (ii), the spousal consent requirements of this subparagraph are met with respect to any distribution or any designation or change of beneficiary if—

(I) the plan provides to each participant, within a reasonable period of time before such distribution or designation or change of beneficiary is made and consistent with such regulations as the Secretary may prescribe, a written explanation of the rights of the participant and the participant's spouse under this paragraph,

(II) the spouse of the participant consents in writing to the distribution or designation or change of beneficiary,

(III) in the case of a distribution, the written consent under subclause (II) is made during the consent period, and

(IV) the written consent under subclause (ii)—

(aa) acknowledges the effect of such distribution or designation or change of beneficiary, and

(bb) is witnessed by a plan representative or a notary public.

(ii) EXCEPTIONS UNDER SECTION 417(A)(2)(B) TO APPLY.—The requirements of clause (i) (other than subclause (I) thereof) shall not apply with respect to any distribution or designation or change of beneficiary if a participant establishes to the satisfaction of the administrator that—

(I) there is no spouse,

(II) the participant and the participant's spouse have not been married for at least 1 year as of the date of the distribution or designation or change of beneficiary, or

(III) such consent cannot be obtained because—

(aa) the spouse cannot be located after taking documented search efforts in accordance with guidance from the Secretary of Labor;

(bb) due to exceptional circumstances, requiring the participant to seek the spouse's consent would be inappropriate; or

(cc) of such other circumstances as the Secretary, in consultation with the Secretary of Labor, may by regulations prescribe.

The Secretary, in consultation with the Secretary of Labor, may issue regulations to implement this clause.

(iii) CONSENT LIMITED TO SPOUSE AND EVENT.—Any written consent by a spouse under clause (i), or the establishment by a participant that an exception under clause (ii) applies with respect to a spouse, shall be effective only with respect to that spouse and to the distribution or designation or change of beneficiary to which it relates.

(iv) CONSENT PERIOD.—For purposes of this subparagraph, the term "consent period" means, with respect to any distribution—

(I) the 90-day period immediately preceding the date of such distribution, or

(II) such other period as the Secretary may provide.

(19) A trust shall not constitute a qualified trust under this section if under the plan of which such trust is a part any part of a participant's accrued benefit derived from employer contributions (whether or not otherwise nonforfeitable), is forfeitable solely because of withdrawal by such participant of any amount attributable to the benefit derived from contributions made by such participant. The preceding sentence shall not apply to the accrued benefit of any participant unless, at the time of such withdrawal, such participant has a nonforfeitable

right to at least 50 percent of such accrued benefit (as determined under section 411). The first sentence of this paragraph shall not apply to the extent that an accrued benefit is permitted to be forfeited in accordance with section 411(a)(3)(D)(iii) (relating to proportional forfeitures of benefits accrued before September 2, 1974, in the event of withdrawal of certain mandatory contributions).

(20) A trust forming part of a pension plan shall not be treated as failing to constitute a qualified trust under this section merely because the pension plan of which such trust is a part makes 1 or more distributions within 1 taxable year to a distributee on account of a termination of the plan of which the trust is a part, or in the case of a profit-sharing or stock bonus plan, a complete discontinuance of contributions under such plan. This paragraph shall not apply to a defined benefit plan unless the employer maintaining such plan files a notice with the Pension Benefit Guaranty Corporation (at the time and in the manner prescribed by the Pension Benefit Guaranty Corporation) notifying the Corporation of such payment or distribution and the Corporation has approved such payment or distribution or, within 90 days after the date on which such notice was filed, has failed to disapprove such payment or distribution. For purposes of this paragraph, rules similar to the rules of section 402(a)(6)(B) (as in effect before its repeal by section 521 of the Unemployment Compensation Amendments of 1992) shall apply.

⟦(21) Repealed. Pub. L. 99–514, title XI, § 1171(b)(5), Oct. 22, 1986, 100 Stat. 2513.⟧

(22) If a defined contribution plan (other than a profit-sharing plan)—

(A) is established by an employer whose stock is not readily tradable on an established market, and

(B) after acquiring securities of the employer, more than 10 percent of the total assets of the plan are securities of the employer,

any trust forming part of such plan shall not constitute a qualified trust under this section unless the plan meets the requirements of subsection (e) of section 409. The requirements of subsection (e) of section 409 shall not apply to any employees of an employer who are participants in any defined contribution plan established and maintained by such employer if the stock of such employer is not readily tradable on an established market and the trade or business of such employer consists of publishing on a regular basis a newspaper for general circulation. For purposes of the preceding sentence, subsections (b), (c), (m), and (*o*) of section 414 shall not apply except for determining whether stock of the employer is not readily tradable on an established market.

(23) A stock bonus plan shall not be treated as meeting the requirements of this section unless such plan meets the requirements of subsections (h) and (*o*) of section 409, except that in applying section 409(h) for purposes of this paragraph, the term "employer securities" shall include any securities of the employer held by the plan.

(24) Any group trust which otherwise meets the requirements of this section shall not be treated as not meeting such requirements on account of the participation or inclusion in such trust of the moneys of any plan or governmental unit described in section 818(a)(6).

(25) REQUIREMENT THAT ACTUARIAL ASSUMPTIONS BE SPECIFIED.—A defined benefit plan shall not be treated as providing definitely determinable benefits unless, whenever the amount of any benefit is to be determined on the basis of actuarial assumptions, such assumptions are specified in the plan in a way which precludes employer discretion.

(26) ADDITIONAL PARTICIPATION REQUIREMENTS.—

(A) IN GENERAL.—In the case of a trust which is a part of a defined benefit plan, such trust shall not constitute a qualified trust under this subsection unless on each day of the plan year such trust benefits at least the lesser of—

(i) 50 employees of the employer, or

(ii) the greater of—

(I) 40 percent of all employees of the employer, or

(II) 2 employees (or if there is only 1 employee, such employee).

(B) TREATMENT OF EXCLUDABLE EMPLOYEES.—

(i) IN GENERAL.—A plan may exclude from consideration under this paragraph employees described in paragraphs (3) and (4)(A) of section 410(b).

(ii) SEPARATE APPLICATION FOR CERTAIN EXCLUDABLE EMPLOYEES.—If employees described in section 410(b)(4)(B) are covered under a plan which meets the requirements of subparagraph (A) separately with respect to such employees, such employees may be excluded from consideration in determining whether any plan of the employer meets such requirements if—

(I) the benefits for such employees are provided under the same plan as benefits for other employees,

(II) the benefits provided to such employees are not greater than comparable benefits provided to other employees under the plan, and

(III) no highly compensated employee (within the meaning of section 414(q)) is included in the group of such employees for more than 1 year.

(C) SPECIAL RULE FOR COLLECTIVE BARGAINING UNITS.—Except to the extent provided in regulations, a plan covering only employees described in section 410(b)(3)(A) may exclude from consideration any employees who are not included in the unit or units in which the covered employees are included.

(D) PARAGRAPH NOT TO APPLY TO MULTIEMPLOYER PLANS.—Except to the extent provided in regulations, this paragraph shall not apply to employees in a multiemployer plan (within the meaning of section 414(f)) who are covered by collective bargaining agreements.

(E) SPECIAL RULE FOR CERTAIN DISPOSITIONS OR ACQUISITIONS.—Rules similar to the rules of section 410(b)(6)(C) shall apply for purposes of this paragraph.

(F) SEPARATE LINES OF BUSINESS.—At the election of the employer and with the consent of the Secretary, this paragraph may be applied separately with respect to each separate line of business of the employer. For purposes of this paragraph, the term "separate line of business" has the meaning given such term by section 414(r) (without regard to paragraph (2)(A) or (7) thereof).

(G) EXCEPTION FOR GOVERNMENTAL PLANS.—This paragraph shall not apply to a governmental plan (within the meaning of section 414(d)).

(H) REGULATIONS.—The Secretary may by regulation provide that any separate benefit structure, any separate trust, or any other separate arrangement is to be treated as a separate plan for purposes of applying this paragraph.

(I) PROTECTED PARTICIPANTS.—

(i) IN GENERAL.—A plan shall be deemed to satisfy the requirements of subparagraph (A) if—

(I) the plan is amended—

(aa) to cease all benefit accruals, or

(bb) to provide future benefit accruals only to a closed class of participants,

(II) the plan satisfies subparagraph (A) (without regard to this subparagraph) as of the effective date of the amendment, and

(III) the amendment was adopted before April 5, 2017, or the plan is described in clause (ii).

(ii) PLANS DESCRIBED.—A plan is described in this clause if the plan would be described in subsection (*o*)(1)(C), as applied for purposes of subsection (*o*)(1)(B)(iii)(IV) and by treating the effective date of the amendment as the date the class was closed for purposes of subsection (*o*)(1)(C).

(iii) SPECIAL RULES.—For purposes of clause (i)(II), in applying section 410(b)(6)(C), the amendments described in clause (i) shall not be treated as a significant change in coverage under section 410(b)(6)(C)(i)(II).

(iv) SPUN-OFF PLANS.—For purposes of this subparagraph, if a portion of a plan described in clause (i) is spun off to another employer, the treatment under clause (i) of the spun-off plan shall continue with respect to the other employer.

(27) DETERMINATIONS AS TO PROFIT-SHARING PLANS.—

(A) CONTRIBUTIONS NEED NOT BE BASED ON PROFITS.—The determination of whether the plan under which any contributions are made is a profit-sharing plan shall be made without regard to current or accumulated profits of the employer and without regard to whether the employer is a tax-exempt organization.

(B) PLAN MUST DESIGNATE TYPE.—In the case of a plan which is intended to be a money purchase pension plan or a profit-sharing plan, a trust forming part of such plan shall not constitute a qualified trust under this subsection unless the plan designates such intent at such time and in such manner as the Secretary may prescribe.

(28) ADDITIONAL REQUIREMENTS RELATING TO EMPLOYEE STOCK OWNERSHIP PLANS.—

(A) IN GENERAL.—In the case of a trust which is part of an employee stock ownership plan (within the meaning of section 4975(e)(7)) or a plan which meets the requirements of section 409(a), such trust shall not constitute a qualified trust under this section unless such plan meets the requirements of subparagraphs (B) and (C).

(B) DIVERSIFICATION OF INVESTMENTS.—

(i) IN GENERAL.—A plan meets the requirements of this subparagraph if each qualified participant in the plan may elect within 90 days after the close of each plan year in the qualified election period to direct the plan as to the investment of at least 25 percent of the participant's account in the plan (to the extent such portion exceeds the amount to which a prior election under this subparagraph applies). In the case of the election year in which the participant can make his last election, the preceding sentence shall be applied by substituting "50 percent" for "25 percent".

(ii) METHOD OF MEETING REQUIREMENTS.—A plan shall be treated as meeting the requirements of clause (i) if—

(I) the portion of the participant's account covered by the election under clause (i) is distributed within 90 days after the period during which the election may be made, or

(II) the plan offers at least 3 investment options (not inconsistent with regulations prescribed by the Secretary) to each participant making an election under clause (i) and within 90 days after the period during which the election may be made, the plan invests the portion of the participant's account covered by the election in accordance with such election.

(iii) QUALIFIED PARTICIPANT.—For purposes of this subparagraph, the term "qualified participant" means any employee who has completed at least 10 years of participation under the plan and has attained age 55.

(iv) QUALIFIED ELECTION PERIOD.—For purposes of this subparagraph, the term "qualified election period" means the 6-plan-year period beginning with the later of—

(I) the 1st plan year in which the individual first became a qualified participant, or

(II) the 1st plan year beginning after December 31, 1986.

For purposes of the preceding sentence, an employer may elect to treat an individual first becoming a qualified participant in the 1st plan year beginning in 1987 as having become a participant in the 1st plan year beginning in 1988.

(v) EXCEPTION.—This subparagraph shall not apply to an applicable defined contribution plan (as defined in paragraph (35)(E)).

(C) USE OF INDEPENDENT APPRAISER.—A plan meets the requirements of this subparagraph if all valuations of employer securities which are not readily tradable on an established securities market with respect to activities carried on by the plan are by an independent appraiser. For purposes of the preceding sentence, the term "independent appraiser" means any appraiser meeting requirements similar to the requirements of the regulations prescribed under section 170(a)(1).

(29) BENEFIT LIMITATIONS.—In the case of a defined benefit plan (other than a multiemployer plan or a CSEC plan) to which the requirements of section 412 apply, the trust of which the plan is a part shall not constitute a qualified trust under this subsection unless the plan meets the requirements of section 436.

(30) LIMITATIONS ON ELECTIVE DEFERRALS.—In the case of a trust which is part of a plan under which elective deferrals (within the meaning of section 402(g)(3)) may be made with respect to any individual during a calendar year, such trust shall not constitute a qualified trust under this subsection unless the plan provides that the amount of such deferrals under such plan and all other plans, contracts, or arrangements of an employer maintaining such plan may not exceed the amount of the limitation in effect under section 402(g)(1)(A) for taxable years beginning in such calendar year.

(31) DIRECT TRANSFER OF ELIGIBLE ROLLOVER DISTRIBUTIONS.—

(A) IN GENERAL.—A trust shall not constitute a qualified trust under this section unless the plan of which such trust is a part provides that if the distributee of any eligible rollover distribution—

(i) elects to have such distribution paid directly to an eligible retirement plan, and

(ii) specifies the eligible retirement plan to which such distribution is to be paid (in such form and at such time as the plan administrator may prescribe),

such distribution shall be made in the form of a direct trustee-to-trustee transfer to the eligible retirement plan so specified.

(B) CERTAIN MANDATORY DISTRIBUTIONS.—

(i) IN GENERAL.—In case of a trust which is part of an eligible plan, such trust shall not constitute a qualified trust under this section unless the plan of which such trust is a part provides that if—

(I) a distribution described in clause (ii) in excess of $1,000 is made, and

(II) the distributee does not make an election under subparagraph (A) and does not elect to receive the distribution directly,

the plan administrator shall make such transfer to an individual retirement plan of a designated trustee or issuer and shall notify the distributee in writing (either separately or as part of the notice under section 402(f)) that the distribution may be transferred to another individual retirement plan.

(ii) ELIGIBLE PLAN.—For purposes of clause (i), the term "eligible plan" means a plan which provides that any nonforfeitable accrued benefit for which the present value (as determined under section 411(a)(11)) does not exceed $5,000 shall be immediately distributed to the participant.

(C) LIMITATION.—Subparagraphs (A) and (B) shall apply only to the extent that the eligible rollover distribution would be includible in gross income if not transferred as provided in subparagraph (A) (determined without regard to sections 402(c), 403(a)(4), 403(b)(8), and 457(e)(16)). The preceding sentence shall not apply to such distribution if the plan to which such distribution is transferred—

(i) is a qualified trust which is part of a plan which is a defined contribution plan and agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible, or

(ii) is an eligible retirement plan described in clause (i) or (ii) of section 402(c)(8)(B).

(D) ELIGIBLE ROLLOVER DISTRIBUTION.—For purposes of this paragraph, the term "eligible rollover distribution" has the meaning given such term by section 402(f)(2)(A).

(E) ELIGIBLE RETIREMENT PLAN.—For purposes of this paragraph, the term "eligible retirement plan" has the meaning given such term by section 402(c)(8)(B), except that a qualified trust shall be considered an eligible retirement plan only if it is a defined contribution plan, the terms of which permit the acceptance of rollover distributions.

(32) TREATMENT OF FAILURE TO MAKE CERTAIN PAYMENTS IF PLAN HAS LIQUIDITY SHORTFALL.—

(A) IN GENERAL.—A trust forming part of a pension plan to which section 430(j)(4) or 433(f)(5) applies shall not be treated as failing to constitute a qualified trust under this section merely because such plan ceases to make any payment described in subparagraph (B) during any period that such plan has a liquidity shortfall (as defined in section 430(j)(4) or 433(f)(5)).

(B) PAYMENTS DESCRIBED.—A payment is described in this subparagraph if such payment is—

(i) any payment, in excess of the monthly amount paid under a single life annuity (plus any social security supplements described in the last sentence of section 411(a)(9)), to a participant or beneficiary whose annuity starting date (as defined in section 417(f)(2)) occurs during the period referred to in subparagraph (A),

(ii) any payment for the purchase of an irrevocable commitment from an insurer to pay benefits, and

(iii) any other payment specified by the Secretary by regulations.

(C) PERIOD OF SHORTFALL.—For purposes of this paragraph, a plan has a liquidity shortfall during the period that there is an underpayment of an installment under section 430(j)(3) or 433(f) by reason of section 430(j)(4)(A) or 433(f)(5), respectively.

(33) PROHIBITION ON BENEFIT INCREASES WHILE SPONSOR IS IN BANKRUPTCY.—

(A) IN GENERAL.—A trust which is part of a plan to which this paragraph applies shall not constitute a qualified trust under this section if an amendment to such plan is adopted while the employer is a debtor in a case under title 11, United States Code, or similar Federal or State law, if such amendment increases liabilities of the plan by reason of—

(i) any increase in benefits,

(ii) any change in the accrual of benefits, or

(iii) any change in the rate at which benefits become nonforfeitable under the plan,

with respect to employees of the debtor, and such amendment is effective prior to the effective date of such employer's plan of reorganization.

(B) EXCEPTIONS.—This paragraph shall not apply to any plan amendment if—

(i) the plan, were such amendment to take effect, would have a funding target attainment percentage (as defined in section 430(d)(2)) of 100 percent or more,

(ii) the Secretary determines that such amendment is reasonable and provides for only de minimis increases in the liabilities of the plan with respect to employees of the debtor,

(iii) such amendment only repeals an amendment described in section 412(d)(2), or

(iv) such amendment is required as a condition of qualification under this part.

(C) PLANS TO WHICH THIS PARAGRAPH APPLIES.—This paragraph shall apply only to plans (other than multiemployer plans or CSEC plans) covered under section 4021 of the Employee Retirement Income Security Act of 1974.

(D) EMPLOYER.—For purposes of this paragraph, the term "employer" means the employer referred to in section 412(b)(1), without regard to section 412(b)(2).

(34) BENEFITS OF MISSING PARTICIPANTS ON PLAN TERMINATION.—In the case of a plan covered by title IV of the Employee Retirement Income Security Act of 1974, a trust forming part of such plan shall not be treated as failing to constitute a qualified trust under this section merely because the pension plan of which such trust is a part, upon its termination, transfers benefits of missing participants to the Pension Benefit Guaranty Corporation in accordance with section 4050 of such Act.

(35) DIVERSIFICATION REQUIREMENTS FOR CERTAIN DEFINED CONTRIBUTION PLANS.—

(A) IN GENERAL.—A trust which is part of an applicable defined contribution plan shall not be treated as a qualified trust unless the plan meets the diversification requirements of subparagraphs (B), (C), and (D).

(B) EMPLOYEE CONTRIBUTIONS AND ELECTIVE DEFERRALS INVESTED IN EMPLOYER SECURITIES.—In the case of the portion of an applicable individual's account attributable to employee contributions and elective deferrals which is invested in employer securities, a plan meets the requirements of this subparagraph if the applicable individual may elect to direct the plan to divest any such securities and to reinvest an equivalent amount in other investment options meeting the requirements of subparagraph (D).

(C) EMPLOYER CONTRIBUTIONS INVESTED IN EMPLOYER SECURITIES.—In the case of the portion of the account attributable to employer contributions other than elective deferrals which is invested in employer securities, a plan meets the requirements of this subparagraph if each applicable individual who—

(i) is a participant who has completed at least 3 years of service, or

(ii) is a beneficiary of a participant described in clause (i) or of a deceased participant,

may elect to direct the plan to divest any such securities and to reinvest an equivalent amount in other investment options meeting the requirements of subparagraph (D).

(D) INVESTMENT OPTIONS.—

(i) IN GENERAL.—The requirements of this subparagraph are met if the plan offers not less than 3 investment options, other than employer securities, to which an applicable individual may direct the proceeds from the divestment of employer securities pursuant to this paragraph, each of which is diversified and has materially different risk and return characteristics.

(ii) TREATMENT OF CERTAIN RESTRICTIONS AND CONDITIONS.—

(I) TIME FOR MAKING INVESTMENT CHOICES.—A plan shall not be treated as failing to meet the requirements of this subparagraph merely because the plan limits the time for divestment and reinvestment to periodic, reasonable opportunities occurring no less frequently than quarterly.

(II) CERTAIN RESTRICTIONS AND CONDITIONS NOT ALLOWED.—Except as provided in regulations, a plan shall not meet the requirements of this subparagraph if the plan imposes restrictions or conditions with respect to the investment of employer securities which are not imposed on the investment of other assets of the plan. This subclause shall not apply to any restrictions or conditions imposed by reason of the application of securities laws.

(E) APPLICABLE DEFINED CONTRIBUTION PLAN.—For purposes of this paragraph—

(i) IN GENERAL.—The term "applicable defined contribution plan" means any defined contribution plan which holds any publicly traded employer securities.

(ii) EXCEPTION FOR CERTAIN ESOPS.—Such term does not include an employee stock ownership plan if—

(I) there are no contributions to such plan (or earnings thereunder) which are held within such plan and are subject to subsection (k) or (m), and

(II) such plan is a separate plan for purposes of section 414(*l*) with respect to any other defined benefit plan or defined contribution plan maintained by the same employer or employers.

(iii) EXCEPTION FOR ONE PARTICIPANT PLANS.—Such term does not include a one-participant retirement plan.

(iv) ONE-PARTICIPANT RETIREMENT PLAN.—For purposes of clause (iii), the term "one-participant retirement plan" means a retirement plan that on the first day of the plan year—

(I) covered only one individual (or the individual and the individual's spouse) and the individual (or the individual and the individual's spouse) owned 100 percent of the plan sponsor (whether or not incorporated), or

(II) covered only one or more partners (or partners and their spouses) in the plan sponsor.

(F) CERTAIN PLANS TREATED AS HOLDING PUBLICLY TRADED EMPLOYER SECURITIES.—

(i) IN GENERAL.—Except as provided in regulations or in clause (ii), a plan holding employer securities which are not publicly traded employer securities shall be treated as holding publicly traded employer securities if any employer corporation, or any member of a controlled group of corporations which includes such employer corporation, has issued a class of stock which is a publicly traded employer security.

(ii) EXCEPTION FOR CERTAIN CONTROLLED GROUPS WITH PUBLICLY TRADED SECURITIES.—Clause (i) shall not apply to a plan if—

(I) no employer corporation, or parent corporation of an employer corporation, has issued any publicly traded employer security, and

(II) no employer corporation, or parent corporation of an employer corporation, has issued any special class of stock which grants particular rights to, or bears particular risks for, the holder or issuer with respect to any corporation described in clause (i) which has issued any publicly traded employer security.

(iii) DEFINITIONS.—For purposes of this subparagraph, the term—

(I) "controlled group of corporations" has the meaning given such term by section 1563(a), except that "50 percent" shall be substituted for "80 percent" each place it appears,

(II) "employer corporation" means a corporation which is an employer maintaining the plan, and

(III) "parent corporation" has the meaning given such term by section 424(e).

(G) OTHER DEFINITIONS.—For purposes of this paragraph—

(i) APPLICABLE INDIVIDUAL.—The term "applicable individual" means—

(I) any participant in the plan, and

(II) any beneficiary who has an account under the plan with respect to which the beneficiary is entitled to exercise the rights of a participant.

(ii) ELECTIVE DEFERRAL.—The term "elective deferral" means an employer contribution described in section 402(g)(3)(A).

(iii) EMPLOYER SECURITY.—The term "employer security" has the meaning given such term by section 407(d)(1) of the Employee Retirement Income Security Act of 1974.

(iv) EMPLOYEE STOCK OWNERSHIP PLAN.—The term "employee stock ownership plan" has the meaning given such term by section 4975(e)(7).

(v) PUBLICLY TRADED EMPLOYER SECURITIES.—The term "publicly traded employer securities" means employer securities which are readily tradable on an established securities market.

(vi) YEAR OF SERVICE.—The term "year of service" has the meaning given such term by section 411(a)(5).

(H) TRANSITION RULE FOR SECURITIES ATTRIBUTABLE TO EMPLOYER CONTRIBUTIONS.—

(i) RULES PHASED IN OVER 3 YEARS.—

(I) IN GENERAL.—In the case of the portion of an account to which subparagraph (C) applies and which consists of employer securities acquired in a plan year beginning before January 1, 2007, subparagraph (C) shall only apply to the applicable percentage of such securities. This subparagraph shall be applied separately with respect to each class of securities.

(II) EXCEPTION FOR CERTAIN PARTICIPANTS AGED 55 OR OVER.—Subclause (I) shall not apply to an applicable individual who is a participant who has attained age 55 and completed at least 3 years of service before the first plan year beginning after December 31, 2005.

(ii) APPLICABLE PERCENTAGE.—For purposes of clause (i), the applicable percentage shall be determined as follows:

(36) DISTRIBUTIONS DURING WORKING RETIREMENT.—

(A) IN GENERAL.—A trust forming part of a pension plan shall not be treated as failing to constitute a qualified trust under this section solely because the plan provides that a distribution may be made from such trust to an employee who has attained age 591/2 and who is not separated from employment at the time of such distribution.

(B) CERTAIN EMPLOYEES IN THE BUILDING AND CONSTRUCTION INDUSTRY.—Subparagraph (A) shall be applied by substituting "age 55" for "age 591/2" in the case of a multiemployer plan described in section 4203(b)(1)(B)(i) of the Employee Retirement Income Security Act of 1974, with respect to individuals who were participants in such plan on or before April 30, 2013, if—

(i) the trust to which subparagraph (A) applies was in existence before January 1, 1970, and

(ii) before December 31, 2011, at a time when the plan provided that distributions may be made to an employee who has attained age 55 and who is not separated from employment at the time of such distribution, the plan received at least 1 written determination from the Internal Revenue Service that the trust to which subparagraph (A) applies constituted a qualified trust under this section.

(37) DEATH BENEFITS UNDER USERRA-QUALIFIED ACTIVE MILITARY SERVICE.—A trust shall not constitute a qualified trust unless the plan provides that, in the case of a participant who dies while performing qualified military service (as defined in section 414(u)), the survivors of the participant are entitled to any additional benefits (other than benefit accruals relating to the period of qualified military service) provided under the plan had the participant resumed and then terminated employment on account of death.

(38) PORTABILITY OF LIFETIME INCOME.—

(A) IN GENERAL.—Except as may be otherwise provided by regulations, a trust forming part of a defined contribution plan shall not be treated as failing to constitute a qualified trust under this section solely by reason of allowing—

(i) qualified distributions of a lifetime income investment, or

(ii) distributions of a lifetime income investment in the form of a qualified plan distribution annuity contract,

on or after the date that is 90 days prior to the date on which such lifetime income investment is no longer authorized to be held as an investment option under the plan.

(B) DEFINITIONS.—For purposes of this subsection—

(i) the term "qualified distribution" means a direct trustee-to-trustee transfer described in paragraph (31)(A) to an eligible retirement plan (as defined in section 402(c)(8)(B)),

(ii) the term "lifetime income investment" means an investment option which is designed to provide an employee with election rights—

(I) which are not uniformly available with respect to other investment options under the plan, and

(II) which are to a lifetime income feature available through a contract or other arrangement offered under the plan (or under another eligible retirement plan (as so defined), if paid by means of a direct trustee-to-trustee transfer described in paragraph (31)(A) to such other eligible retirement plan),

(iii) the term "lifetime income feature" means—

(I) a feature which guarantees a minimum level of income annually (or more frequently) for at least the remainder of the life of the employee or the joint lives of the employee and the employee's designated beneficiary, or

(II) an annuity payable on behalf of the employee under which payments are made in substantially equal periodic payments (not less frequently than annually) over the life of the employee or the joint lives of the employee and the employee's designated beneficiary, and

(iv) the term "qualified plan distribution annuity contract" means an annuity contract purchased for a participant and distributed to the participant by a plan or contract described in subparagraph (B) of section 402(c)(8) (without regard to clauses (i) and (ii) thereof).

Paragraphs (11), (12), (13), (14), (15), (19), and (20) shall apply only in the case of a plan to which section 411 (relating to minimum vesting standards) applies without regard to subsection (e)(2) of such section.

(b) CERTAIN PLAN AMENDMENTS.—

(1) CERTAIN RETROACTIVE CHANGES IN PLAN.—A stock bonus, pension, profit-sharing, or annuity plan shall be considered as satisfying the requirements of subsection (a) for the period beginning with the date on which it was put into effect, or for the period beginning with the earlier of the date on which there was adopted or put into effect any amendment which caused the plan to fail to satisfy such requirements, and ending with the time prescribed by law for filing the return of the employer for his taxable year in which such plan or amendment was adopted (including extensions thereof) or such later time as the Secretary may designate, if all provisions of the plan which are necessary to satisfy such requirements are in effect by the end of such period and have been made effective for all purposes for the whole of such period.

(2) ADOPTION OF PLAN.—If an employer adopts a stock bonus, pension, profit-sharing, or annuity plan after the close of a taxable year but before the time prescribed by law for filing the return of the employer for the taxable year (including extensions thereof), the employer may elect to treat the plan as having been adopted as of the last day of the taxable year.

(c) DEFINITIONS AND RULES RELATING TO SELF-EMPLOYED INDIVIDUALS AND OWNER-EMPLOYEES.—For purposes of this section—

(1) SELF-EMPLOYED INDIVIDUAL TREATED AS EMPLOYEE.—

(A) IN GENERAL.—The term "employee" includes, for any taxable year, an individual who is a self-employed individual for such taxable year.

(B) SELF-EMPLOYED INDIVIDUAL.—The term "self-employed individual" means, with respect to any taxable year, an individual who has earned income (as defined in paragraph (2)) for such taxable year. To the extent provided in regulations prescribed by the Secretary, such term also includes, for any taxable year—

(i) an individual who would be a self-employed individual within the meaning of the preceding sentence but for the fact that the trade or business carried on by such individual did not have net profits for the taxable year, and

(ii) an individual who has been a self-employed individual within the meaning of the preceding sentence for any prior taxable year.

(2) EARNED INCOME.—

(A) IN GENERAL.—The term "earned income" means the net earnings from self-employment (as defined in section 1402(a)), but such net earnings shall be determined—

(i) only with respect to a trade or business in which personal services of the taxpayer are a material income-producing factor,

(ii) without regard to paragraphs (4) and (5) of section 1402(c),

(iii) in the case of any individual who is treated as an employee under subparagraph (A), (C), or (D) of section 3121(d)(3), without regard to section 1402(c)(2),

(iv) without regard to items which are not included in gross income for purposes of this chapter, and the deductions properly allocable to or chargeable against such items,

(v) with regard to the deductions allowed by section 404 to the taxpayer, and

(vi) with regard to the deduction allowed to the taxpayer by section 164(f).

For purposes of this subparagraph, section 1402, as in effect for a taxable year ending on December 31, 1962, shall be treated as having been in effect for all taxable years ending before such date. For purposes of this part only (other than sections 419 and 419A), this subparagraph shall be applied as if the term "trade or business" for purposes of section 1402 included service described in section 1402(c)(6).

(C) INCOME FROM DISPOSITION OF CERTAIN PROPERTY.—For purposes of this section, the term "earned income" includes gains (other than any gain which is treated under any provision of this chapter as gain from the sale or exchange of a capital asset) and net earnings derived from the sale or other disposition of, the transfer of any interest in, or the licensing of the use of property (other than good will) by an individual whose personal efforts created such property.

(3) OWNER-EMPLOYEE.—The term "owner-employee" means an employee who—

(A) owns the entire interest in an unincorporated trade or business, or

(B) in the case of a partnership, is a partner who owns more than 10 percent of either the capital interest or the profits interest in such partnership.

To the extent provided in regulations prescribed by the Secretary, such term also means an individual who has been an owner-employee within the meaning of the preceding sentence.

(4) EMPLOYER.—An individual who owns the entire interest in an unincorporated trade or business shall be treated as his own employer. A partnership shall be treated as the employer of each partner who is an employee within the meaning of paragraph (1).

(5) CONTRIBUTIONS ON BEHALF OF OWNER-EMPLOYEES.—The term "contribution on behalf of an owner-employee" includes, except as the context otherwise requires, a contribution under a plan—

(A) by the employer for an owner-employee, and

(B) by an owner-employee as an employee.

(6) SPECIAL RULE FOR CERTAIN FISHERMEN.—For purposes of this subsection, the term "self-employed individual" includes an individual described in section 3121(b)(20) (relating to certain fishermen).

(d) CONTRIBUTION LIMIT ON OWNER-EMPLOYEES.—A trust forming part of a pension or profit-sharing plan which provides contributions or benefits for employees some or all of whom are owner-employees shall constitute a qualified trust under this section only if, in addition to meeting the requirements of subsection (a), the plan provides that contributions on behalf of any owner-employee may be made only with respect to the earned income of such owner-employee which is derived from the trade or business with respect to which such plan is established.

(f) CERTAIN CUSTODIAL ACCOUNTS AND CONTRACTS.—For purposes of this title, a custodial account, an annuity contract, or a contract (other than a life, health or accident, property, casualty, or liability insurance contract) issued by an insurance company qualified to do business in a State shall be treated as a qualified trust under this section if—

(1) the custodial account or contract would, except for the fact that it is not a trust, constitute a qualified trust under this section, and

(2) in the case of a custodial account the assets thereof are held by a bank (as defined in section 408(n)) or another person who demonstrates, to the satisfaction of the Secretary, that the manner in which he will hold the assets will be consistent with the requirements of this section.

For purposes of this title, in the case of a custodial account or contract treated as a qualified trust under this section by reason of this subsection, the person holding the assets of such account or holding such contract shall be treated as the trustee thereof.

(g) ANNUITY DEFINED.—For purposes of this section and sections 402, 403, and 404, the term "annuity" includes a face-amount certificate, as defined in section 2(a)(15) of the Investment Company Act of 1940 (15 U.S.C., sec. 80a–2); but does not include any contract or certificate issued after December 31, 1962, which is transferable, if any person other than the trustee of a trust described in section 401(a) which is exempt from tax under section 501(a) is the owner of such contract or certificate.

(h) MEDICAL, ETC., BENEFITS FOR RETIRED EMPLOYEES AND THEIR SPOUSES AND DEPENDENTS.—Under regulations prescribed by the

Secretary, and subject to the provisions of section 420, a pension or annuity plan may provide for the payment of benefits for sickness, accident, hospitalization, and medical expenses of retired employees, their spouses and their dependents, but only if—

(1) such benefits are subordinate to the retirement benefits provided by the plan,

(2) a separate account is established and maintained for such benefits,

(3) the employer's contributions to such separate account are reasonable and ascertainable,

(4) it is impossible, at any time prior to the satisfaction of all liabilities under the plan to provide such benefits, for any part of the corpus or income of such separate account to be (within the taxable year or thereafter) used for, or diverted to, any purpose other than the providing of such benefits,

(5) notwithstanding the provisions of subsection (a)(2), upon the satisfaction of all liabilities under the plan to provide such benefits, any amount remaining in such separate account must, under the terms of the plan, be returned to the employer, and

(6) in the case of an employee who is a key employee, a separate account is established and maintained for such benefits payable to such employee (and his spouse and dependents) and such benefits (to the extent attributable to plan years beginning after March 31, 1984, for which the employee is a key employee) are only payable to such employee (and his spouse and dependents) from such separate account.

For purposes of paragraph (6), the term "key employee" means any employee, who at any time during the plan year or any preceding plan year during which contributions were made on behalf of such employee, is or was a key employee as defined in section 416(i). In no event shall the requirements of paragraph (1) be treated as met if the aggregate actual contributions for medical benefits, when added to actual contributions for life insurance protection under the plan, exceed 25 percent of the total actual contributions to the plan (other than contributions to fund past service credits) after the date on which the account is established. For purposes of this subsection, the term "dependent" shall include any individual who is a child (as defined in section 152(f)(1)) of a retired employee who as of the end of the calendar year has not attained age 27.

(i) CERTAIN UNION-NEGOTIATED PENSION PLANS.—In the case of a trust forming part of a pension plan which has been determined by the Secretary to constitute a qualified trust under subsection (a) and to be exempt from taxation under section 501(a) for a period beginning after contributions were first made to or for such trust, if it is shown to the satisfaction of the Secretary that—

(1) such trust was created pursuant to a collective bargaining agreement between employee representatives and one or more employers,

(2) any disbursements of contributions, made to or for such trust before the time as of which the Secretary determined that the trust constituted a qualified trust, substantially complied with the terms of the trust, and the plan of which the trust is a part, as subsequently qualified, and

(3) before the time as of which the Secretary determined that the trust constitutes a qualified trust, the contributions to or for such trust were not used in a manner which would jeopardize the interests of its beneficiaries,

then such trust shall be considered as having constituted a qualified trust under subsection (a) and as having been exempt from taxation under section 501(a) for the period beginning on the date on which contributions were first made to or for such trust and ending on the date such trust first constituted (without regard to this subsection) a qualified trust under subsection (a).

(k) CASH OR DEFERRED ARRANGEMENTS.—

(1) GENERAL RULE.—A profit-sharing or stock bonus plan, a pre-ERISA money purchase plan, or a rural cooperative plan shall not be considered as not satisfying the requirements of subsection (a) merely because the plan includes a qualified cash or deferred arrangement.

(2) QUALIFIED CASH OR DEFERRED ARRANGEMENT.—A qualified cash or deferred arrangement is any arrangement which is part of a profit-sharing or stock bonus plan, a pre-ERISA money purchase plan, or a rural cooperative plan which meets the requirements of subsection (a)—

(A) under which a covered employee may elect to have the employer make payments as contributions to a trust under the plan on behalf of the employee, or to the employee directly in cash;

(B) under which amounts held by the trust which are attributable to employer contributions made pursuant to the employee's election—

(i) may not be distributable to participants or other beneficiaries earlier than—

(I) severance from employment, death, or disability,

(II) an event described in paragraph (10),

(III) in the case of a profit-sharing or stock bonus plan, the attainment of age 591/2,

(IV) subject to the provisions of paragraph (14), upon hardship of the employee,

(V) in the case of a qualified reservist distribution (as defined in section 72(t)(2)(G)(iii)), the date on which a period referred to in subclause (III) of such section begins, or

(VI) except as may be otherwise provided by regulations, with respect to amounts invested in a lifetime income investment (as defined in subsection (a)(38)(B)(ii)), the date that is 90 days prior to the date that such lifetime income investment may no longer be held as an investment option under the arrangement,

(ii) will not be distributable merely by reason of the completion of a stated period of participation or the lapse of a fixed number of years, and

(iii) except as may be otherwise provided by regulations, in the case of amounts described in clause (i)(VI), will be distributed only in the form of a qualified distribution (as defined in subsection (a)(38)(B)(i)) or a qualified plan distribution annuity contract (as defined in subsection (a)(38)(B)(iv)),

(C) which provides that an employee's right to his accrued benefit derived from employer contributions made to the trust pursuant to his election is nonforfeitable, and

(D) which does not require, as a condition of participation in the arrangement, that an employee complete a period of service with the employer (or employers) maintaining the plan extending beyond the close of the earlier of—

(i) the period permitted under section 410(a)(1) (determined without regard to subparagraph (B)(i) thereof), or

(ii) subject to the provisions of paragraph (15), the first period of 3 consecutive 12-month periods during each of which the employee has at least 500 hours of service.

(3) APPLICATION OF PARTICIPATION AND DISCRIMINATION STANDARDS.—

(A) A cash or deferred arrangement shall not be treated as a qualified cash or deferred arrangement unless—

(i) those employees eligible to benefit under the arrangement satisfy the provisions of section 410(b)(1), and

(ii) the actual deferral percentage for eligible highly compensated employees (as defined in paragraph (5)) for the plan year bears a relationship to the actual deferral percentage for all other eligible employees for the preceding plan year which meets either of the following tests:

(I) The actual deferral percentage for the group of eligible highly compensated employees is not more than the actual deferral percentage of all other eligible employees multiplied by 1.25.

(II) The excess of the actual deferral percentage for the group of eligible highly compensated employees over that of all other eligible employees is not more than 2 percentage points, and the actual deferral percentage for the group of eligible highly compensated employees is not more than the actual deferral percentage of all other eligible employees multiplied by 2.

If 2 or more plans which include cash or deferred arrangements are considered as 1 plan for purposes of section 401(a)(4) or 410(b), the cash or deferred arrangements included in such plans shall be treated as 1 arrangement for purposes of this subparagraph.

If any highly compensated employee is a participant under 2 or more cash or deferred arrangements of the employer, for purposes of determining the deferral percentage with respect to such employee, all such cash or deferred arrangements shall be treated as 1 cash or deferred arrangement. An arrangement may apply clause (ii) by using the plan year rather than the preceding plan year if the employer so elects, except that if such an election is made, it may not be changed except as provided by the Secretary.

(B) For purposes of subparagraph (A), the actual deferral percentage for a specified group of employees for a plan year shall be the average of the ratios (calculated separately for each employee in such group) of—

(i) the amount of employer contributions actually paid over to the trust on behalf of each such employee for such plan year, to

(ii) the employee's compensation for such plan year.

(C) A cash or deferred arrangement shall be treated as meeting the requirements of subsection (a)(4) with respect to contributions if the requirements of subparagraph (A)(ii) are met.

(D) For purposes of subparagraph (B), the employer contributions on behalf of any employee—

(i) shall include any employer contributions made pursuant to the employee's election under paragraph (2), and

(ii) under such rules as the Secretary may prescribe, may, at the election of the employer, include—

(I) matching contributions (as defined in 401(m)(4)(A)) which meet the requirements of paragraph (2)(B) and (C), and

(II) qualified nonelective contributions (within the meaning of section 401(m)(4)(C)).

(E) For purposes of this paragraph, in the case of the first plan year of any plan (other than a successor plan), the amount taken into account as the actual deferral percentage of nonhighly compensated employees for the preceding plan year shall be—

(i) 3 percent, or

(ii) if the employer makes an election under this subclause, the actual deferral percentage of nonhighly compensated employees determined for such first plan year.

(F) SPECIAL RULE FOR EARLY PARTICIPATION.—If an employer elects to apply section 410(b)(4)(B) in determining whether a cash or deferred arrangement meets the requirements of subparagraph (A)(i), the employer may, in determining whether the arrangement meets the requirements of subparagraph (A)(ii), exclude from consideration all eligible employees (other than highly compensated employees) who have not met the minimum age and service requirements of section 410(a)(1)(A).

(G) GOVERNMENTAL PLAN.—A governmental plan (within the meaning of section 414(d)) shall be treated as meeting the requirements of this paragraph.

(4) OTHER REQUIREMENTS.—

(A) BENEFITS (OTHER THAN MATCHING CONTRIBUTIONS) MUST NOT BE CONTINGENT ON ELECTION TO DEFER.—A cash or deferred arrangement of any employer shall not be treated as a qualified cash or deferred arrangement if any other benefit is conditioned (directly or indirectly) on the employee electing to have the employer make or not make contributions under the arrangement in lieu of receiving cash. The preceding sentence shall not apply to any matching contribution (as defined in section 401(m)) made by reason of such an election.

(B) ELIGIBILITY OF STATE AND LOCAL GOVERNMENTS AND TAX-EXEMPT ORGANIZATIONS.—

(i) TAX-EXEMPTS ELIGIBLE.—Except as provided in clause (ii), any organization exempt from tax under this subtitle may include a qualified cash or deferred arrangement as part of a plan maintained by it.

(ii) GOVERNMENTS INELIGIBLE.—A cash or deferred arrangement shall not be treated as a qualified cash or deferred arrangement if it is part of a plan maintained by a State or local government or political subdivision thereof, or any agency or instrumentality thereof. This clause shall not apply to a rural cooperative plan or to a plan of an employer described in clause (iii).

(iii) TREATMENT OF INDIAN TRIBAL GOVERNMENTS.—An employer which is an Indian tribal government (as defined in section 7701(a)(40)), a subdivision of an Indian tribal government (determined in accordance with section 7871(d)), an agency or instrumentality of an Indian tribal government or subdivision thereof, or a corporation chartered under Federal, State, or tribal law which is owned in whole or in part by any of the foregoing may include a qualified cash or deferred arrangement as part of a plan maintained by the employer.

(C) COORDINATION WITH OTHER PLANS.—Except as provided in section 401(m), any employer contribution made pursuant to an employee's election under a qualified cash or deferred arrangement shall not be taken into account for purposes of determining whether any other plan meets the requirements of section 401(a) or 410(b). This subparagraph shall not apply for purposes of determining whether a plan meets the average benefit requirement of section 410(b)(2)(A)(ii).

(5) HIGHLY COMPENSATED EMPLOYEE.—For purposes of this subsection, the term "highly compensated employee" has the meaning given such term by section 414(q).

(6) PRE-ERISA MONEY PURCHASE PLAN.—For purposes of this subsection, the term "pre-ERISA money purchase plan" means a pension plan—

(A) which is a defined contribution plan (as defined in section 414(i)),

(B) which was in existence on June 27, 1974, and which, on such date, included a salary reduction arrangement, and

(C) under which neither the employee contributions nor the employer contributions may exceed the levels provided for by the contribution formula in effect under the plan on such date.

(7) RURAL COOPERATIVE PLAN.—For purposes of this subsection—

(A) IN GENERAL.—The term "rural cooperative plan" means any pension plan—

(i) which is a defined contribution plan (as defined in section 414(i)), and

(ii) which is established and maintained by a rural cooperative.

(B) RURAL COOPERATIVE DEFINED.—For purposes of subparagraph (A), the term "rural cooperative" means—

(i) any organization which—

(I) is engaged primarily in providing electric service on a mutual or cooperative basis, or

(II) is engaged primarily in providing electric service to the public in its area of service and which is exempt from tax under this subtitle or which is a State or local government (or an agency or instrumentality thereof), other than a municipality (or an agency or instrumentality thereof),

(ii) any organization described in paragraph (4) or (6) of section 501(c) and at least 80 percent of the members of which are organizations described in clause (i),

(iii) a cooperative telephone company described in section 501(c)(12),

(iv) any organization which—

(I) is a mutual irrigation or ditch company described in section 501(c)(12) (without regard to the 85 percent requirement thereof), or

(II) is a district organized under the laws of a State as a municipal corporation for the purpose of irrigation, water conservation, or drainage, and

(v) an organization which is a national association of organizations described in clause (i), (ii),, (iii), or (iv).

(C) SPECIAL RULE FOR CERTAIN DISTRIBUTIONS.—A rural cooperative plan which includes a qualified cash or deferred arrangement shall not be treated as violating the requirements of section 401(a) or of paragraph (2) merely by reason of a hardship distribution or a distribution to a participant after attainment of age 591/2. For purposes of this section, the term "hardship distribution" means a distribution described in paragraph (2)(B)(i)(IV) (without regard to the limitation of its application to profit-sharing or stock bonus plans).

(8) ARRANGEMENT NOT DISQUALIFIED IF EXCESS CONTRIBUTIONS DISTRIBUTED.—

(A) IN GENERAL.—A cash or deferred arrangement shall not be treated as failing to meet the requirements of clause (ii) of paragraph (3)(A) for any plan year if, before the close of the following plan year—

(i) the amount of the excess contributions for such plan year (and any income allocable to such contributions through the end of such year) is distributed, or

(ii) to the extent provided in regulations, the employee elects to treat the amount of the excess contributions as an amount distributed to the employee and then contributed by the employee to the plan.

Any distribution of excess contributions (and income) may be made without regard to any other provision of law.

(B) EXCESS CONTRIBUTIONS.—For purposes of subparagraph (A), the term “excess contributions” means, with respect to any plan year, the excess of—

(i) the aggregate amount of employer contributions actually paid over to the trust on behalf of highly compensated employees for such plan year, over

(ii) the maximum amount of such contributions permitted under the limitations of clause (ii) of paragraph (3)(A) (determined by reducing contributions made on behalf of highly compensated employees in order of the actual deferral percentages beginning with the highest of such percentages).

(C) METHOD OF DISTRIBUTING EXCESS CONTRIBUTIONS.—Any distribution of the excess contributions for any plan year shall be made to highly compensated employees on the basis of the amount of contributions by, or on behalf of, each of such employees.

(D) ADDITIONAL TAX UNDER SECTION 72(T) NOT TO APPLY.—No tax shall be imposed under section 72(t) on any amount required to be distributed under this paragraph.

(E) TREATMENT OF MATCHING CONTRIBUTIONS FORFEITED BY REASON OF EXCESS DEFERRAL OR CONTRIBUTION OR PERMISSIBLE WITHDRAWAL.—For purposes of paragraph (2)(C), a matching contribution (within the meaning of subsection (m)) shall not be treated as forfeitable merely because such contribution is forfeitable if the contribution to which the matching contribution relates is treated as an excess contribution under subparagraph (B), an excess deferral under section 402(g)(2)(A), a permissible withdrawal under section 414(w), or an excess aggregate contribution under section 401(m)(6)(B).

(F) CROSS REFERENCE.—For excise tax on certain excess contributions, see section 4979.

(9) COMPENSATION.—For purposes of this subsection, the term “compensation” has the meaning given such term by section 414(s).

(10) DISTRIBUTIONS UPON TERMINATION OF PLAN.—

(A) IN GENERAL.—An event described in this subparagraph is the termination of the plan without establishment or maintenance of another defined contribution plan (other than an employee stock ownership plan as defined in section 4975(e)(7)).

(B) DISTRIBUTIONS MUST BE LUMP SUM DISTRIBUTIONS.—

(i) IN GENERAL.—A termination shall not be treated as described in subparagraph (A) with respect to any employee unless the employee receives a lump sum distribution by reason of the termination.

(ii) LUMP-SUM DISTRIBUTION.—For purposes of this subparagraph, the term “lump-sum distribution” has the meaning given such term by section 402(e)(4)(D) (without regard to subclauses (I), (II), (III), and (IV) of clause (i) thereof). Such term includes a distribution of an annuity contract from—

(I) a trust which forms a part of a plan described in section 401(a) and which is exempt from tax under section 501(a), or

(II) an annuity plan described in section 403(a).

(11) ADOPTION OF SIMPLE PLAN TO MEET NONDISCRIMINATION TESTS.—

(A) IN GENERAL.—A cash or deferred arrangement maintained by an eligible employer shall be treated as meeting the requirements of paragraph (3)(A)(ii) if such arrangement meets—

(i) the contribution requirements of subparagraph (B),

(ii) the exclusive plan requirements of subparagraph (C), and

(iii) the vesting requirements of section 408(p)(3).

(B) CONTRIBUTION REQUIREMENTS.—

(i) IN GENERAL.—The requirements of this subparagraph are met if, under the arrangement—

(I) an employee may elect to have the employer make elective contributions for the year on behalf of the employee to a trust under the plan in an amount which is expressed as a percentage of compensation of the employee but which in no event exceeds the amount in effect under section 408(p)(2)(A)(ii),

(II) the employer is required to make a matching contribution to the trust for the year in an amount equal to so much of the amount the employee elects under subclause (I) as does not exceed 3 percent of compensation for the year, and

(III) no other contributions may be made other than contributions described in subclause (I) or (II).

(ii) EMPLOYER MAY ELECT 2-PERCENT NONELECTIVE CONTRIBUTION.—An employer shall be treated as meeting the requirements of clause (i)(II) for any year if, in lieu of the contributions described in such clause, the employer elects (pursuant to the terms of the arrangement) to make nonelective contributions of 2 percent of compensation for each employee who is eligible to participate in the arrangement and who has at least $5,000 of compensation from the employer for the year. If an employer makes an election under this subparagraph for any year, the employer shall notify employees of such election within a reasonable period of time before the 60th day before the beginning of such year.

(iii) ADMINISTRATIVE REQUIREMENTS.—

(I) IN GENERAL.—Rules similar to the rules of subparagraphs (B) and (C) of section 408(p)(5) shall apply for purposes of this subparagraph.

(II) NOTICE OF ELECTION PERIOD.—The requirements of this subparagraph shall not be treated as met with respect to any year unless the employer notifies each employee eligible to participate, within a reasonable period of time before the 60th day before the beginning of such year (and, for the first year the employee is so eligible, the 60th day before the first day such employee is so eligible), of the rules similar to the rules of section 408(p)(5)(C) which apply by reason of subclause (I).

(C) EXCLUSIVE PLAN REQUIREMENT.—The requirements of this subparagraph are met for any year to which this paragraph applies if no contributions were made, or benefits were accrued, for services during such year under any qualified plan of the employer on behalf of any employee eligible to participate in the cash or deferred arrangement, other than contributions described in subparagraph (B).

(D) DEFINITIONS AND SPECIAL RULE.—

(i) DEFINITIONS.—For purposes of this paragraph, any term used in this paragraph which is also used in section 408(p) shall have the meaning given such term by such section.

(ii) COORDINATION WITH TOP-HEAVY RULES.—A plan meeting the requirements of this paragraph for any year shall not be treated as a top-heavy plan under section 416 for such year if such plan allows only contributions required under this paragraph.

(12) ALTERNATIVE METHODS OF MEETING NONDISCRIMINATION REQUIREMENTS.—

(A) IN GENERAL.—A cash or deferred arrangement shall be treated as meeting the requirements of paragraph (3)(A)(ii) if such arrangement—

(i) meets the contribution requirements of subparagraph (B) and the notice requirements of subparagraph (D), or

(ii) meets the contribution requirements of subparagraph (C).

(B) MATCHING CONTRIBUTIONS.—

(i) IN GENERAL.—The requirements of this subparagraph are met if, under the arrangement, the employer makes matching contributions on behalf of each employee who is not a highly compensated employee in an amount equal to—

(I) 100 percent of the elective contributions of the employee to the extent such elective contributions do not exceed 3 percent of the employee's compensation, and

(II) 50 percent of the elective contributions of the employee to the extent that such elective contributions exceed 3 percent but do not exceed 5 percent of the employee's compensation.

(ii) RATE FOR HIGHLY COMPENSATED EMPLOYEES.—The requirements of this subparagraph are not met if, under the arrangement, the rate of matching contribution with respect to any elective contribution of a highly compensated employee at any rate of elective contribution is greater than that with respect to an employee who is not a highly compensated employee.

(iii) ALTERNATIVE PLAN DESIGNS.—If the rate of any matching contribution with respect to any rate of elective contribution is not equal to the percentage required under clause (i), an arrangement shall not be treated as failing to meet the requirements of clause (i) if—

(I) the rate of an employer's matching contribution does not increase as an employee's rate of elective contributions increase, and

(II) the aggregate amount of matching contributions at such rate of elective contribution is at least equal to the aggregate amount of matching contributions which would be made if matching contributions were made on the basis of the percentages described in clause (i).

(C) NONELECTIVE CONTRIBUTIONS.—The requirements of this subparagraph are met if, under the arrangement, the employer is required, without regard to whether the employee makes an elective contribution or employee contribution, to make a contribution to a defined contribution plan on behalf of each employee who is not a highly compensated employee and who is eligible to participate in the arrangement in an amount equal to at least 3 percent of the employee's compensation.

(D) NOTICE REQUIREMENT.—An arrangement meets the requirements of this paragraph if, under the arrangement, each employee eligible to participate is, within a reasonable period before any year, given written notice of the employee's rights and obligations under the arrangement which—

(i) is sufficiently accurate and comprehensive to apprise the employee of such rights and obligations, and

(ii) is written in a manner calculated to be understood by the average employee eligible to participate.

(E) OTHER REQUIREMENTS.—

(i) WITHDRAWAL AND VESTING RESTRICTIONS.—An arrangement shall not be treated as meeting the requirements of subparagraph (B) or (C) of this paragraph unless the requirements of subparagraphs (B) and (C) of paragraph (2) are met with respect to all employer contributions (including matching contributions) taken into account in determining whether the requirements of subparagraphs (B) and (C) of this paragraph are met.

(ii) SOCIAL SECURITY AND SIMILAR CONTRIBUTIONS NOT TAKEN INTO ACCOUNT.—An arrangement shall not be treated as meeting the requirements of subparagraph (B) or (C) unless such requirements are met without regard to subsection (*l*), and, for purposes of subsection (*l*), employer contributions under subparagraph (B) or (C) shall not be taken into account.

(F) TIMING OF PLAN AMENDMENT FOR EMPLOYER MAKING NONELECTIVE CONTRIBUTIONS.—

(i) IN GENERAL.—Except as provided in clause (ii), a plan may be amended after the beginning of a plan year to provide that the requirements of subparagraph (C) shall apply to the arrangement for the plan year, but only if the amendment is adopted—

(I) at any time before the 30th day before the close of the plan year, or

(II) at any time before the last day under paragraph (8)(A) for distributing excess contributions for the plan year.

(ii) EXCEPTION WHERE PLAN PROVIDED FOR MATCHING CONTRIBUTIONS.—Clause (i) shall not apply to any plan year if the plan provided at any time during the plan year that the requirements of subparagraph (B) or paragraph (13)(D)(i)(I) applied to the plan year.

(iii) 4-PERCENT CONTRIBUTION REQUIREMENT.—Clause (i)(II) shall not apply to an arrangement unless the amount of the contributions described in subparagraph (C) which the employer is required to make under the arrangement for the plan year with respect to any employee is an amount equal to at least 4 percent of the employee's compensation.

(G) OTHER PLANS.—An arrangement shall be treated as meeting the requirements under subparagraph (A)(i) if any other plan maintained by the employer meets such requirements with respect to employees eligible under the arrangement.

(13) ALTERNATIVE METHOD FOR AUTOMATIC CONTRIBUTION ARRANGEMENTS TO MEET NONDISCRIMINATION REQUIREMENTS.—

(A) IN GENERAL.—A qualified automatic contribution arrangement shall be treated as meeting the requirements of paragraph (3)(A)(ii).

(B) QUALIFIED AUTOMATIC CONTRIBUTION ARRANGEMENT.—For purposes of this paragraph, the term "qualified automatic contribution arrangement" means a cash or deferred arrangement—

(i) which is described in subparagraph (D)(i)(I) and meets the applicable requirements of subparagraphs (C) through (E), or

(ii) which is described in subparagraph (D)(i)(II) and meets the applicable requirements of subparagraphs (C) and (D).

(C) AUTOMATIC DEFERRAL.—

(i) IN GENERAL.—The requirements of this subparagraph are met if, under the arrangement, each employee eligible to participate in the arrangement is treated as having elected to have the employer make elective contributions in an amount equal to a qualified percentage of compensation.

(ii) ELECTION OUT.—The election treated as having been made under clause (i) shall cease to apply with respect to any employee if such employee makes an affirmative election—

(I) to not have such contributions made, or

(II) to make elective contributions at a level specified in such affirmative election.

(iii) QUALIFIED PERCENTAGE.—For purposes of this subparagraph, the term "qualified percentage" means, with respect to any employee, any percentage determined under the arrangement if such percentage is applied uniformly, does not exceed 15 percent (10 percent during the period described in subclause (I)), and is at least—

(I) 3 percent during the period ending on the last day of the first plan year which begins after the date on which the first elective contribution described in clause (i) is made with respect to such employee,

(II) 4 percent during the first plan year following the plan year described in subclause (I),

(III) 5 percent during the second plan year following the plan year described in subclause (I), and

(IV) 6 percent during any subsequent plan year.

(iv) AUTOMATIC DEFERRAL FOR CURRENT EMPLOYEES NOT REQUIRED *FOR PRE-2025 ARRANGEMENTS*.—❲Clause (i)❳ *In the case of a qualified automatic contribution arrangement in effect before January 1, 2025, clause (i)* may be applied without taking into account any employee who—

(I) was eligible to participate in the arrangement (or a predecessor arrangement) immediately before the date on which such arrangement becomes a qualified automatic contribution arrangement (determined after application of this clause), and

(II) had an election in effect on such date either to participate in the arrangement or to not participate in the arrangement.

(v) PERIODIC AUTOMATIC DEFERRAL REQUIRED FOR POST-2024 ARRANGEMENTS.—In the case of a qualified automatic contribution arrangement which takes effect after December 31, 2024, the requirements of this subparagraph shall be treated as met only if, under the arrangement, at least every 3 plan years each employee—

(I) who is eligible to participate in the arrangement, and

(II) who, at the time of the determination, has in effect an affirmative election pursuant to clause (ii) not to have contributions described in clause (i) made,

is treated as having made the election described in clause (i) unless the employee makes a new affirmative election under clause (ii). Such determination may be made at one time for all employees described in the preceding sentence for a plan year, regardless of individual employee dates of enrollment.

(D) MATCHING OR NONELECTIVE CONTRIBUTIONS.—

(i) IN GENERAL.—The requirements of this subparagraph are met if, under the arrangement, the employer—

(I) makes matching contributions on behalf of each employee who is not a highly compensated employee in an amount equal to the sum of 100 percent of the elective contributions of the employee to the extent that such contributions do not exceed 1 percent of compensation plus 50 percent of so much of such contributions as exceed 1 percent but do not exceed 6 percent of compensation, or

(II) is required, without regard to whether the employee makes an elective contribution or employee contribution, to make a contribution to a defined contribution plan on behalf of each employee who is not a highly compensated employee and who is eligible to participate in the arrangement in an amount equal to at least 3 percent of the employee's compensation.

(ii) APPLICATION OF RULES FOR MATCHING CONTRIBUTIONS.—The rules of clauses (ii) and (iii) of paragraph (12)(B) shall apply for purposes of clause (i)(I).

(iii) WITHDRAWAL AND VESTING RESTRICTIONS.—An arrangement shall not be treated as meeting the requirements of clause (i) unless, with respect to employer contributions (including matching contributions) taken into account in determining whether the requirements of clause (i) are met—

(I) any employee who has completed at least 2 years of service (within the meaning of section 411(a)) has a nonforfeitable right to 100 percent of the employee's accrued benefit derived from such employer contributions, and

(II) the requirements of subparagraph (B) of paragraph (2) are met with respect to all such employer contributions.

(iv) APPLICATION OF CERTAIN OTHER RULES.—The rules of subparagraphs (E)(ii) and (F) of paragraph (12) shall apply for purposes of subclauses (I) and (II) of clause (i).

(E) NOTICE REQUIREMENTS.—

(i) IN GENERAL.—The requirements of this subparagraph are met if, within a reasonable period before each plan year, each employee eligible to participate in the arrangement for such year receives written notice of the employee's rights and obligations under the arrangement which—

(I) is sufficiently accurate and comprehensive to apprise the employee of such rights and obligations, and

(II) is written in a manner calculated to be understood by the average employee to whom the arrangement applies.

(ii) TIMING AND CONTENT REQUIREMENTS.—A notice shall not be treated as meeting the requirements of clause (i) with respect to an employee unless—

(I) the notice explains the employee's right under the arrangement to elect not to have elective contributions made on the employee's behalf (or to elect to have such contributions made at a different percentage),

(II) in the case of an arrangement under which the employee may elect among 2 or more investment options, the notice explains how contributions made under the arrangement will be invested in the absence of any investment election by the employee, and

(III) the employee has a reasonable period of time after receipt of the notice described in subclauses (I) and (II) and before the first elective contribution is made to make either such election.

(F) TIMING OF PLAN AMENDMENT FOR EMPLOYER MAKING NONELECTIVE CONTRIBUTIONS.—

(i) IN GENERAL.—Except as provided in clause (ii), a plan may be amended after the beginning of a plan year to provide that the requirements of subparagraph (D)(i)(II) shall apply to the arrangement for the plan year, but only if the amendment is adopted—

(I) at any time before the 30th day before the close of the plan year, or

(II) at any time before the last day under paragraph (8)(A) for distributing excess contributions for the plan year.

(ii) EXCEPTION WHERE PLAN PROVIDED FOR MATCHING CONTRIBUTIONS.—Clause (i) shall not apply to any plan year if the plan provided at any time during the plan year that the requirements of subparagraph (D)(i)(I) or paragraph (12)(B) applied to the plan year.

(iii) 4-PERCENT CONTRIBUTION REQUIREMENT.—Clause (i)(II) shall not apply to an arrangement unless the amount of the contributions described in subparagraph (D)(i)(II) which the employer is required to make under the arrangement for the plan year with respect to any employee is an amount equal to at least 4 percent of the employee's compensation.

(14) SPECIAL RULES RELATING TO HARDSHIP WITHDRAWALS.—For purposes of paragraph (2)(B)(i)(IV)—

(A) AMOUNTS WHICH MAY BE WITHDRAWN.—The following amounts may be distributed upon hardship of the employee:

(i) Contributions to a profit-sharing or stock bonus plan to which section 402(e)(3) applies.

(ii) Qualified nonelective contributions (as defined in subsection (m)(4)(C)).

(iii) Qualified matching contributions described in paragraph (3)(D)(ii)(I).

(iv) Earnings on any contributions described in clause (i), (ii), or (iii).

(B) NO REQUIREMENT TO TAKE AVAILABLE LOAN.—A distribution shall not be treated as failing to be made upon the hardship of an employee solely because the employee does not take any available loan under the plan.

(15) SPECIAL RULES FOR PARTICIPATION REQUIREMENT FOR LONG-TERM, PART-TIME WORKERS.—For purposes of paragraph (2)(D)(ii)—

(A) AGE REQUIREMENT MUST BE MET.—Paragraph (2)(D)(ii) shall not apply to an employee unless the employee has met the requirement of section 410(a)(1)(A)(i) by the close of the last of the 12-month periods described in such paragraph.

(B) NONDISCRIMINATION AND TOP-HEAVY RULES NOT TO APPLY.—

(i) NONDISCRIMINATION RULES.—In the case of employees who are eligible to participate in the arrangement solely by reason of paragraph (2)(D)(ii)—

(I) notwithstanding subsection (a)(4), an employer shall not be required to make nonelective or matching contributions on behalf of such employees even if such contributions are made on behalf of other employees eligible to participate in the arrangement, and

(II) an employer may elect to exclude such employees from the application of subsection (a)(4), paragraphs (3), (12), and (13), subsection (m)(2), and section 410(b).

(ii) TOP-HEAVY RULES.—An employer may elect to exclude all employees who are eligible to participate in a plan maintained by the employer solely by reason of paragraph (2)(D)(ii) from the application of the vesting and benefit requirements under subsections (b) and (c) of section 416.

(iii) VESTING.—For purposes of determining whether an employee described in clause (i) has a nonforfeitable right to employer contributions (other than contributions described in paragraph (3)(D)(i)) under the arrangement, each 12-month period for which the employee has at least 500 hours of service shall be treated as a year of service, and section 411(a)(6) shall be applied by substituting “at least 500 hours of service” for “more than 500 hours of service” in subparagraph (A) thereof.

(iv) EMPLOYEES WHO BECOME FULL-TIME EMPLOYEES.—This subparagraph (other than clause (iii)) shall cease to apply to any employee as of the first plan year beginning after the plan year in which the employee meets the requirements of section 410(a)(1)(A)(ii) without regard to paragraph (2)(D)(ii).

(C) EXCEPTION FOR EMPLOYEES UNDER COLLECTIVELY BARGAINED PLANS, ETC..—Paragraph (2)(D)(ii) shall not apply to employees described in section 410(b)(3).

(D) SPECIAL RULES.—

(i) TIME OF PARTICIPATION.—The rules of section 410(a)(4) shall apply to an employee eligible to participate in an arrangement solely by reason of paragraph (2)(D)(ii).

(ii) 12-MONTH PERIODS.—12-month periods shall be determined in the same manner as under the last sentence of section 410(a)(3)(A).

(l) PERMITTED DISPARITY IN PLAN CONTRIBUTIONS OR BENEFITS.—

(1) IN GENERAL.—The requirements of this subsection are met with respect to a plan if—

(A) in the case of a defined contribution plan, the requirements of paragraph (2) are met, and

(B) in the case of a defined benefit plan, the requirements of paragraph (3) are met.

(2) DEFINED CONTRIBUTION PLAN.—

(A) IN GENERAL.—A defined contribution plan meets the requirements of this paragraph if the excess contribution percentage does not exceed the base contribution percentage by more than the lesser of—

(i) the base contribution percentage, or

(ii) the greater of—

(I) 5.7 percentage points, or

(II) the percentage equal to the portion of the rate of tax under section 3111(a) (in effect as of the beginning of the year) which is attributable to old-age insurance.

(B) CONTRIBUTION PERCENTAGES.—For purposes of this paragraph—

(i) EXCESS CONTRIBUTION PERCENTAGE.—The term "excess contribution percentage" means the percentage of compensation which is contributed by the employer under the plan with respect to that portion of each participant's compensation in excess of the integration level.

(ii) BASE CONTRIBUTION PERCENTAGE.—The term "base contribution percentage" means the percentage of compensation contributed by the employer under the plan with respect to that portion of each participant's compensation not in excess of the integration level.

(3) DEFINED BENEFIT PLAN.—A defined benefit plan meets the requirements of this paragraph if—

(A) EXCESS PLANS.—

(i) IN GENERAL.—In the case of a plan other than an offset plan—

(I) the excess benefit percentage does not exceed the base benefit percentage by more than the maximum excess allowance,

(II) any optional form of benefit, preretirement benefit, actuarial factor, or other benefit or feature provided with respect to compensation in excess of the integration level is provided with respect to compensation not in excess of such level, and

(III) benefits are based on average annual compensation.

(ii) BENEFIT PERCENTAGES.—For purposes of this subparagraph, the excess and base benefit percentages shall be computed in the same manner as the excess and base contribution percentages under paragraph

(2)(B), except that such determination shall be made on the basis of benefits attributable to employer contributions rather than contributions.

(B) OFFSET PLANS.—In the case of an offset plan, the plan provides that—

(i) a participant's accrued benefit attributable to employer contributions (within the meaning of section 411(c)(1)) may not be reduced (by reason of the offset) by more than the maximum offset allowance, and

(ii) benefits are based on average annual compensation.

(4) DEFINITIONS RELATING TO PARAGRAPH (3).—For purposes of paragraph (3)—

(A) MAXIMUM EXCESS ALLOWANCE.—The maximum excess allowance is equal to—

(i) in the case of benefits attributable to any year of service with the employer taken into account under the plan, 3/4 of a percentage point, and

(ii) in the case of total benefits, 3/4 of a percentage point, multiplied by the participant's years of service (not in excess of 35) with the employer taken into account under the plan.

In no event shall the maximum excess allowance exceed the base benefit percentage.

(B) MAXIMUM OFFSET ALLOWANCE.—The maximum offset allowance is equal to—

(i) in the case of benefits attributable to any year of service with the employer taken into account under the plan, 3/4 percent of the participant's final average compensation, and

(ii) in the case of total benefits, 3/4 percent of the participant's final average compensation, multiplied by the participant's years of service (not in excess of 35) with the employer taken into account under the plan.

In no event shall the maximum offset allowance exceed 50 percent of the benefit which would have accrued without regard to the offset reduction.

(C) REDUCTIONS.—

(i) IN GENERAL.—The Secretary shall prescribe regulations requiring the reduction of the 3/4 percentage factor under subparagraph (A) or (B)—

(I) in the case of a plan other than an offset plan which has an integration level in excess of covered compensation, or

(II) with respect to any participant in an offset plan who has final average compensation in excess of covered compensation.

(ii) BASIS OF REDUCTIONS.—Any reductions under clause (i) shall be based on the percentages of compensation replaced by the employer-derived portions of primary insurance amounts under the Social Security Act for participants with compensation in excess of covered compensation.

(D) OFFSET PLAN.—The term "offset plan" means any plan with respect to which the benefit attributable to employer contributions for each participant is reduced by an amount specified in the plan.

(5) OTHER DEFINITIONS AND SPECIAL RULES.—For purposes of this subsection—

(A) INTEGRATION LEVEL.—

(i) IN GENERAL.—The term "integration level" means the amount of compensation specified under the plan (by dollar amount or formula) at or below which the rate at which contributions or benefits are provided (expressed as a percentage) is less than such rate above such amount.

(ii) LIMITATION.—The integration level for any year may not exceed the contribution and benefit base in effect under section 230 of the Social Security Act for such year.

(iii) LEVEL TO APPLY TO ALL PARTICIPANTS.—A plan's integration level shall apply with respect to all participants in the plan.

(iv) MULTIPLE INTEGRATION LEVELS.—Under rules prescribed by the Secretary, a defined benefit plan may specify multiple integration levels.

(B) COMPENSATION.—The term "compensation" has the meaning given such term by section 414(s).

(C) AVERAGE ANNUAL COMPENSATION.—The term "average annual compensation" means the participant's highest average annual compensation for—

(i) any period of at least 3 consecutive years, or

(ii) if shorter, the participant's full period of service.

(D) FINAL AVERAGE COMPENSATION.—

(i) IN GENERAL.—The term "final average compensation" means the participant's average annual compensation for—

(I) the 3-consecutive year period ending with the current year, or

(II) if shorter, the participant's full period of service.

(ii) LIMITATION.—A participant's final average compensation shall be determined by not taking into account in any year compensation in excess of the contribution and benefit base in effect under section 230 of the Social Security Act for such year.

(E) COVERED COMPENSATION.—

(i) IN GENERAL.—The term "covered compensation" means, with respect to an employee, the average of the contribution and benefit bases in effect under section 230 of the Social Security Act for each year in the 35-year period ending with the year in which the employee attains the social security retirement age.

(ii) COMPUTATION FOR ANY YEAR.—For purposes of clause (i), the determination for any year preceding the year in which the employee attains the social security retirement age shall be made by assuming that there is no increase in the bases described in clause (i) after the determination year and before the employee attains the social security retirement age.

(iii) SOCIAL SECURITY RETIREMENT AGE.—For purposes of this subparagraph, the term “social security retirement age” has the meaning given such term by section 415(b)(8).

(F) REGULATIONS.—The Secretary shall prescribe such regulations as are necessary or appropriate to carry out the purposes of this subsection, including—

(i) in the case of a defined benefit plan which provides for unreduced benefits commencing before the social security retirement age (as defined in section 415(b)(8)), rules providing for the reduction of the maximum excess allowance and the maximum offset allowance, and

(ii) in the case of an employee covered by 2 or more plans of the employer which fail to meet the requirements of subsection (a)(4) (without regard to this subsection), rules preventing the multiple use of the disparity permitted under this subsection with respect to any employee.

For purposes of clause (i), unreduced benefits shall not include benefits for disability (within the meaning of section 223(d) of the Social Security Act).

(6) SPECIAL RULE FOR PLAN MAINTAINED BY RAILROADS.—In determining whether a plan which includes employees of a railroad employer who are entitled to benefits under the Railroad Retirement Act of 1974 meets the requirements of this subsection, rules similar to the rules set forth in this subsection shall apply. Such rules shall take into account the employer-derived portion of the employees’ tier 2 railroad retirement benefits and any supplemental annuity under the Railroad Retirement Act of 1974.

(m) NONDISCRIMINATION TEST FOR MATCHING CONTRIBUTIONS AND EMPLOYEE CONTRIBUTIONS.—

(1) IN GENERAL.—A defined contribution plan shall be treated as meeting the requirements of subsection (a)(4) with respect to the amount of any matching contribution or employee contribution for any plan year only if the contribution percentage requirement of paragraph (2) of this subsection is met for such plan year.

(2) REQUIREMENTS.—

(A) CONTRIBUTION PERCENTAGE REQUIREMENT.—A plan meets the contribution percentage requirement of this paragraph for any plan year only if the contribution percentage for eligible highly compensated employees for such plan year does not exceed the greater of—

(i) 125 percent of such percentage for all other eligible employees for the preceding plan year, or

(ii) the lesser of 200 percent of such percentage for all other eligible employees for the preceding plan year, or such percentage for all other eligible employees for the preceding plan year plus 2 percentage points.

This subparagraph may be applied by using the plan year rather than the preceding plan year if the employer so elects, except that if such an election is made, it may not be changed except as provided by the Secretary.

(B) MULTIPLE PLANS TREATED AS A SINGLE PLAN.—If two or more plans of an employer to which matching contributions, employee contributions, or elective deferrals are made are treated as one plan for purposes of section 410(b), such plans shall be treated as one plan for purposes of this subsection. If a highly compensated employee participates in two or more plans of an employer to which contributions to which this subsection applies are made, all such contributions shall be aggregated for purposes of this subsection.

(3) CONTRIBUTION PERCENTAGE.—For purposes of paragraph (2), the contribution percentage for a specified group of employees for a plan year shall be the average of the ratios (calculated separately for each employee in such group) of—

(A) the sum of the matching contributions and employee contributions paid under the plan on behalf of each such employee for such plan year, to

(B) the employee's compensation (within the meaning of section 414(s)) for such plan year.

Under regulations, an employer may elect to take into account (in computing the contribution percentage) elective deferrals and qualified nonelective contributions under the plan or any other plan of the employer. If matching contributions are taken into account for purposes of subsection (k)(3)(A)(ii) for any plan year, such contributions shall not be taken into account under subparagraph (A) for such year. Rules similar to the rules of subsection (k)(3)(E) shall apply for purposes of this subsection.

(4) DEFINITIONS.—For purposes of this subsection—

(A) MATCHING CONTRIBUTION.—The term "matching contribution" means—

(i) any employer contribution made to a defined contribution plan on behalf of an employee on account of an employee contribution made by such employee, and

(ii) any employer contribution made to a defined contribution plan on behalf of an employee on account of an employee's elective deferral.

(B) ELECTIVE DEFERRAL.—The term "elective deferral" means any employer contribution described in section 402(g)(3).

(C) QUALIFIED NONELECTIVE CONTRIBUTIONS.—The term "qualified nonelective contribution" means any employer contribution (other than a matching contribution) with respect to which—

(i) the employee may not elect to have the contribution paid to the employee in cash instead of being contributed to the plan, and

(ii) the requirements of subparagraphs (B) and (C) of subsection (k)(2) are met.

(5) EMPLOYEES TAKEN INTO CONSIDERATION.—

(A) IN GENERAL.—Any employee who is eligible to make an employee contribution (or, if the employer takes elective contributions into account, elective contributions) or to receive a matching contribution under the plan being tested under paragraph (1) shall be considered an eligible employee for purposes of this subsection.

(B) CERTAIN NONPARTICIPANTS.—If an employee contribution is required as a condition of participation in the plan, any employee who would be a participant in the plan if such employee made such a contribution shall be treated as an eligible employee on behalf of whom no employer contributions are made.

(C) SPECIAL RULE FOR EARLY PARTICIPATION.—If an employer elects to apply section 410(b)(4)(B) in determining whether a plan meets the requirements of section 410(b), the employer may, in determining whether the plan meets the requirements of paragraph (2), exclude from consideration all eligible employees (other than highly compensated employees) who have not met the minimum age and service requirements of section 410(a)(1)(A).

(6) PLAN NOT DISQUALIFIED IF EXCESS AGGREGATE CONTRIBUTIONS DISTRIBUTED BEFORE END OF FOLLOWING PLAN YEAR.—

(A) IN GENERAL.—A plan shall not be treated as failing to meet the requirements of paragraph (1) for any plan year if, before the close of the following plan year, the amount of the excess aggregate contributions for such plan year (and any income allocable to such contributions through the end of such year) is distributed (or, if forfeitable, is forfeited). Such contributions (and such income) may be distributed without regard to any other provision of law.

(B) EXCESS AGGREGATE CONTRIBUTIONS.—For purposes of subparagraph (A), the term "excess aggregate contributions" means, with respect to any plan year, the excess of—

(i) the aggregate amount of the matching contributions and employee contributions (and any qualified nonelective contribution or elective contribution taken into account in computing the contribution percentage) actually made on behalf of highly compensated employees for such plan year, over

(ii) the maximum amount of such contributions permitted under the limitations of paragraph (2)(A) (determined by reducing contributions made on behalf of highly compensated employees in order of their contribution percentages beginning with the highest of such percentages).

(C) METHOD OF DISTRIBUTING EXCESS AGGREGATE CONTRIBUTIONS.—Any distribution of the excess aggregate contributions for any plan year shall be made to highly compensated employees on the basis of the amount of contributions on behalf of, or by, each such employee. Forfeitures of excess aggregate contributions may not be allocated to participants whose contributions are reduced under this paragraph.

(D) COORDINATION WITH SUBSECTION (K) AND 402(G).—The determination of the amount of excess aggregate contributions with respect to a plan shall be made after—

(i) first determining the excess deferrals (within the meaning of section 402(g)), and

(ii) then determining the excess contributions under subsection (k).

(7) TREATMENT OF DISTRIBUTIONS.—

(A) ADDITIONAL TAX OF SECTION 72(T) NOT APPLICABLE.—No tax shall be imposed under section 72(t) on any amount required to be distributed under paragraph (6).

(B) EXCLUSION OF EMPLOYEE CONTRIBUTIONS.—Any distribution attributable to employee contributions shall not be included in gross income except to the extent attributable to income on such contributions.

(8) HIGHLY COMPENSATED EMPLOYEE.—For purposes of this subsection, the term "highly compensated employee" has the meaning given to such term by section 414(q).

(9) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this subsection and subsection (k), including regulations permitting appropriate aggregation of plans and contributions.

(10) ALTERNATIVE METHOD OF SATISFYING TESTS.—A defined contribution plan shall be treated as meeting the requirements of paragraph (2) with respect to matching contributions if the plan—

(A) meets the contribution requirements of subparagraph (B) of subsection (k)(11),

(B) meets the exclusive plan requirements of subsection (k)(11)(C), and

(C) meets the vesting requirements of section 408(p)(3).

(11) ADDITIONAL ALTERNATIVE METHOD OF SATISFYING TESTS.—

(A) IN GENERAL.—A defined contribution plan shall be treated as meeting the requirements of paragraph (2) with respect to matching contributions if the plan—

(i) meets the contribution requirements of subparagraph (B) or (C) of subsection (k)(12),

(ii) meets the notice requirements of subsection (k)(12)(D), and

(iii) meets the requirements of subparagraph (B).

(B) LIMITATION ON MATCHING CONTRIBUTIONS.—The requirements of this subparagraph are met if—

(i) matching contributions on behalf of any employee may not be made with respect to an employee's contributions or elective deferrals in excess of 6 percent of the employee's compensation,

(ii) the rate of an employer's matching contribution does not increase as the rate of an employee's contributions or elective deferrals increase, and

(iii) the matching contribution with respect to any highly compensated employee at any rate of an employee contribution or rate of elective deferral is not greater than that with respect to an employee who is not a highly compensated employee.

(12) ALTERNATIVE METHOD FOR AUTOMATIC CONTRIBUTION ARRANGEMENTS.—A defined contribution plan shall be treated as

meeting the requirements of paragraph (2) with respect to matching contributions if the plan—

(A) is a qualified automatic contribution arrangement (as defined in subsection (k)(13)), and

(B) meets the requirements of paragraph (11)(B).

(13) CROSS REFERENCE.—For excise tax on certain excess contributions, see section 4979.

(n) COORDINATION WITH QUALIFIED DOMESTIC RELATIONS ORDERS.—The Secretary shall prescribe such rules or regulations as may be necessary to coordinate the requirements of subsection (a)(13)(B) and section 414(p) (and the regulations issued by the Secretary of Labor thereunder) with the other provisions of this chapter.

(o) SPECIAL RULES FOR APPLYING NONDISCRIMINATION RULES TO PROTECT OLDER, LONGER SERVICE AND GRANDFATHERED PARTICIPANTS.—

(1) TESTING OF DEFINED BENEFIT PLANS WITH CLOSED CLASSES OF PARTICIPANTS.—

(A) BENEFITS, RIGHTS, OR FEATURES PROVIDED TO CLOSED CLASSES.—A defined benefit plan which provides benefits, rights, or features to a closed class of participants shall not fail to satisfy the requirements of subsection (a)(4) by reason of the composition of such closed class or the benefits, rights, or features provided to such closed class, if—

(i) for the plan year as of which the class closes and the 2 succeeding plan years, such benefits, rights, and features satisfy the requirements of subsection (a)(4) (without regard to this subparagraph but taking into account the rules of subparagraph (I)),

(ii) after the date as of which the class was closed, any plan amendment which modifies the closed class or the benefits, rights, and features provided to such closed class does not discriminate significantly in favor of highly compensated employees, and

(iii) the class was closed before April 5, 2017, or the plan is described in subparagraph (C).

(B) AGGREGATE TESTING WITH DEFINED CONTRIBUTION PLANS PERMITTED ON A BENEFITS BASIS.—

(i) IN GENERAL.—For purposes of determining compliance with subsection (a)(4) and section 410(b), a defined benefit plan described in clause (iii) may be aggregated and tested on a benefits basis with 1 or more defined contribution plans, including with the portion of 1 or more defined contribution plans which—

(I) provides matching contributions (as defined in subsection (m)(4)(A)),

(II) provides annuity contracts described in section 403(b) which are purchased with matching contributions or nonelective contributions, or

(III) consists of an employee stock ownership plan (within the meaning of section 4975(e)(7)) or a tax credit employee stock ownership plan (within the meaning of section 409(a)).

(ii) SPECIAL RULES FOR MATCHING CONTRIBUTIONS.—For purposes of clause (i), if a defined benefit plan is aggregated with a portion of a defined contribution plan providing matching contributions—

(I) such defined benefit plan must also be aggregated with any portion of such defined contribution plan which provides elective deferrals described in subparagraph (A) or (C) of section 402(g)(3), and

(II) such matching contributions shall be treated in the same manner as nonelective contributions, including for purposes of applying the rules of subsection (*l*).

(iii) PLANS DESCRIBED.—A defined benefit plan is described in this clause if—

(I) the plan provides benefits to a closed class of participants,

(II) for the plan year as of which the class closes and the 2 succeeding plan years, the plan satisfies the requirements of section 410(b) and subsection (a)(4) (without regard to this subparagraph but taking into account the rules of subparagraph (I)),

(III) after the date as of which the class was closed, any plan amendment which modifies the closed class or the benefits provided to such closed class does not discriminate significantly in favor of highly compensated employees, and

(IV) the class was closed before April 5, 2017, or the plan is described in subparagraph (C).

(C) PLANS DESCRIBED.—A plan is described in this subparagraph if, taking into account any predecessor plan—

(i) such plan has been in effect for at least 5 years as of the date the class is closed, and

(ii) during the 5-year period preceding the date the class is closed, there has not been a substantial increase in the coverage or value of the benefits, rights, or features described in subparagraph (A) or in the coverage or benefits under the plan described in subparagraph (B)(iii) (whichever is applicable).

(D) DETERMINATION OF SUBSTANTIAL INCREASE FOR BENEFITS, RIGHTS, AND FEATURES.—In applying subparagraph (C)(ii) for purposes of subparagraph (A)(iii), a plan shall be treated as having had a substantial increase in coverage or value of the benefits, rights, or features described in subparagraph (A) during the applicable 5-year period only if, during such period—

(i) the number of participants covered by such benefits, rights, or features on the date such period ends is more than 50 percent greater than the number of such participants on the first day of the plan year in which such period began, or

(ii) such benefits, rights, and features have been modified by 1 or more plan amendments in such a way that, as of the date the class is closed, the value of such benefits, rights, and features to the closed class as a whole is substantially greater than the value as of the first day of such 5-year period, solely as a result of such amendments.

(E) DETERMINATION OF SUBSTANTIAL INCREASE FOR AGGREGATE TESTING ON BENEFITS BASIS.—In applying subparagraph (C)(ii) for purposes of subparagraph (B)(iii)(IV), a plan shall be treated as having had a substantial increase in coverage or benefits during the applicable 5-year period only if, during such period—

(i) the number of participants benefitting under the plan on the date such period ends is more than 50 percent greater than the number of such participants on the first day of the plan year in which such period began, or

(ii) the average benefit provided to such participants on the date such period ends is more than 50 percent greater than the average benefit provided on the first day of the plan year in which such period began.

(F) CERTAIN EMPLOYEES DISREGARDED.—For purposes of subparagraphs (D) and (E), any increase in coverage or value or in coverage or benefits, whichever is applicable, which is attributable to such coverage and value or coverage and benefits provided to employees—

(i) who became participants as a result of a merger, acquisition, or similar event which occurred during the 7-year period preceding the date the class is closed, or

(ii) who became participants by reason of a merger of the plan with another plan which had been in effect for at least 5 years as of the date of the merger,

shall be disregarded, except that clause (ii) shall apply for purposes of subparagraph (D) only if, under the merger, the benefits, rights, or features under 1 plan are conformed to the benefits, rights, or features of the other plan prospectively.

(G) RULES RELATING TO AVERAGE BENEFIT.—For purposes of subparagraph (E)—

(i) the average benefit provided to participants under the plan will be treated as having remained the same between the 2 dates described in subparagraph (E)(ii) if the benefit formula applicable to such participants has not changed between such dates, and

(ii) if the benefit formula applicable to 1 or more participants under the plan has changed between such 2 dates, then the average benefit under the plan shall be considered to have increased by more than 50 percent only if—

(I) the total amount determined under section 430(b)(1)(A)(i) for all participants benefitting under the plan for the plan year in which the 5-year period described in subparagraph (E) ends, exceeds

(II) the total amount determined under section 430(b)(1)(A)(i) for all such participants for such plan year, by using the benefit formula in effect for each such participant for the first plan year in such 5-year period, by more than 50 percent. In the case of a CSEC plan (as defined in section 414(y)), the normal cost of the plan (as determined under section 433(j)(1)(B)) shall be used in lieu of the amount determined under section 430(b)(1)(A)(i).

(H) TREATMENT AS SINGLE PLAN.—For purposes of subparagraphs (E) and (G), a plan described in section 413(c) shall be treated as a single plan rather than as separate plans maintained by each employer in the plan.

(I) SPECIAL RULES.—For purposes of subparagraphs (A)(i) and (B)(iii)(II), the following rules shall apply:

(i) In applying section 410(b)(6)(C), the closing of the class of participants shall not be treated as a significant change in coverage under section 410(b)(6)(C)(i)(II).

(ii) 2 or more plans shall not fail to be eligible to be aggregated and treated as a single plan solely by reason of having different plan years.

(iii) Changes in the employee population shall be disregarded to the extent attributable to individuals who become employees or cease to be employees, after the date the class is closed, by reason of a merger, acquisition, divestiture, or similar event.

(iv) Aggregation and all other testing methodologies otherwise applicable under subsection (a)(4) and section 410(b) may be taken into account.

The rule of clause (ii) shall also apply for purposes of determining whether plans to which subparagraph (B)(i) applies may be aggregated and treated as 1 plan for purposes of determining whether such plans meet the requirements of subsection (a)(4) and section 410(b).

(J) SPUN-OFF PLANS.—For purposes of this paragraph, if a portion of a defined benefit plan described in subparagraph (A) or (B)(iii) is spun off to another employer and the spun-off plan continues to satisfy the requirements of—

(i) subparagraph (A)(i) or (B)(iii)(II), whichever is applicable, if the original plan was still within the 3-year period described in such subparagraph at the time of the spin off, and

(ii) subparagraph (A)(ii) or (B)(iii)(III), whichever is applicable,

the treatment under subparagraph (A) or (B) of the spun-off plan shall continue with respect to such other employer.

(2) TESTING OF DEFINED CONTRIBUTION PLANS.—

(A) TESTING ON A BENEFITS BASIS.—A defined contribution plan shall be permitted to be tested on a benefits basis if—

(i) such defined contribution plan provides make-whole contributions to a closed class of participants whose accruals under a defined benefit plan have been reduced or eliminated,

(ii) for the plan year of the defined contribution plan as of which the class eligible to receive such make-whole contributions closes and the 2 succeeding plan years, such closed class of participants satisfies the requirements of section 410(b)(2)(A)(i) (determined by applying the rules of paragraph (1)(I)),

(iii) after the date as of which the class was closed, any plan amendment to the defined contribution plan which modifies the closed class or the allocations, benefits, rights, and features provided to such closed class does not discriminate significantly in favor of highly compensated employees, and

(iv) the class was closed before April 5, 2017, or the defined benefit plan under clause (i) is described in paragraph (1)(C) (as applied for purposes of paragraph (1)(B)(iii)(IV)).

(B) AGGREGATION WITH PLANS INCLUDING MATCHING CONTRIBUTIONS.—

(i) IN GENERAL.—With respect to 1 or more defined contribution plans described in subparagraph (A), for purposes of determining compliance with subsection (a)(4) and section 410(b), the portion of such plans which provides make-whole contributions or other nonelective contributions may be aggregated and tested on a benefits basis with the portion of 1 or more other defined contribution plans which—

(I) provides matching contributions (as defined in subsection (m)(4)(A)),

(II) provides annuity contracts described in section 403(b) which are purchased with matching contributions or nonelective contributions, or

(III) consists of an employee stock ownership plan (within the meaning of section 4975(e)(7)) or a tax credit employee stock ownership plan (within the meaning of section 409(a)).

(ii) SPECIAL RULES FOR MATCHING CONTRIBUTIONS.—Rules similar to the rules of paragraph (1)(B)(ii) shall apply for purposes of clause (i).

(C) SPECIAL RULES FOR TESTING DEFINED CONTRIBUTION PLAN FEATURES PROVIDING MATCHING CONTRIBUTIONS TO CERTAIN OLDER, LONGER SERVICE PARTICIPANTS.—In the case of a defined contribution plan which provides benefits, rights, or features to a closed class of participants whose accruals under a defined benefit plan have been reduced or eliminated, the plan shall not fail to satisfy the requirements of subsection (a)(4) solely by reason of the composition of the closed class or the benefits, rights, or features provided to such closed class if the defined contribution plan and defined benefit plan otherwise meet the requirements of subparagraph (A) but for the fact that the make-whole contributions under the defined contribution plan are made in whole or in part through matching contributions.

(D) SPUN-OFF PLANS.—For purposes of this paragraph, if a portion of a defined contribution plan described in subparagraph (A) or (C) is spun off to another employer, the treatment under subparagraph (A) or (C) of the spun-off plan shall continue with respect to the other employer if such plan continues to comply with the requirements of clauses (ii) (if the original plan was still within the 3-year period described in such clause at the time of the spin off) and (iii) of subparagraph (A), as determined for purposes of subparagraph (A) or (C), whichever is applicable.

(3) DEFINITIONS AND SPECIAL RULE.—For purposes of this subsection—

(A) MAKE-WHOLE CONTRIBUTIONS.—Except as otherwise provided in paragraph (2)(C), the term "make-whole contributions" means nonelective allocations for each employee in the class which are reasonably calculated, in a consistent manner, to replace some or all of the retirement benefits which the employee would have received under the defined benefit plan and any other plan or qualified cash or deferred arrangement under subsection (k)(2) if no change had been made to such defined benefit plan and such other plan or arrangement. For purposes of the preceding sentence, consistency shall not be required with respect to employees who were subject to different benefit formulas under the defined benefit plan.

(B) REFERENCES TO CLOSED CLASS OF PARTICIPANTS.—References to a closed class of participants and similar references to a closed class shall include arrangements under which 1 or more classes of participants are closed, except that 1 or more classes of participants closed on different dates shall not be aggregated for purposes of determining the date any such class was closed.

(C) HIGHLY COMPENSATED EMPLOYEE.—The term "highly compensated employee" has the meaning given such term in section 414(q).

(p) CROSS REFERENCE.—For exemption from tax of a trust qualified under this section, see section 501(a).

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Subpart B—SPECIAL RULES

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SEC. 414. DEFINITIONS AND SPECIAL RULES.

(a) SERVICE FOR PREDECESSOR EMPLOYER.—For purposes of this part—

(1) in any case in which the employer maintains a plan of a predecessor employer, service for such predecessor shall be treated as service for the employer, and

(2) in any case in which the employer maintains a plan which is not the plan maintained by a predecessor employer, service for such predecessor shall, to the extent provided in regulations prescribed by the Secretary, be treated as service for the employer.

(b) EMPLOYEES OF CONTROLLED GROUP OF CORPORATIONS.—For purposes of sections 401, 408(k), 408(p), 410, 411, 415, and 416, all employees of all corporations which are members of a controlled group of corporations (within the meaning of section 1563(a), determined without regard to section 1563(a)(4) and (e)(3)(C)) shall be treated as employed by a single employer. With respect to a plan adopted by more than one such corporation, the applicable limitations provided by section 404(a) shall be determined as if all such employers were a single employer, and allocated to each employer in accordance with regulations prescribed by the Secretary.

(c) EMPLOYEES OF PARTNERSHIPS, PROPRIETORSHIPS, ETC., WHICH ARE UNDER COMMON CONTROL.—

(1) IN GENERAL.—Except as provided in paragraph (2), for purposes of sections 401, 408(k), 408(p), 410, 411, 415, and 416, under regulations prescribed by the Secretary, all employees of trades or businesses (whether or not incorporated) which are under common control shall be treated as employed by a single employer. The regulations prescribed under this subsection shall be based on principles similar to the principles which apply in the case of subsection (b).

(2) SPECIAL RULES RELATING TO CHURCH PLANS.—

(A) GENERAL RULE.—Except as provided in subparagraphs (B) and (C), for purposes of this subsection and subsection (m), an organization that is otherwise eligible to participate in a church plan shall not be aggregated with another such organization and treated as a single employer with such other organization for a plan year beginning in a taxable year unless—

(i) one such organization provides (directly or indirectly) at least 80 percent of the operating funds for the other organization during the preceding taxable year of the recipient organization, and

(ii) there is a degree of common management or supervision between the organizations such that the organization providing the operating funds is directly involved in the day-to-day operations of the other organization.

(B) NONQUALIFIED CHURCH-CONTROLLED ORGANIZATIONS.—Notwithstanding subparagraph (A), for purposes of this subsection and subsection (m), an organization that is a nonqualified church-controlled organization shall be aggregated with 1 or more other nonqualified church-controlled organizations, or with an organization that is not exempt from tax under section 501, and treated as a single employer with such other organization, if at least 80 percent of the directors or trustees of such other organization are either representatives of, or directly or indirectly controlled by, such nonqualified church-controlled organization. For purposes of this subparagraph, the term "nonqualified church-controlled organization" means a church-controlled tax-exempt organization described in section 501(c)(3) that is not a qualified church-controlled organization (as defined in section 3121(w)(3)(B)).

(C) PERMISSIVE AGGREGATION AMONG CHURCH-RELATED ORGANIZATIONS.—The church or convention or association of churches with which an organization described in subparagraph (A) is associated (within the meaning of subsection (e)(3)(D)), or an organization designated by such church or convention or association of churches, may elect to treat such organizations as a single employer for a plan year. Such election, once made, shall apply to all succeeding plan years unless revoked with notice provided to the Secretary in such manner as the Secretary shall prescribe.

(D) PERMISSIVE DISAGGREGATION OF CHURCH-RELATED ORGANIZATIONS.—For purposes of subparagraph (A), in the case of a church plan, an employer may elect to treat churches (as defined in section 403(b)(12)(B)) separately from entities that are not churches (as so defined), without regard to whether such entities maintain separate church plans. Such election, once made, shall apply to all succeeding plan years unless revoked with notice provided to the Secretary in such manner as the Secretary shall prescribe.

(d) GOVERNMENTAL PLAN.—For purposes of this part, the term "governmental plan" means a plan established and maintained for its employees by the Government of the United States, by the government of any State or political subdivision thereof, or by any agency or instrumentality of any of the foregoing. The term "governmental plan" also includes any plan to which the Railroad Retirement Act of 1935 or 1937 applies and which is financed by contributions required under that Act and any plan of an international organization which is exempt from taxation by reason of the International Organizations Immunities Act (59 Stat. 669). The term "governmental plan" includes a plan which is established and maintained by an Indian tribal government (as defined in section 7701(a)(40)), a subdivision of an Indian tribal government (determined in accordance with section 7871(d)), or an agency or instrumentality of either, and all of the participants of which are employees of such entity substantially all of whose services as such an employee are in the performance of essential governmental functions but not in the performance of commercial activities (whether or not an essential government function).

(e) CHURCH PLAN.—

(1) IN GENERAL.—For purposes of this part, the term "church plan" means a plan established and maintained (to the extent required in paragraph (2)(B)) for its employees (or their beneficiaries) by a church or by a convention or association of churches which is exempt from tax under section 501.

(2) CERTAIN PLANS EXCLUDED.—The term "church plan" does not include a plan—

(A) which is established and maintained primarily for the benefit of employees (or their beneficiaries) of such church or convention or association of churches who are employed in connection with one or more unrelated trades or businesses (within the meaning of section 513); or

(B) if less than substantially all of the individuals included in the plan are individuals described in paragraph (1) or (3)(B) (or their beneficiaries).

(3) DEFINITIONS AND OTHER PROVISIONS.—For purposes of this subsection—

(A) TREATMENT AS CHURCH PLAN.—A plan established and maintained for its employees (or their beneficiaries) by a church or by a convention or association of churches includes a plan maintained by an organization, whether a civil law corporation or otherwise, the principal purpose or function of which is the administration or funding of a plan or program for the provision of retirement benefits or welfare benefits, or both, for the employees of a church or a convention or association of churches, if such organization is controlled by or associated with a church or a convention or association of churches.

(B) EMPLOYEE DEFINED.—The term employee of a church or a convention or association of churches shall include—

(i) a duly ordained, commissioned, or licensed minister of a church in the exercise of his ministry, regardless of the source of his compensation;

(ii) an employee of an organization, whether a civil law corporation or otherwise, which is exempt from tax under section 501 and which is controlled by or associated with a church or a convention or association of churches; and

(iii) an individual described in subparagraph (E).

(C) CHURCH TREATED AS EMPLOYER.—A church or a convention or association of churches which is exempt from tax under section 501 shall be deemed the employer of any individual included as an employee under subparagraph (B).

(D) ASSOCIATION WITH CHURCH.—An organization, whether a civil law corporation or otherwise, is associated with a church or a convention or association of churches if it shares common religious bonds and convictions with that church or convention or association of churches.

(E) SPECIAL RULE IN CASE OF SEPARATION FROM PLAN.—If an employee who is included in a church plan separates from the service of a church or a convention or association of churches or an organization described in clause (ii) of paragraph (3)(B), the church plan shall not fail to meet the requirements of this subsection merely because the plan—

(i) retains the employee's accrued benefit or account for the payment of benefits to the employee or his beneficiaries pursuant to the terms of the plan; or

(ii) receives contributions on the employee's behalf after the employee's separation from such service, but only for a period of 5 years after such separation, unless the employee is disabled (within the meaning of the disability provisions of the church plan or, if there are no such provisions in the church plan, within the meaning of section 72(m)(7)) at the time of such separation from service.

(4) CORRECTION OF FAILURE TO MEET CHURCH PLAN REQUIREMENTS.—

(A) IN GENERAL.—If a plan established and maintained for its employees (or their beneficiaries) by a church or by a convention or association of churches which is exempt from tax under section 501 fails to meet one or more of the requirements of this subsection and corrects its failure to meet such requirements within the correction period, the plan shall be deemed to meet the requirements of this subsection for the year in which the correction was made and for all prior years.

(B) FAILURE TO CORRECT.—If a correction is not made within the correction period, the plan shall be deemed not to meet the requirements of this subsection beginning with the date on which the earliest failure to meet one or more of such requirements occurred.

(C) CORRECTION PERIOD DEFINED.—The term "correction period" means—

(i) the period, ending 270 days after the date of mailing by the Secretary of a notice of default with respect to the plan's failure to meet one or more of the requirements of this subsection;

(ii) any period set by a court of competent jurisdiction after a final determination that the plan fails to meet such requirements, or, if the court does not specify such period, any reasonable period determined by the Secretary on the basis of all the facts and circumstances, but in any event not less than 270 days after the determination has become final; or

(iii) any additional period which the Secretary determines is reasonable or necessary for the correction of the default,

whichever has the latest ending date.

(5) SPECIAL RULES FOR CHAPLAINS AND SELF-EMPLOYED MINISTERS.—

(A) CERTAIN MINISTERS MAY PARTICIPATE.—For purposes of this part—

(i) IN GENERAL.—A duly ordained, commissioned, or licensed minister of a church is described in paragraph (3)(B) if, in connection with the exercise of their ministry, the minister—

(I) is a self-employed individual (within the meaning of section 401(c)(1)(B), or

(II) is employed by an organization other than an organization which is described in section 501(c)(3) and with respect to which the minister shares common religious bonds.

(ii) TREATMENT AS EMPLOYER AND EMPLOYEE.—For purposes of sections 403(b)(1)(A) and 404(a)(10), a minister described in clause (i)(I) shall be treated as employed by the minister's own employer which is an organization described in section 501(c)(3) and exempt from tax under section 501(a).

(B) SPECIAL RULES FOR APPLYING SECTION 403(B) TO SELF-EMPLOYED MINISTERS.—In the case of a minister described in subparagraph (A)(i)(I)—

(i) the minister's includible compensation under section 403(b)(3) shall be determined by reference to the minister's earned income (within the meaning of section 401(c)(2)) from such ministry rather than the amount of compensation which is received from an employer, and

(ii) the years (and portions of years) in which such minister was a self-employed individual (within the meaning of section 401(c)(1)(B)) with respect to such ministry shall be included for purposes of section 403(b)(4).

(C) EFFECT ON NON-DENOMINATIONAL PLANS.—If a duly ordained, commissioned, or licensed minister of a church in the exercise of his or her ministry participates in a church plan (within the meaning of this section) and in the exercise of such ministry is employed by an employer not otherwise participating in such church plan, then such employer may exclude such minister from being treated as an employee of such employer for purposes of applying sections 401(a)(3), 401(a)(4), and 401(a)(5), as in effect on September 1, 1974, and sections 401(a)(4), 401(a)(5), 401(a)(26), 401(k)(3), 401(m), 403(b)(1)(D) (including section 403(b)(12)), and 410 to any stock bonus, pension, profit-sharing, or annuity plan (including an annuity described in section 403(b) or a retirement income account described in section 403(b)(9)). The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purpose of, and prevent the abuse of, this subparagraph.

(D) COMPENSATION TAKEN INTO ACCOUNT ONLY ONCE.—If any compensation is taken into account in determining the amount of any contributions made to, or benefits to be provided under, any church plan, such compensation shall not also be taken into account in determining the amount of any contributions made to, or benefits to be provided under, any other stock bonus, pension, profit-sharing, or annuity plan which is not a church plan.

(E) EXCLUSION.—In the case of a contribution to a church plan made on behalf of a minister described in subparagraph (A)(i)(II), such contribution shall not be included in the gross income of the minister to the extent that such contribution would not be so included if the minister was an employee of a church.

(f) MULTIEMPLOYER PLAN.—

(1) DEFINITION.—For purposes of this part, the term "multiemployer plan" means a plan—

(A) to which more than one employer is required to contribute,

(B) which is maintained pursuant to one or more collective bargaining agreements between one or more employee organizations and more than one employer, and

(C) which satisfies such other requirements as the Secretary of Labor may prescribe by regulation.

(2) CASES OF COMMON CONTROL.—For purposes of this subsection, all trades or businesses (whether or not incorporated) which are under common control within the meaning of subsection (c) are considered a single employer.

(3) CONTINUATION OF STATUS AFTER TERMINATION.—Notwithstanding paragraph (1), a plan is a multiemployer plan on and after its termination date under title IV of the Employee Retirement Income Security Act of 1974 if the plan was a multiemployer plan under this subsection for the plan year preceding its termination date.

(4) TRANSITIONAL RULE.—For any plan year which began before the date of the enactment of the Multiemployer Pension Plan Amendments Act of 1980, the term "multiemployer plan" means a plan described in this subsection as in effect immediately before that date.

(5) SPECIAL ELECTION.—Within one year after the date of the enactment of the Multiemployer Pension Plan Amendments Act of 1980, a multiemployer plan may irrevocably elect, pursuant to procedures established by the Pension Benefit Guaranty Corporation and subject to the provisions of section 4403(b) and (c) of the Employee Retirement Income Security Act of 1974, that the plan shall not be treated as a multiemployer plan for any purpose under such Act or this title, if for each of the last 3 plan years ending prior to the effective date of the Multiemployer Pension Plan Amendments Act of 1980—

(A) the plan was not a multiemployer plan because the plan was not a plan described in section 3(37)(A)(iii) of the Employee Retirement Income Security Act of 1974 and section 414(f)(1)(C) (as such provisions were in effect on the day before the date of the enactment of the Multiemployer Pension Plan Amendments Act of 1980); and

(B) the plan had been identified as a plan that was not a multiemployer plan in substantially all its filings with the Pension Benefit Guaranty Corporation, the Secretary of Labor and the Secretary.

(6) ELECTION WITH REGARD TO MULTIEMPLOYER STATUS.—(A) Within 1 year after the enactment of the Pension Protection Act of 2006—

(i) An election under paragraph (5) may be revoked, pursuant to procedures prescribed by the Pension Benefit Guaranty Corporation, if, for each of the 3 plan years prior to the date of the enactment of that Act, the plan would have been a multiemployer plan but for the election under paragraph (5), and

(ii) a plan that meets the criteria in subparagraph (A) and (B) of paragraph (1) of this subsection or that is described in subparagraph (E) may, pursuant to procedures prescribed by the Pension Benefit Guaranty Corporation, elect to be a multiemployer plan, if—

(I) for each of the 3 plan years immediately preceding the first plan year for which the election under this paragraph is effective with respect to the plan, the plan has met those criteria or is so described,

(II) substantially all of the plan's employer contributions for each of those plan years were made or required to be made by organizations that were exempt from tax under section 501, and

(III) the plan was established prior to September 2, 1974.

(B) An election under this paragraph shall be effective for all purposes under this Act and under the Employee Retirement Income Security Act of 1974, starting with any plan year beginning on or after January 1, 1999, and ending before January 1, 2008, as designated by the plan in the election made under subparagraph (A)(ii).

(C) Once made, an election under this paragraph shall be irrevocable, except that a plan described in subparagraph (A)(ii) shall cease to be a multiemployer plan as of the plan year beginning immediately after the first plan year for which the majority of its employer contributions were made or required to be made by organizations that were not exempt from tax under section 501.

(D) The fact that a plan makes an election under subparagraph (A)(ii) does not imply that the plan was not a multiemployer plan prior to the date of the election or would not be a multiemployer plan without regard to the election.

(E) A plan is described in this subparagraph if it is a plan sponsored by an organization which is described in section 501(c)(5) and exempt from tax under section 501(a) and which was established in Chicago, Illinois, on August 12, 1881.

(F) MAINTENANCE UNDER COLLECTIVE BARGAINING AGREEMENT.—For purposes of this title and the Employee Retirement Income Security Act of 1974, a plan making an election under this paragraph shall be treated as maintained pursuant to a collective bargaining agreement if a collective bargaining agreement, expressly or otherwise, provides for or permits employer contributions to the plan by one or more employers that are signatory to such agreement, or participation in the plan by one or more employees of an employer that is signatory to such agreement, regardless of whether the plan was created, established, or maintained for such employees by virtue of another document that is not a collective bargaining agreement.

(g) PLAN ADMINISTRATOR.—For purposes of this part, the term "plan administrator" means—

(1) the person specifically so designated by the terms of the instrument under which the plan is operated;

(2) in the absence of a designation referred to in paragraph (1)—

(A) in the case of a plan maintained by a single employer, such employer,

(B) in the case of a plan maintained by two or more employers or jointly by one or more employers and one or more employee organizations, the association, committee, joint board of trustees, or other similar group of representatives of the parties who maintained the plan, or

(C) in any case to which subparagraph (A) or (B) does not apply, such other person as the Secretary may by regulation, prescribe.

(h) TAX TREATMENT OF CERTAIN CONTRIBUTIONS.—

(1) IN GENERAL.—Effective with respect to taxable years beginning after December 31, 1973, for purposes of this title, any amount contributed—

(A) to an employees' trust described in section 401(a), or

(B) under a plan described in section 403(a), shall not be treated as having been made by the employer if it is designated as an employee contribution.

(2) DESIGNATION BY UNITS OF GOVERNMENT.—For purposes of paragraph (1), in the case of any plan established by the government of any State or political subdivision thereof, or by any agency or instrumentality of any of the foregoing, or a govern-

mental plan described in the last sentence of section 414(d) (relating to plans of Indian tribal governments), where the contributions of employing units are designated as employee contributions but where any employing unit picks up the contributions, the contributions so picked up shall be treated as employer contributions.

(i) DEFINED CONTRIBUTION PLAN.—For purposes of this part, the term "defined contribution plan" means a plan which provides for an individual account for each participant and for benefits based solely on the amount contributed to the participant's account, and any income, expenses, gains and losses, and any forfeitures of accounts of other participants which may be allocated to such participant's account.

(j) DEFINED BENEFIT PLAN.—For purposes of this part, the term "defined benefit plan" means any plan which is not a defined contribution plan.

(k) CERTAIN PLANS.—A defined benefit plan which provides a benefit derived from employer contributions which is based partly on the balance of the separate account of a participant shall—

(1) for purposes of section 410 (relating to minimum participation standards), be treated as a defined contribution plan,

(2) for purposes of sections 72(d) (relating to treatment of employee contributions as separate contract), 411(a)(7)(A) (relating to minimum vesting standards), 415 (relating to limitations on benefits and contributions under qualified plans), and 401(m) (relating to nondiscrimination tests for matching requirements and employee contributions), be treated as consisting of a defined contribution plan to the extent benefits are based on the separate account of a participant and as a defined benefit plan with respect to the remaining portion of benefits under the plan, and

(3) for purposes of section 4975 (relating to tax on prohibited transactions), be treated as a defined benefit plan.

(l) MERGER AND CONSOLIDATIONS OF PLANS OR TRANSFERS OF PLAN ASSETS.—

(1) IN GENERAL.—A trust which forms a part of a plan shall not constitute a qualified trust under section 401 and a plan shall be treated as not described in section 403(a) unless in the case of any merger or consolidation of the plan with, or in the case of any transfer of assets or liabilities of such plan to, any other trust plan after September 2, 1974, each participant in the plan would (if the plan then terminated) receive a benefit immediately after the merger, consolidation, or transfer which is equal to or greater than the benefit he would have been entitled to receive immediately before the merger, consolidation, or transfer (if the plan had then terminated). The preceding sentence does not apply to any multiemployer plan with respect to any transaction to the extent that participants either before or after the transaction are covered under a multiemployer plan to which Title IV of the Employee Retirement Income Security Act of 1974 applies.

(2) ALLOCATION OF ASSETS IN PLAN SPIN-OFFS, ETC..—

(A) IN GENERAL.—In the case of a plan spin-off of a defined benefit plan, a trust which forms part of—

(i) the original plan, or

(ii) any plan spun off from such plan,

shall not constitute a qualified trust under this section unless the applicable percentage of excess assets are allocated to each of such plans.

(B) APPLICABLE PERCENTAGE.—For purposes of subparagraph (A), the term "applicable percentage" means, with respect to each of the plans described in clauses (i) and (ii) of subparagraph (A), the percentage determined by dividing—

(i) the excess (if any) of—

(I) the sum of the funding target and target normal cost determined under section 430, over

(II) the amount of the assets required to be allocated to the plan after the spin-off (without regard to this paragraph), by

(ii) the sum of the excess amounts determined separately under clause (i) for all such plans.

(C) EXCESS ASSETS.—For purposes of subparagraph (A), the term "excess assets" means an amount equal to the excess (if any) of—

(i) the fair market value of the assets of the original plan immediately before the spin-off, over

(ii) the amount of assets required to be allocated after the spin-off to all plans (determined without regard to this paragraph).

(D) CERTAIN SPUN-OFF PLANS NOT TAKEN INTO ACCOUNT.—

(i) IN GENERAL.—A plan involved in a spin-off which is described in clause (ii), (iii), or (iv) shall not be taken into account for purposes of this paragraph, except that the amount determined under subparagraph (C)(ii) shall be increased by the amount of assets allocated to such plan.

(ii) PLANS TRANSFERRED OUT OF CONTROLLED GROUPS.—A plan is described in this clause if, after such spin-off, such plan is maintained by an employer who is not a member of the same controlled group as the employer maintaining the original plan.

(iii) PLANS TRANSFERRED OUT OF MULTIPLE EMPLOYER PLANS.—A plan as described in this clause if, after the spin-off, any employer maintaining such plan (and any member of the same controlled group as such employer) does not maintain any other plan remaining after the spin-off which is also maintained by another employer (or member of the same controlled group as such other employer) which maintained the plan in existence before the spin-off.

(iv) TERMINATED PLANS.—A plan is described in this clause if, pursuant to the transaction involving the spin-off, the plan is terminated.

(v) CONTROLLED GROUP.—For purposes of this subparagraph, the term "controlled group" means any group treated as a single employer under subsection (b), (c), (m), or (*o*).

(E) PARAGRAPH NOT TO APPLY TO MULTIEMPLOYER PLANS.—This paragraph does not apply to any multiemployer plan with respect to any spin-off to the extent that participants either before or after the spin-off are covered under a multiemployer plan to which title IV of the Employee Retirement Income Security Act of 1974 applies.

(F) APPLICATION TO SIMILAR TRANSACTION.—Except as provided by the Secretary, rules similar to the rules of this paragraph shall apply to transactions similar to spin-offs.

(G) SPECIAL RULES FOR BRIDGE DEPOSITORY INSTITUTIONS.—For purposes of this paragraph, in the case of a bridge depository institution established under section 11(i) of the Federal Deposit Insurance Act (12 U.S.C. 1821(i))—

(i) such bank shall be treated as a member of any controlled group which includes any insured bank (as defined in section 3(h) of such Act (12 U.S.C. 1813(h)))—

(I) which maintains a defined benefit plan,

(II) which is closed by the appropriate bank regulatory authorities, and

(III) any asset and liabilities of which are received by the bridge depository institution, and

(ii) the requirements of this paragraph shall not be treated as met with respect to such plan unless during the 180-day period beginning on the date such insured bank is closed—

(I) the bridge depository institution has the right to require the plan to transfer (subject to the provisions of this paragraph) not more than 50 percent of the excess assets (as defined in subparagraph (C)) to a defined benefit plan maintained by the bridge depository institution with respect to participants or former participants (including retirees and beneficiaries) in the original plan employed by the bridge depository institution or formerly employed by the closed bank, and

(II) no other merger, spin-off, termination, or similar transaction involving the portion of the excess assets described in subclause (I) may occur without the prior written consent of the bridge depository institution.

(m) EMPLOYEES OF AN AFFILIATED SERVICE GROUP.—

(1) IN GENERAL.—For purposes of the employee benefit requirements listed in paragraph (4), except to the extent otherwise provided in regulations, all employees of the members of an affiliated service group shall be treated as employed by a single employer.

(2) AFFILIATED SERVICE GROUP.—For purposes of this subsection, the term "affiliated service group" means a group consisting of a service organization (hereinafter in this paragraph referred to as the "first organization") and one or more of the following:

(A) any service organization which—

(i) is a shareholder or partner in the first organization, and

(ii) regularly performs services for the first organization or is regularly associated with the first organization in performing services for third persons, and

(B) any other organization if—

(i) a significant portion of the business of such organization is the performance of services (for the first organization, for organizations described in subparagraph (A), or for both) of a type historically performed in such service field by employees, and

(ii) 10 percent or more of the interests in such organization is held by persons who are highly compensated employees (within the meaning of section 414(q)) of the first organization or an organization described in subparagraph (A).

(3) SERVICE ORGANIZATIONS.—For purposes of this subsection, the term "service organization" means an organization the principal business of which is the performance of services.

(4) EMPLOYEE BENEFIT REQUIREMENTS.—For purposes of this subsection, the employee benefit requirements listed in this paragraph are—

(A) paragraphs (3), (4), (7), (16), (17), and (26) of section 401(a), and

(B) sections 408(k), 408(p), 410, 411, 415, and 416.

(5) CERTAIN ORGANIZATIONS PERFORMING MANAGEMENT FUNCTIONS.—For purposes of this subsection, the term "affiliated service group" also includes a group consisting of—

(A) an organization the principal business of which is performing, on a regular and continuing basis, management functions for 1 organization (or for 1 organization and other organizations related to such 1 organization), and

(B) the organization (and related organizations) for which such functions are so performed by the organization described in subparagraph (A).

For purposes of this paragraph, the term "related organizations" has the same meaning as the term "related persons" when used in section 144(a)(3).

(6) OTHER DEFINITIONS.—For purposes of this subsection—

(A) ORGANIZATION DEFINED.—The term "organization" means a corporation, partnership, or other organization.

(B) OWNERSHIP.—In determining ownership, the principles of section 318(a) shall apply.

(n) EMPLOYEE LEASING.—

(1) IN GENERAL.—For purposes of the requirements listed in paragraph (3), with respect to any person (hereinafter in this subsection referred to as the "recipient") for whom a leased employee performs services—

(A) the leased employee shall be treated as an employee of the recipient, but

(B) contributions or benefits provided by the leasing organization which are attributable to services performed for the recipient shall be treated as provided by the recipient.

(2) LEASED EMPLOYEE.—For purposes of paragraph (1), the term "leased employee" means any person who is not an employee of the recipient and who provides services to the recipient if—

(A) such services are provided pursuant to an agreement between the recipient and any other person (in this subsection referred to as the "leasing organization"),

(B) such person has performed such services for the recipient (or for the recipient and related persons) on a substantially full-time basis for a period of at least 1 year, and

(C) such services are performed under primary direction or control by the recipient.

(3) REQUIREMENTS.—For purposes of this subsection, the requirements listed in this paragraph are—

(A) paragraphs (3), (4), (7), (16), (17), and (26) of section 401(a),

(B) sections 408(k), 408(p), 410, 411, 415, and 416, and

(C) sections 79, 106, 117(d), 125, 127, 129, 132, 137, 274(j), 505, and 4980B.

(4) TIME WHEN FIRST CONSIDERED AS EMPLOYEE.—

(A) IN GENERAL.—In the case of any leased employee, paragraph (1) shall apply only for purposes of determining whether the requirements listed in paragraph (3) are met for periods after the close of the period referred to in paragraph (2)(B).

(B) YEARS OF SERVICE.—In the case of a person who is an employee of the recipient (whether by reason of this subsection or otherwise), for purposes of the requirements listed in paragraph (3), years of service for the recipient shall be determined by taking into account any period for which such employee would have been a leased employee but for the requirements of paragraph (2)(B).

(5) SAFE HARBOR.—

(A) IN GENERAL.—In the case of requirements described in subparagraphs (A) and (B) of paragraph (3), this subsection shall not apply to any leased employee with respect to services performed for a recipient if—

(i) such employee is covered by a plan which is maintained by the leasing organization and meets the requirements of subparagraph (B), and

(ii) leased employees (determined without regard to this paragraph) do not constitute more than 20 percent of the recipient's nonhighly compensated work force.

(B) PLAN REQUIREMENTS.—A plan meets the requirements of this subparagraph if—

(i) such plan is a money purchase pension plan with a nonintegrated employer contribution rate for each participant of at least 10 percent of compensation,

(ii) such plan provides for full and immediate vesting, and

(iii) each employee of the leasing organization (other than employees who perform substantially all of their services for the leasing organization) immediately participates in such plan.

Clause (iii) shall not apply to any individual whose compensation from the leasing organization in each plan year during the 4-year period ending with the plan year is less than $1,000.

(C) DEFINITIONS.—For purposes of this paragraph—

(i) HIGHLY COMPENSATED EMPLOYEE.—The term "highly compensated employee" has the meaning given such term by section 414(q).

(ii) NONHIGHLY COMPENSATED WORK FORCE.—The term "nonhighly compensated work force" means the aggregate number of individuals (other than highly compensated employees)—

(I) who are employees of the recipient (without regard to this subsection) and have performed services for the recipient (or for the recipient and related persons) on a substantially full-time basis for a period of at least 1 year, or

(II) who are leased employees with respect to the recipient (determined without regard to this paragraph).

(iii) COMPENSATION.—The term "compensation" has the same meaning as when used in section 415; except that such term shall include—

(I) any employer contribution under a qualified cash or deferred arrangement to the extent not included in gross income under section 402(e)(3) or 402(h)(1)(B),

(II) any amount which the employee would have received in cash but for an election under a cafeteria plan (within the meaning of section 125), and

(III) any amount contributed to an annuity contract described in section 403(b) pursuant to a salary reduction agreement (within the meaning of section 3121(a)(5)(D)).

(6) OTHER RULES.—For purposes of this subsection—

(A) RELATED PERSONS.—The term "related persons" has the same meaning as when used in section 144(a)(3).

(B) EMPLOYEES OF ENTITIES UNDER COMMON CONTROL.—The rules of subsections (b), (c), (m), and (*o*) shall apply.

(o) REGULATIONS.—The Secretary shall prescribe such regulations (which may provide rules in addition to the rules contained in subsections (m) and (n)) as may be necessary to prevent the avoidance of any employee benefit requirement listed in subsection (m)(4) or (n)(3) or any requirement under section 457 through the use of—

(1) separate organizations,

(2) employee leasing, or

(3) other arrangements.

The regulations prescribed under subsection (n) shall include provisions to minimize the recordkeeping requirements of subsection (n) in the case of an employer which has no top-heavy plans (within the meaning of section 416(g)) and which uses the services of persons (other than employees) for an insignificant percentage of the employer's total workload.

(p) QUALIFIED DOMESTIC RELATIONS ORDER DEFINED.—For purposes of this subsection and section 401(a)(13)—

(1) IN GENERAL.—

(A) QUALIFIED DOMESTIC RELATIONS ORDER.—The term "qualified domestic relations order" means a domestic relations order—

(i) which creates or recognizes the existence of an alternate payee's right to, or assigns to an alternate payee the right to, receive all or a portion of the benefits payable with respect to a participant under a plan, and

(ii) with respect to which the requirements of paragraphs (2) and (3) are met.

(B) DOMESTIC RELATIONS ORDER.—The term "domestic relations order" means any judgment, decree, or order (including approval of a property settlement agreement) which—

(i) relates to the provision of child support, alimony payments, or marital property rights to a spouse, former spouse, child, or other dependent of a participant, and

(ii) is made pursuant to a State domestic relations law (including a community property law).

(2) ORDER MUST CLEARLY SPECIFY CERTAIN FACTS.—A domestic relations order meets the requirements of this paragraph only if such order clearly specifies—

(A) the name and the last known mailing address (if any) of the participant and the name and mailing address of each alternate payee covered by the order,

(B) the amount or percentage of the participant's benefits to be paid by the plan to each such alternate payee, or the manner in which such amount or percentage is to be determined,

(C) the number of payments or period to which such order applies, and

(D) each plan to which such order applies.

(3) ORDER MAY NOT ALTER AMOUNT, FORM, ETC., OF BENEFITS.—A domestic relations order meets the requirements of this paragraph only if such order—

(A) does not require a plan to provide any type or form of benefit, or any option, not otherwise provided under the plan,

(B) does not require the plan to provide increased benefits (determined on the basis of actuarial value), and

(C) does not require the payment of benefits to an alternate payee which are required to be paid to another alternate payee under another order previously determined to be a qualified domestic relations order.

(4) EXCEPTION FOR CERTAIN PAYMENTS MADE AFTER EARLIEST RETIREMENT AGE.—

(A) IN GENERAL.—A domestic relations order shall not be treated as failing to meet the requirements of subparagraph (A) of paragraph (3) solely because such order requires that payment of benefits be made to an alternate payee—

(i) in the case of any payment before a participant has separated from service, on or after the date on which the participant attains (or would have attained) the earliest retirement age,

(ii) as if the participant had retired on the date on which such payment is to begin under such order (but taking into account only the present value of the benefits actually accrued and not taking into account the present value of any employer subsidy for early retirement), and

(iii) in any form in which such benefits may be paid under the plan to the participant (other than in the form of a joint and survivor annuity with respect to the alternate payee and his or her subsequent spouse).

For purposes of clause (ii), the interest rate assumption used in determining the present value shall be the interest rate specified in the plan or, if no rate is specified, 5 percent.

(B) EARLIEST RETIREMENT AGE.—For purposes of this paragraph, the term "earliest retirement age" means the earlier of—

(i) the date on which the participant is entitled to a distribution under the plan, or

(ii) the later of—

(I) the date the participant attains age 50, or

(II) the earliest date on which the participant could begin receiving benefits under the plan if the participant separated from service.

(5) TREATMENT OF FORMER SPOUSE AS SURVIVING SPOUSE FOR PURPOSES OF DETERMINING SURVIVOR BENEFITS.—To the extent provided in any qualified domestic relations order—

(A) the former spouse of a participant shall be treated as a surviving spouse of such participant for purposes of sections 401(a)(11) and 417 (and any spouse of the participant shall not be treated as a spouse of the participant for such purposes), and

(B) if married for at least 1 year, the surviving former spouse shall be treated as meeting the requirements of section 417(d).

(6) PLAN PROCEDURES WITH RESPECT TO ORDERS.—

(A) NOTICE AND DETERMINATION BY ADMINISTRATOR.—In the case of any domestic relations order received by a plan—

(i) the plan administrator shall promptly notify the participant and each alternate payee of the receipt of such order and the plan's procedures for determining the qualified status of domestic relations orders, and

(ii) within a reasonable period after receipt of such order, the plan administrator shall determine whether such order is a qualified domestic relations order and notify the participant and each alternate payee of such determination.

(B) PLAN TO ESTABLISH REASONABLE PROCEDURES.—Each plan shall establish reasonable procedures to determine the qualified status of domestic relations orders and to administer distributions under such qualified orders.

(7) PROCEDURES FOR PERIOD DURING WHICH DETERMINATION IS BEING MADE.—

(A) IN GENERAL.—During any period in which the issue of whether a domestic relations order is a qualified domestic relations order is being determined (by the plan administrator, by a court of competent jurisdiction, or otherwise), the plan administrator shall separately account for the amounts (hereinafter in this paragraph referred to as the "segregated amounts") which would have been payable to the alternate payee during such period if the order had been determined to be a qualified domestic relations order.

(B) PAYMENT TO ALTERNATE PAYEE IF ORDER DETERMINED TO BE QUALIFIED DOMESTIC RELATIONS ORDER.—If within the 18-month period described in subparagraph (E) the order (or modification thereof) is determined to be a qualified domestic relations order, the plan administrator shall pay the segregated amounts (including any interest thereon) to the person or persons entitled thereto.

(C) PAYMENT TO PLAN PARTICIPANT IN CERTAIN CASES.—If within the 18-month period described in subparagraph (E)—

(i) it is determined that the order is not a qualified domestic relations order, or

(ii) the issue as to whether such order is a qualified domestic relations order is not resolved,

then the plan administrator shall pay the segregated amounts (including any interest thereon) to the person or persons who would have been entitled to such amounts if there had been no order.

(D) SUBSEQUENT DETERMINATION OR ORDER TO BE APPLIED PROSPECTIVELY ONLY.—Any determination that an order is a qualified domestic relations order which is made after the close of the 18-month period described in subparagraph (E) shall be applied prospectively only.

(E) DETERMINATION OF 18-MONTH PERIOD.—For purposes of this paragraph, the 18-month period described in this subparagraph is the 18-month period beginning with the date on which the first payment would be required to be made under the domestic relations order.

(8) ALTERNATE PAYEE DEFINED.—The term "alternate payee" means any spouse, former spouse, child or other dependent of a participant who is recognized by a domestic relations order as having a right to receive all, or a portion of, the benefits payable under a plan with respect to such participant.

(9) SUBSECTION NOT TO APPLY TO PLANS TO WHICH SECTION 401(A)(13) DOES NOT APPLY.—This subsection shall not apply to any plan to which section 401(a)(13) does not apply. For purposes of this title, except as provided in regulations, any distribution from an annuity contract under section 403(b) pursuant to a qualified domestic relations order shall be treated in the same manner as a distribution from a plan to which section 401(a)(13) applies.

(10) WAIVER OF CERTAIN DISTRIBUTION REQUIREMENTS.—With respect to the requirements of subsections (a) and (k) of section 401, section 403(b), section 409(d), and section 457(d), a plan shall not be treated as failing to meet such requirements solely by reason of payments to an alternative payee pursuant to a qualified domestic relations order.

(11) APPLICATION OF RULES TO CERTAIN OTHER PLANS.—For purposes of this title, a distribution or payment from a governmental plan (as defined in subsection (d)) or a church plan (as described in subsection (e)) or an eligible deferred compensation plan (within the meaning of section 457(b)) shall be treated as made pursuant to a qualified domestic relations order if it is made pursuant to a domestic relations order which meets the requirement of clause (i) of paragraph (1)(A).

(12) TAX TREATMENT OF PAYMENTS FROM A SECTION 457 PLAN.—If a distribution or payment from an eligible deferred compensation plan described in section 457(b) is made pursuant to a qualified domestic relations order, rules similar to the rules of section 402(e)(1)(A) shall apply to such distribution or payment.

(13) CONSULTATION WITH THE SECRETARY.—In prescribing regulations under this subsection and section 401(a)(13), the Secretary of Labor shall consult with the Secretary.

(q) HIGHLY COMPENSATED EMPLOYEE.—

(1) IN GENERAL.—The term "highly compensated employee" means any employee who—

(A) was a 5-percent owner at any time during the year or the preceding year, or

(B) for the preceding year—

(i) had compensation from the employer in excess of $80,000, and

(ii) if the employer elects the application of this clause for such preceding year, was in the top-paid group of employees for such preceding year.

The Secretary shall adjust the $80,000 amount under subparagraph (B) at the same time and in the same manner as under section 415(d), except that the base period shall be the calendar quarter ending September 30, 1996.

(2) 5-PERCENT OWNER.—An employee shall be treated as a 5-percent owner for any year if at any time during such year such employee was a 5-percent owner (as defined in section 416(i)(1)) of the employer.

(3) TOP-PAID GROUP.—An employee is in the top-paid group of employees for any year if such employee is in the group consisting of the top 20 percent of the employees when ranked on the basis of compensation paid during such year.

(4) COMPENSATION.—For purposes of this subsection, the term "compensation" has the meaning given such term by section 415(c)(3).

(5) EXCLUDED EMPLOYEES.—For purposes of subsection (r) and for purposes of determining the number of employees in the top-paid group, the following employees shall be excluded—

(A) employees who have not completed 6 months of service,

(B) employees who normally work less than 171/2 hours per week,

(C) employees who normally work during not more than 6 months during any year,

(D) employees who have not attained age 21, and

(E) except to the extent provided in regulations, employees who are included in a unit of employees covered by an agreement which the Secretary of Labor finds to be a collective bargaining agreement between employee representatives and the employer.

Except as provided by the Secretary, the employer may elect to apply subparagraph (A), (B), (C), or (D) by substituting a shorter period of service, smaller number of hours or months, or lower age for the period of service, number of hours or months, or age (as the case may be) than that specified in such subparagraph.

(6) FORMER EMPLOYEES.—A former employee shall be treated as a highly compensated employee if—

(A) such employee was a highly compensated employee when such employee separated from service, or

(B) such employee was a highly compensated employee at any time after attaining age 55.

(7) COORDINATION WITH OTHER PROVISIONS.—Subsections (b), (c), (m), (n), and (*o*) shall be applied before the application of this subsection.

(8) SPECIAL RULE FOR NONRESIDENT ALIENS.—For purposes of this subsection and subsection (r), employees who are nonresident aliens and who receive no earned income (within the meaning of section 911(d)(2)) from the employer which constitutes income from sources within the United States (within the meaning of section 861(a)(3)) shall not be treated as employees.

(9) CERTAIN EMPLOYEES NOT CONSIDERED HIGHLY COMPENSATED AND EXCLUDED EMPLOYEES UNDER PRE-ERISA RULES FOR CHURCH PLANS.—In the case of a church plan (as defined in subsection (e)), no employee shall be considered an officer, a person whose principal duties consist of supervising the work of other employees, or a highly compensated employee for any year unless such employee is a highly compensated employee under paragraph (1) for such year.

(r) SPECIAL RULES FOR SEPARATE LINE OF BUSINESS.—

(1) IN GENERAL.—For purposes of sections 129(d)(8) and 410(b), an employer shall be treated as operating separate lines of business during any year if the employer for bona fide business reasons operates separate lines of business.

(2) LINE OF BUSINESS MUST HAVE 50 EMPLOYEES, ETC..—A line of business shall not be treated as separate under paragraph (1) unless—

(A) such line of business has at least 50 employees who are not excluded under subsection (q)(5),

(B) the employer notifies the Secretary that such line of business is being treated as separate for purposes of paragraph (1), and

(C) such line of business meets guidelines prescribed by the Secretary or the employer receives a determination from the Secretary that such line of business may be treated as separate for purposes of paragraph (1).

(3) SAFE HARBOR RULE.—

(A) IN GENERAL.—The requirements of subparagraph (C) of paragraph (2) shall not apply to any line of business if the highly compensated employee percentage with respect to such line of business is—

(i) not less than one-half, and

(ii) not more than twice,

the percentage which highly compensated employees are of all employees of the employer. An employer shall be treated as meeting the requirements of clause (i) if at least 10 percent of all highly compensated employees of the employer perform services solely for such line of business.

(B) DETERMINATION MAY BE BASED ON PRECEDING YEAR.—The requirements of subparagraph (A) shall be treated as met with respect to any line of business if such requirements were met with respect to such line of business for the preceding year and if—

(i) no more than a de minimis number of employees were shifted to or from the line of business after the close of the preceding year, or

(ii) the employees shifted to or from the line of business after the close of the preceding year contained a substantially proportional number of highly compensated employees.

(4) HIGHLY COMPENSATED EMPLOYEE PERCENTAGE DEFINED.—For purposes of this subsection, the term "highly compensated employee percentage" means the percentage which highly compensated employees performing services for the line of business are of all employees performing services for the line of business.

(5) ALLOCATION OF BENEFITS TO LINE OF BUSINESS.—For purposes of this subsection, benefits which are attributable to services provided to a line of business shall be treated as provided by such line of business.

(6) HEADQUARTERS PERSONNEL, ETC..—The Secretary shall prescribe rules providing for—

(A) the allocation of headquarters personnel among the lines of business of the employer, and

(B) the treatment of other employees providing services for more than 1 line of business of the employer or not in lines of business meeting the requirements of paragraph (2).

(7) SEPARATE OPERATING UNITS.—For purposes of this subsection, the term "separate line of business" includes an operating unit in a separate geographic area separately operated for a bona fide business reason.

(8) AFFILIATED SERVICE GROUPS.—This subsection shall not apply in the case of any affiliated service group (within the meaning of section 414(m)).

(s) COMPENSATION.—For purposes of any applicable provision—

(1) IN GENERAL.—Except as provided in this subsection, the term "compensation" has the meaning given such term by section 415(c)(3).

(2) EMPLOYER MAY ELECT NOT TO TREAT CERTAIN DEFERRALS AS COMPENSATION.—An employer may elect not to include as compensation any amount which is contributed by the employer pursuant to a salary reduction agreement and which is not includible in the gross income of an employee under section 125, 132(f)(4), 402(e)(3), 402(h), or 403(b).

(3) ALTERNATIVE DETERMINATION OF COMPENSATION.—The Secretary shall by regulation provide for alternative methods of determining compensation which may be used by an employer, except that such regulations shall provide that an employer may not use an alternative method if the use of such method discriminates in favor of highly compensated employees (within the meaning of subsection (q)).

(4) APPLICABLE PROVISION.—For purposes of this subsection, the term "applicable provision" means any provision which specifically refers to this subsection.

(t) APPLICATION OF CONTROLLED GROUP RULES TO CERTAIN EMPLOYEE BENEFITS.—

(1) IN GENERAL.—All employees who are treated as employed by a single employer under subsection (b), (c), or (m) shall be treated as employed by a single employer for purposes of an applicable section. The provisions of subsection (*o*) shall apply with respect to the requirements of an applicable section.

(2) APPLICABLE SECTION.—For purposes of this subsection, the term "applicable section" means section 79, 106, 117(d), 125, 127, 129, 132, 137, 274(j), 505, or 4980B.

(u) SPECIAL RULES RELATING TO VETERANS' REEMPLOYMENT RIGHTS UNDER USERRA AND TO DIFFERENTIAL WAGE PAYMENTS TO MEMBERS ON ACTIVE DUTY.—

(1) TREATMENT OF CERTAIN CONTRIBUTIONS MADE PURSUANT TO VETERANS' REEMPLOYMENT RIGHTS.—If any contribution is made by an employer or an employee under an individual account plan with respect to an employee, or by an employee to a defined benefit plan that provides for employee contributions, and such contribution is required by reason of such employee's rights under chapter 43 of title 38, United States Code, resulting from qualified military service, then—

(A) such contribution shall not be subject to any otherwise applicable limitation contained in section 402(g), 402(h), 403(b), 404(a), 404(h), 408, 415, or 457, and shall not be taken into account in applying such limitations to other contributions or benefits under such plan or any other plan, with respect to the year in which the contribution is made,

(B) such contribution shall be subject to the limitations referred to in subparagraph (A) with respect to the year to which the contribution relates (in accordance with rules prescribed by the Secretary), and

(C) such plan shall not be treated as failing to meet the requirements of section 401(a)(4), 401(a)(26), 401(k)(3), 401(k)(11), 401(k)(12), 401(m), 403(b)(12), 408(k)(3), 408(k)(6), 408(p), 410(b), or 416 by reason of the making of (or the right to make) such contribution.

For purposes of the preceding sentence, any elective deferral or employee contribution made under paragraph (2) shall be treated as required by reason of the employee's rights under such chapter 43.

(2) REEMPLOYMENT RIGHTS UNDER USERRA WITH RESPECT TO ELECTIVE DEFERRALS.—

(A) IN GENERAL.—For purposes of this subchapter and section 457, if an employee is entitled to the benefits of chapter 43 of title 38, United States Code, with respect to any plan which provides for elective deferrals, the employer sponsoring the plan shall be treated as meeting the requirements of such chapter 43 with respect to such elective deferrals only if such employer—

(i) permits such employee to make additional elective deferrals under such plan (in the amount determined under subparagraph (B) or such lesser amount as is elected by the employee) during the period which begins on the date of the reemployment of such employee with such employer and has the same length as the lesser of—

(I) the product of 3 and the period of qualified military service which resulted in such rights, and

(II) 5 years, and

(ii) makes a matching contribution with respect to any additional elective deferral made pursuant to clause (i) which would have been required had such deferral actually been made during the period of such qualified military service.

(B) AMOUNT OF MAKEUP REQUIRED.—The amount determined under this subparagraph with respect to any plan is the maximum amount of the elective deferrals that the individual would have been permitted to make under the plan in accordance with the limitations referred to in paragraph (1)(A) during the period of qualified military service if the individual had continued to be employed by the employer during such period and received compensation as determined under paragraph (7). Proper adjustment shall be made to the amount determined under the preceding sentence for any elective deferrals actually made during the period of such qualified military service.

(C) ELECTIVE DEFERRAL.—For purposes of this paragraph, the term "elective deferral" has the meaning given such term by section 402(g)(3); except that such term shall include any deferral of compensation under an eligible deferred compensation plan (as defined in section 457(b)).

(D) AFTER-TAX EMPLOYEE CONTRIBUTIONS.—References in subparagraphs (A) and (B) to elective deferrals shall be treated as including references to employee contributions.

(3) CERTAIN RETROACTIVE ADJUSTMENTS NOT REQUIRED.—For purposes of this subchapter and subchapter E, no provision of chapter 43 of title 38, United States Code, shall be construed as requiring—

(A) any crediting of earnings to an employee with respect to any contribution before such contribution is actually made, or

(B) any allocation of any forfeiture with respect to the period of qualified military service.

(4) LOAN REPAYMENT SUSPENSIONS PERMITTED.—If any plan suspends the obligation to repay any loan made to an employee from such plan for any part of any period during which such employee is performing service in the uniformed services (as defined in chapter 43 of title 38, United States Code), whether or not qualified military service, such suspension shall not be taken into account for purposes of section 72(p), 401(a), or 4975(d)(1).

(5) QUALIFIED MILITARY SERVICE.—For purposes of this subsection, the term "qualified military service" means any service in the uniformed services (as defined in chapter 43 of title 38, United States Code) by any individual if such individual is entitled to reemployment rights under such chapter with respect to such service.

(6) INDIVIDUAL ACCOUNT PLAN.—For purposes of this subsection, the term "individual account plan" means any defined contribution plan (including any tax-sheltered annuity plan under section 403(b), any simplified employee pension under section 408(k), any qualified salary reduction arrangement under section 408(p), and any eligible deferred compensation plan (as defined in section 457(b))).

(7) COMPENSATION.—For purposes of sections 403(b)(3), 415(c)(3), and 457(e)(5), an employee who is in qualified military service shall be treated as receiving compensation from the employer during such period of qualified military service equal to—

(A) the compensation the employee would have received during such period if the employee were not in qualified military service, determined based on the rate of pay the employee would have received from the employer but for absence during the period of qualified military service, or

(B) if the compensation the employee would have received during such period was not reasonably certain, the employee's average compensation from the employer during the 12-month period immediately preceding the qualified military service (or, if shorter, the period of employment immediately preceding the qualified military service).

(8) USERRA REQUIREMENTS FOR QUALIFIED RETIREMENT PLANS.—For purposes of this subchapter and section 457, an employer sponsoring a retirement plan shall be treated as meeting the requirements of chapter 43 of title 38, United States Code, only if each of the following requirements is met:

(A) An individual reemployed under such chapter is treated with respect to such plan as not having incurred a break in service with the employer maintaining the plan by reason of such individual's period of qualified military service.

(B) Each period of qualified military service served by an individual is, upon reemployment under such chapter, deemed with respect to such plan to constitute service with the employer maintaining the plan for the purpose of determining the nonforfeitability of the individual's accrued benefits under such plan and for the purpose of determining the accrual of benefits under such plan.

(C) An individual reemployed under such chapter is entitled to accrued benefits that are contingent on the making of, or derived from, employee contributions or elective deferrals only to the extent the individual makes payment to the plan with respect to such contributions or deferrals. No such payment may exceed the amount the individual would have been permitted or required to contribute had the individual remained continuously employed by the employer throughout the period of qualified military service. Any payment to such plan shall be made during the period beginning with the date of reemployment and whose duration is 3 times the period of the qualified military service (but not greater than 5 years).

(9) TREATMENT IN THE CASE OF DEATH OR DISABILITY RESULTING FROM ACTIVE MILITARY SERVICE.—

(A) IN GENERAL.—For benefit accrual purposes, an employer sponsoring a retirement plan may treat an individual who dies or becomes disabled (as defined under the terms of the plan) while performing qualified military service with respect to the employer maintaining the plan as if the individual has resumed employment in accordance with the individual's reemployment rights under chapter 43 of title 38, United States Code, on the day preceding death or disability (as the case may be) and terminated employment on the actual date of death or disability. In the case of any such treatment, and subject to subparagraphs (B) and (C), any full or partial compliance by such plan with respect to the benefit accrual requirements of paragraph (8) with respect to such individual shall be treated for purposes of paragraph (1) as if such compliance were required under such chapter 43.

(B) NONDISCRIMINATION REQUIREMENT.—Subparagraph (A) shall apply only if all individuals performing qualified military service with respect to the employer maintaining the plan (as determined under subsections (b), (c), (m), and (*o*)) who die or became disabled as a result of performing qualified military service prior to reemployment by the employer are credited with service and benefits on reasonably equivalent terms.

(C) DETERMINATION OF BENEFITS.—The amount of employee contributions and the amount of elective deferrals of an individual treated as reemployed under subparagraph (A) for purposes of applying paragraph (8)(C) shall be determined on the basis of the individual's average actual employee contributions or elective deferrals for the lesser of—

(i) the 12-month period of service with the employer immediately prior to qualified military service, or

(ii) if service with the employer is less than such 12-month period, the actual length of continuous service with the employer.

(10) PLANS NOT SUBJECT TO TITLE 38.—This subsection shall not apply to any retirement plan to which chapter 43 of title 38, United States Code, does not apply.

(11) REFERENCES.—For purposes of this section, any reference to chapter 43 of title 38, United States Code, shall be treated as a reference to such chapter as in effect on December 12, 1994 (without regard to any subsequent amendment).

(12) TREATMENT OF DIFFERENTIAL WAGE PAYMENTS.—

(A) IN GENERAL.—Except as provided in this paragraph, for purposes of applying this title to a retirement plan to which this subsection applies—

(i) an individual receiving a differential wage payment shall be treated as an employee of the employer making the payment,

(ii) the differential wage payment shall be treated as compensation, and

(iii) the plan shall not be treated as failing to meet the requirements of any provision described in paragraph (1)(C) by reason of any contribution or benefit which is based on the differential wage payment.

(B) SPECIAL RULE FOR DISTRIBUTIONS.—

(i) IN GENERAL.—Notwithstanding subparagraph (A)(i), for purposes of section 401(k)(2)(B)(i)(I), 403(b)(7)(A)(ii), 403(b)(11)(A), or 457(d)(1)(A)(ii), an individual shall be treated as having been severed from employment during any period the individual is performing service in the uniformed services described in section 3401(h)(2)(A).

(ii) LIMITATION.—If an individual elects to receive a distribution by reason of clause (i), the plan shall provide that the individual may not make an elective deferral or employee contribution during the 6-month period beginning on the date of the distribution.

(C) NONDISCRIMINATION REQUIREMENT.—Subparagraph (A)(iii) shall apply only if all employees of an employer (as determined under subsections (b), (c), (m), and (*o*)) performing service in the uniformed services described in section 3401(h)(2)(A) are entitled to receive differential wage payments on reasonably equivalent terms and, if eligible to participate in a retirement plan maintained by the employer, to make contributions based on the payments on reasonably equivalent terms. For purposes of applying this subparagraph, the provisions of paragraphs (3), (4), and (5) of section 410(b) shall apply.

(D) DIFFERENTIAL WAGE PAYMENT.—For purposes of this paragraph, the term "differential wage payment" has the meaning given such term by section 3401(h)(2).

(v) CATCH-UP CONTRIBUTIONS FOR INDIVIDUALS AGE 50 OR OVER.—

(1) IN GENERAL.—An applicable employer plan shall not be treated as failing to meet any requirement of this title solely because the plan permits an eligible participant to make additional elective deferrals in any plan year.

(2) LIMITATION ON AMOUNT OF ADDITIONAL DEFERRALS.—

(A) IN GENERAL.—A plan shall not permit additional elective deferrals under paragraph (1) for any year in an amount greater than the lesser of—

(i) the applicable dollar amount, or

(ii) the excess (if any) of—

(I) the participant's compensation (as defined in section 415(c)(3)) for the year, over

(II) any other elective deferrals of the participant for such year which are made without regard to this subsection.

(B) APPLICABLE DOLLAR AMOUNT.—For purposes of this paragraph—

(i) In the case of an applicable employer plan other than a plan described in section 401(k)(11) or 408(p), the applicable dollar amount is $5,000.

(ii) In the case of an applicable employer plan described in section 401(k)(11) or 408(p), the applicable dollar amount is $2,500.

(C) COST-OF-LIVING ADJUSTMENT.—In the case of a year beginning after December 31, 2006, the Secretary shall adjust annually the $5,000 amount in subparagraph (B)(i) and the $2,500 amount in subparagraph (B)(ii) for increases in the cost-of-living at the same time and in the same manner as adjustments under section 415(d); except that the base period taken into account shall be the calendar quarter beginning July 1, 2005, and any increase under this subparagraph which is not a multiple of $500 shall be rounded to the next lower multiple of $500.

(D) AGGREGATION OF PLANS.—For purposes of this paragraph, plans described in clauses (i), (ii), and (iv) of paragraph (6)(A) that are maintained by the same employer (as determined under subsection (b), (c), (m) or (*o*)) shall be treated as a single plan, and plans described in clause (iii) of paragraph (6)(A) that are maintained by the same employer shall be treated as a single plan.

(3) TREATMENT OF CONTRIBUTIONS.—In the case of any contribution to a plan under paragraph (1)—

(A) such contribution shall not, with respect to the year in which the contribution is made—

(i) be subject to any otherwise applicable limitation contained in sections 401(a)(30), 402(h), 403(b), 408, 415(c), and 457(b)(2) (determined without regard to section 457(b)(3)), or

(ii) be taken into account in applying such limitations to other contributions or benefits under such plan or any other such plan, and

(B) except as provided in paragraph (4), such plan shall not be treated as failing to meet the requirements of section 401(a)(4), 401(k)(3), 401(k)(11), 403(b)(12), 408(k), 410(b), or 416 by reason of the making of (or the right to make) such contribution.

(4) APPLICATION OF NONDISCRIMINATION RULES.—

(A) IN GENERAL.—An applicable employer plan shall be treated as failing to meet the nondiscrimination requirements under section 401(a)(4) with respect to benefits, rights, and features unless the plan allows all eligible participants to make the same election with respect to the additional elective deferrals under this subsection.

(B) AGGREGATION.—For purposes of subparagraph (A), all plans maintained by employers who are treated as a single employer under subsection (b), (c), (m), or (*o*) of section 414 shall be treated as 1 plan, except that a plan described in clause (i) of section 410(b)(6)(C) shall not be treated as a plan of the employer until the expiration of the transition period with respect to such plan (as determined under clause (ii) of such section).

(5) ELIGIBLE PARTICIPANT.—For purposes of this subsection, the term "eligible participant" means a participant in a plan—

(A) who would attain age 50 by the end of the taxable year,

(B) with respect to whom no other elective deferrals may (without regard to this subsection) be made to the plan for the plan (or other applicable) year by reason of the application of any limitation or other restriction described in paragraph (3) or comparable limitation or restriction contained in the terms of the plan.

(6) OTHER DEFINITIONS AND RULES.—For purposes of this subsection—

(A) APPLICABLE EMPLOYER PLAN.—The term "applicable employer plan" means—

(i) an employees' trust described in section 401(a) which is exempt from tax under section 501(a),

(ii) a plan under which amounts are contributed by an individual's employer for an annuity contract described in section 403(b),

(iii) an eligible deferred compensation plan under section 457 of an eligible employer described in section 457(e)(1)(A), and

(iv) an arrangement meeting the requirements of section 408(k) or (p).

(B) ELECTIVE DEFERRAL.—The term "elective deferral" has the meaning given such term by subsection (u)(2)(C).

(C) EXCEPTION FOR SECTION 457 PLANS.—This subsection shall not apply to a participant for any year for which a higher limitation applies to the participant under section 457(b)(3).

(w) SPECIAL RULES FOR CERTAIN WITHDRAWALS FROM ELIGIBLE AUTOMATIC CONTRIBUTION ARRANGEMENTS.—

(1) IN GENERAL.—If an eligible automatic contribution arrangement allows an employee to elect to make permissible withdrawals—

(A) the amount of any such withdrawal shall be includible in the gross income of the employee for the taxable year of the employee in which the distribution is made,

(B) no tax shall be imposed under section 72(t) with respect to the distribution, and

(C) the arrangement shall not be treated as violating any restriction on distributions under this title solely by reason of allowing the withdrawal.

In the case of any distribution to an employee by reason of an election under this paragraph, employer matching contributions shall be forfeited or subject to such other treatment as the Secretary may prescribe.

(2) PERMISSIBLE WITHDRAWAL.—For purposes of this subsection—

(A) IN GENERAL.—The term "permissible withdrawal" means any withdrawal from an eligible automatic contribution arrangement meeting the requirements of this paragraph which—

(i) is made pursuant to an election by an employee, and

(ii) consists of elective contributions described in paragraph (3)(B) (and earnings attributable thereto).

(B) TIME FOR MAKING ELECTION.—Subparagraph (A) shall not apply to an election by an employee unless the election is made no later than the date which is 90 days after the date of the first elective contribution with respect to the employee under the arrangement.

(C) AMOUNT OF DISTRIBUTION.—Subparagraph (A) shall not apply to any election by an employee unless the amount of any distribution by reason of the election is equal to the amount of elective contributions made with respect to the first payroll period to which the eligible automatic contribution arrangement applies to the employee and any succeeding payroll period beginning before the effective date of the election (and earnings attributable thereto).

(3) ELIGIBLE AUTOMATIC CONTRIBUTION ARRANGEMENT.—⟦For purposes of⟧

(A) IN GENERAL.—For purposes of this subsection, the term "eligible automatic contribution arrangement" means an arrangement under an applicable employer plan—

⟦(A)⟧ *(i)* under which a participant may elect to have the employer make payments as contributions under the plan on behalf of the participant, or to the participant directly in cash,

⟦(B)⟧ *(ii)* under which the participant is treated as having elected to have the employer make such contributions in an amount equal to a uniform percentage of compensation provided under the plan until the participant specifically elects not to have such contributions made (or specifically elects to have such contributions made at a different percentage), and

⟦(C)⟧ *(iii)* which meets the requirements of paragraph (4).

(B) PERIODIC AUTOMATIC DEFERRAL REQUIRED.—In the case of an eligible automatic contribution arrangement taking effect after December 31, 2024, the requirements of this subsection shall be treated as met only if, under the arrangement, at least every 3 plan years each employee—

(i) who is eligible to participate in the arrangement, and

(ii) who, at the time of the determination, has in effect an affirmative election under subparagraph (A)(ii) not to have such contributions described in such subparagraph made,

is treated as having made the election at the uniform percentage level described in subparagraph (A)(ii) unless the employee makes a new election under such subparagraph. Such determination may be made at one time for all em-

ployees described in the preceding sentence for a plan year, regardless of individual employee dates of enrollment.

(4) NOTICE REQUIREMENTS.—

(A) IN GENERAL.—The administrator of a plan containing an arrangement described in paragraph (3) shall, within a reasonable period before each plan year, give to each employee to whom an arrangement described in paragraph (3) applies for such plan year notice of the employee's rights and obligations under the arrangement which—

(i) is sufficiently accurate and comprehensive to apprise the employee of such rights and obligations, and

(ii) is written in a manner calculated to be understood by the average employee to whom the arrangement applies.

(B) TIME AND FORM OF NOTICE.—A notice shall not be treated as meeting the requirements of subparagraph (A) with respect to an employee unless—

(i) the notice includes an explanation of the employee's right under the arrangement to elect not to have elective contributions made on the employee's behalf (or to elect to have such contributions made at a different percentage),

(ii) the employee has a reasonable period of time after receipt of the notice described in clause (i) and before the first elective contribution is made to make such election, and

(iii) the notice explains how contributions made under the arrangement will be invested in the absence of any investment election by the employee.

(5) APPLICABLE EMPLOYER PLAN.—For purposes of this subsection, the term "applicable employer plan" means—

(A) an employees' trust described in section 401(a) which is exempt from tax under section 501(a),

(B) a plan under which amounts are contributed by an individual's employer for an annuity contract described in section 403(b),

(C) an eligible deferred compensation plan described in section 457(b) which is maintained by an eligible employer described in section 457(e)(1)(A),

(D) a simplified employee pension the terms of which provide for a salary reduction arrangement described in section 408(k)(6), and

(E) a simple retirement account (as defined in section 408(p)).

(6) SPECIAL RULE.—A withdrawal described in paragraph (1) (subject to the limitation of paragraph (2)(C)) shall not be taken into account for purposes of section 401(k)(3) or for purposes of applying the limitation under section 402(g)(1).

(x) SPECIAL RULES FOR ELIGIBLE COMBINED DEFINED BENEFIT PLANS AND QUALIFIED CASH OR DEFERRED ARRANGEMENTS.—

(1) GENERAL RULE.—Except as provided in this subsection, the requirements of this title shall be applied to any defined benefit plan or applicable defined contribution plan which is part of an eligible combined plan in the same manner as if each such plan were not a part of the eligible combined plan.

In the case of a termination of the defined benefit plan and the applicable defined contribution plan forming part of an eligible combined plan, the plan administrator shall terminate each such plan separately.

(2) ELIGIBLE COMBINED PLAN.—For purposes of this subsection—

(A) IN GENERAL.—The term "eligible combined plan" means a plan—

(i) which is maintained by an employer which, at the time the plan is established, is a small employer,

(ii) which consists of a defined benefit plan and an applicable defined contribution plan,

(iii) the assets of which are held in a single trust forming part of the plan and are clearly identified and allocated to the defined benefit plan and the applicable defined contribution plan to the extent necessary for the separate application of this title under paragraph (1), and

(iv) with respect to which the benefit, contribution, vesting, and nondiscrimination requirements of subparagraphs (B), (C), (D), (E), and (F) are met.

For purposes of this subparagraph, the term "small employer" has the meaning given such term by section 4980D(d)(2), except that such section shall be applied by substituting "500" for "50" each place it appears.

(B) BENEFIT REQUIREMENTS.—

(i) IN GENERAL.—The benefit requirements of this subparagraph are met with respect to the defined benefit plan forming part of the eligible combined plan if the accrued benefit of each participant derived from employer contributions, when expressed as an annual retirement benefit, is not less than the applicable percentage of the participant's final average pay. For purposes of this clause, final average pay shall be determined using the period of consecutive years (not exceeding 5) during which the participant had the greatest aggregate compensation from the employer.

(ii) APPLICABLE PERCENTAGE.—For purposes of clause (i), the applicable percentage is the lesser of—

(I) 1 percent multiplied by the number of years of service with the employer, or

(II) 20 percent.

(iii) SPECIAL RULE FOR APPLICABLE DEFINED BENEFIT PLANS.—If the defined benefit plan under clause (i) is an applicable defined benefit plan as defined in section 411(a)(13)(B) which meets the interest credit requirements of section 411(b)(5)(B)(i), the plan shall be treated as meeting the requirements of clause (i) with respect to any plan year if each participant receives a pay credit for the year which is not less than the percentage of compensation determined in accordance with the following table:

(iv) YEARS OF SERVICE.—For purposes of this subparagraph, years of service shall be determined under the rules of paragraphs (4), (5), and (6) of section

411(a), except that the plan may not disregard any year of service because of a participant making, or failing to make, any elective deferral with respect to the qualified cash or deferred arrangement to which subparagraph (C) applies.

(C) CONTRIBUTION REQUIREMENTS.—

(i) IN GENERAL.—The contribution requirements of this subparagraph with respect to any applicable defined contribution plan forming part of an eligible combined plan are met if—

(I) the qualified cash or deferred arrangement included in such plan constitutes an automatic contribution arrangement, and

(II) the employer is required to make matching contributions on behalf of each employee eligible to participate in the arrangement in an amount equal to 50 percent of the elective contributions of the employee to the extent such elective contributions do not exceed 4 percent of compensation.

Rules similar to the rules of clauses (ii) and (iii) of section 401(k)(12)(B) shall apply for purposes of this clause.

(ii) NONELECTIVE CONTRIBUTIONS.—An applicable defined contribution plan shall not be treated as failing to meet the requirements of clause (i) because the employer makes nonelective contributions under the plan but such contributions shall not be taken into account in determining whether the requirements of clause (i)(II) are met.

(D) VESTING REQUIREMENTS.—The vesting requirements of this subparagraph are met if—

(i) in the case of a defined benefit plan forming part of an eligible combined plan an employee who has completed at least 3 years of service has a nonforfeitable right to 100 percent of the employee's accrued benefit under the plan derived from employer contributions, and

(ii) in the case of an applicable defined contribution plan forming part of eligible combined plan—

(I) an employee has a nonforfeitable right to any matching contribution made under the qualified cash or deferred arrangement included in such plan by an employer with respect to any elective contribution, including matching contributions in excess of the contributions required under subparagraph (C)(i)(II), and

(II) an employee who has completed at least 3 years of service has a nonforfeitable right to 100 percent of the employee's accrued benefit derived under the arrangement from nonelective contributions of the employer.

For purposes of this subparagraph, the rules of section 411 shall apply to the extent not inconsistent with this subparagraph.

(E) UNIFORM PROVISION OF CONTRIBUTIONS AND BENEFITS.—In the case of a defined benefit plan or applicable defined contribution plan forming part of an eligible combined plan, the requirements of this subparagraph are met if all contributions and benefits under each such plan, and all rights and features under each such plan, must be provided uniformly to all participants.

(F) REQUIREMENTS MUST BE MET WITHOUT TAKING INTO ACCOUNT SOCIAL SECURITY AND SIMILAR CONTRIBUTIONS AND BENEFITS OR OTHER PLANS.—

(i) IN GENERAL.—The requirements of this subparagraph are met if the requirements of clauses (ii) and (iii) are met.

(ii) SOCIAL SECURITY AND SIMILAR CONTRIBUTIONS.—The requirements of this clause are met if—

(I) the requirements of subparagraphs (B) and (C) are met without regard to section 401(*l*), and

(II) the requirements of sections 401(a)(4) and 410(b) are met with respect to both the applicable defined contribution plan and defined benefit plan forming part of an eligible combined plan without regard to section 401(*l*).

(iii) OTHER PLANS AND ARRANGEMENTS.—The requirements of this clause are met if the applicable defined contribution plan and defined benefit plan forming part of an eligible combined plan meet the requirements of sections 401(a)(4) and 410(b) without being combined with any other plan.

(3) NONDISCRIMINATION REQUIREMENTS FOR QUALIFIED CASH OR DEFERRED ARRANGEMENT.—

(A) IN GENERAL.—A qualified cash or deferred arrangement which is included in an applicable defined contribution plan forming part of an eligible combined plan shall be treated as meeting the requirements of section 401(k)(3)(A)(ii) if the requirements of paragraph (2)(C) are met with respect to such arrangement.

(B) MATCHING CONTRIBUTIONS.—In applying section 401(m)(11) to any matching contribution with respect to a contribution to which paragraph (2)(C) applies, the contribution requirement of paragraph (2)(C) and the notice requirements of paragraph (5)(B) shall be substituted for the requirements otherwise applicable under clauses (i) and (ii) of section 401(m)(11)(A).

(4) SATISFACTION OF TOP-HEAVY RULES.—A defined benefit plan and applicable defined contribution plan forming part of an eligible combined plan for any plan year shall be treated as meeting the requirements of section 416 for the plan year.

(5) AUTOMATIC CONTRIBUTION ARRANGEMENT.—For purposes of this subsection—

(A) IN GENERAL.—A qualified cash or deferred arrangement shall be treated as an automatic contribution arrangement if the arrangement—

(i) provides that each employee eligible to participate in the arrangement is treated as having elected to have the employer make elective contributions in an amount equal to 4 percent of the employee's compensation unless the employee specifically elects not to have such contributions made or to have such contributions made at a different rate, and

(ii) meets the notice requirements under subparagraph (B).

(B) NOTICE REQUIREMENTS.—

(i) IN GENERAL.—The requirements of this subparagraph are met if the requirements of clauses (ii) and (iii) are met.

(ii) REASONABLE PERIOD TO MAKE ELECTION.—The requirements of this clause are met if each employee to whom subparagraph (A)(i) applies—

(I) receives a notice explaining the employee's right under the arrangement to elect not to have elective contributions made on the employee's behalf or to have the contributions made at a different rate, and

(II) has a reasonable period of time after receipt of such notice and before the first elective contribution is made to make such election.

(iii) ANNUAL NOTICE OF RIGHTS AND OBLIGATIONS.—The requirements of this clause are met if each employee eligible to participate in the arrangement is, within a reasonable period before any year, given notice of the employee's rights and obligations under the arrangement.

The requirements of clauses (i) and (ii) of section 401(k)(12)(D) shall be met with respect to the notices described in clauses (ii) and (iii) of this subparagraph.

(6) COORDINATION WITH OTHER REQUIREMENTS.—

(A) TREATMENT OF SEPARATE PLANS.—Section 414(k) shall not apply to an eligible combined plan.

(B) REPORTING.—An eligible combined plan shall be treated as a single plan for purposes of sections 6058 and 6059.

(7) APPLICABLE DEFINED CONTRIBUTION PLAN.—For purposes of this subsection—

(A) IN GENERAL.—The term "applicable defined contribution plan" means a defined contribution plan which includes a qualified cash or deferred arrangement.

(B) QUALIFIED CASH OR DEFERRED ARRANGEMENT.—The term "qualified cash or deferred arrangement" has the meaning given such term by section 401(k)(2).

(y) COOPERATIVE AND SMALL EMPLOYER CHARITY PENSION PLANS.—

(1) IN GENERAL.—For purposes of this title, except as provided in this subsection, a CSEC plan is a defined benefit plan (other than a multiemployer plan)—

(A) to which section 104 of the Pension Protection Act of 2006 applies, without regard to—

(i) section 104(a)(2) of such Act;

(ii) the amendments to such section 104 by section 202(b) of the Preservation of Access to Care for Medicare Beneficiaries and Pension Relief Act of 2010; and

(iii) paragraph (3)(B);

(B) that, as of June 25, 2010, was maintained by more than one employer and all of the employers were organizations described in section 501(c)(3);

(C) that, as of June 25, 2010, was maintained by an employer—

(i) described in section 501(c)(3),

(ii) chartered under part B of subtitle II of title 36, United States Code,

(iii) with employees in at least 40 States, and

(iv) whose primary exempt purpose is to provide services with respect to children; or

(D) that, as of January 1, 2000, was maintained by an employer—

(i) described in section 501(c)(3),

(ii) who has been in existence since at least 1938,

(iii) who conducts medical research directly or indirectly through grant making, and

(iv) whose primary exempt purpose is to provide services with respect to mothers and children.

(2) AGGREGATION.—All employers that are treated as a single employer under subsection (b) or (c) shall be treated as a single employer for purposes of determining if a plan was maintained by more than one employer under subparagraphs (B) and (C) of paragraph (1).

(3) ELECTION.—

(A) IN GENERAL.—If a plan falls within the definition of a CSEC plan under this subsection (without regard to this paragraph), such plan shall be a CSEC plan unless the plan sponsor elects not later than the close of the first plan year of the plan beginning after December 31, 2013, not to be treated as a CSEC plan. An election under the preceding sentence shall take effect for such plan year and, once made, may be revoked only with the consent of the Secretary.

(B) SPECIAL RULE.—If a plan described in subparagraph (A) is treated as a CSEC plan, section 104 of the Pension Protection Act of 2006, as amended by the Preservation of Access to Care for Medicare Beneficiaries and Pension Relief Act of 2010, shall cease to apply to such plan as of the first date as of which such plan is treated as a CSEC plan.

(z) CERTAIN PLAN TRANSFERS AND MERGERS.—

(1) IN GENERAL.—Under rules prescribed by the Secretary, except as provided in paragraph (2), no amount shall be includible in gross income by reason of—

(A) a transfer of all or a portion of the accrued benefit of a participant or beneficiary, whether or not vested, from a church plan that is a plan described in section 401(a) or an annuity contract described in section 403(b) to an annuity contract described in section 403(b), if such plan and annuity contract are both maintained by the same church or convention or association of churches,

(B) a transfer of all or a portion of the accrued benefit of a participant or beneficiary, whether or not vested, from an annuity contract described in section 403(b) to a church plan that is a plan described in section 401(a), if such plan and annuity contract are both maintained by the same church or convention or association of churches, or

(C) a merger of a church plan that is a plan described in section 401(a), or an annuity contract described in section 403(b), with an annuity contract described in section 403(b), if such plan and annuity contract are both maintained by the same church or convention or association of churches.

(2) LIMITATION.—Paragraph (1) shall not apply to a transfer or merger unless the participant's or beneficiary's total accrued benefit immediately after the transfer or merger is equal to or greater than the participant's or beneficiary's total accrued benefit immediately before the transfer or merger, and such total accrued benefit is nonforfeitable after the transfer or merger.

(3) QUALIFICATION.—A plan or annuity contract shall not fail to be considered to be described in section 401(a) or 403(b) merely because such plan or annuity contract engages in a transfer or merger described in this subsection.

(4) DEFINITIONS.—For purposes of this subsection—

(A) CHURCH OR CONVENTION OR ASSOCIATION OF CHURCHES.—The term "church or convention or association of churches" includes an organization described in subparagraph (A) or (B)(ii) of subsection (e)(3).

(B) ANNUITY CONTRACT.—The term "annuity contract" includes a custodial account described in section 403(b)(7) and a retirement income account described in section 403(b)(9).

(C) ACCRUED BENEFIT.—The term "accrued benefit" means—

(i) in the case of a defined benefit plan, the employee's accrued benefit determined under the plan, and

(ii) in the case of a plan other than a defined benefit plan, the balance of the employee's account under the plan.

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ASSETS FOR INDEPENDENCE ACT

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TITLE IV—ASSETS FOR INDEPENDENCE

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SEC. 404. DEFINITIONS.

In this title:

(1) APPLICABLE PERIOD.—The term "applicable period" means, with respect to amounts to be paid from a grant made for a project year, the calendar year immediately preceding the calendar year in which the grant is made.

(2) ELIGIBLE INDIVIDUAL.—The term "eligible individual" means an individual who is selected to participate in a dem-

onstration project by a qualified entity under section 409 *or section 418*.

(3) EMERGENCY WITHDRAWAL.—The term "emergency withdrawal" means a withdrawal by an eligible individual that—

(A) is a withdrawal of only those funds, or a portion of those funds, deposited by the individual in the individual development account of the individual;

(B) is permitted by a qualified entity on a case-by-case basis; and

(C) is made for—

(i) expenses for medical care or necessary to obtain medical care, for the individual or a spouse or dependent of the individual described in paragraph (8)(D);

(ii) payments necessary to prevent the eviction of the individual from the residence of the individual, or foreclosure on the mortgage for the principal residence of the individual, as defined in paragraph (8)(B); or

(iii) payments necessary to enable the individual to meet necessary living expenses following loss of employment.

(4) HOUSEHOLD.—The term "household" means all individuals who share use of a dwelling unit as primary quarters for living and eating separate from other individuals.

(5) INDIVIDUAL DEVELOPMENT ACCOUNT.—

(A) IN GENERAL.—The term "individual development account" means a trust created or organized in the United States exclusively for the purpose of paying the qualified expenses of an eligible individual, or enabling the eligible individual to make an emergency withdrawal, but only if the written governing instrument creating the trust contains the following requirements:

(i) No contribution will be accepted unless the contribution is in cash or by check.

(ii) The trustee is a federally insured financial institution, or a State insured financial institution if no federally insured financial institution is available.

(iii) The assets of the trust will be invested in accordance with the direction of the eligible individual after consultation with the qualified entity providing deposits for the individual under section 410.

(iv) The assets of the trust will not be commingled with other property except in a common trust fund or common investment fund.

(v) Except as provided in clause (vi), any amount in the trust that is attributable to a deposit provided under section 410 may be paid or distributed out of the trust only for the purpose of paying the qualified expenses of the eligible individual.

(vi) Any balance in the trust on the day after the date on which the individual for whose benefit the trust is established dies shall be distributed within 30 days of that date as directed by that individual to another individual development account established for the benefit of an eligible individual.

(B) CUSTODIAL ACCOUNTS.—For purposes of subparagraph (A), a custodial account shall be treated as a trust if the assets of the custodial account are held by a bank (as defined in section 408(n) of the Internal Revenue Code of 1986) or another person who demonstrates, to the satisfaction of the Secretary, that the manner in which such person will administer the custodial account will be consistent with the requirements of this title, and if the custodial account would, except for the fact that it is not a trust, constitute an individual development account described in subparagraph (A). For purposes of this title, in the case of a custodial account treated as a trust by reason of the preceding sentence, the custodian of that custodial account shall be treated as the trustee of the account.

(6) PROJECT YEAR.—The term "project year" means, with respect to a demonstration project, any of the 5 consecutive 12-month periods beginning on the date the project is originally authorized to be conducted.

(7) QUALIFIED ENTITY.—

(A) IN GENERAL.—The term "qualified entity" means—

(i) one or more not-for-profit organizations described in section 501(c)(3) of the Internal Revenue Code of 1986 and exempt from taxation under section 501(a) of such Code;

(ii) a State or local government agency, or a tribal government, submitting an application under section 405 jointly with an organization described in clause (i); or

(iii) an entity that—

(I) is—

(aa) a credit union designated as a low-income credit union by the National Credit Union Administration (NCUA); or

(bb) an organization designated as a community development financial institution by the Secretary of the Treasury (or the Community Development Financial Institutions Fund); and

(II) can demonstrate a collaborative relationship with a local community-based organization whose activities are designed to address poverty in the community and the needs of community members for economic independence and stability.

(B) RULE OF CONSTRUCTION.—Nothing in this paragraph shall be construed as preventing an organization described in subparagraph (A)(i) from collaborating with a financial institution or for-profit community development corporation to carry out the purposes of this title.

(8) QUALIFIED EXPENSES.—The term "qualified expenses" means one or more of the following, as provided by a qualified entity:

(A) POSTSECONDARY EDUCATIONAL EXPENSES.—Postsecondary educational expenses paid from an individual development account directly to an eligible educational institution. In this subparagraph:

(i) POSTSECONDARY EDUCATIONAL EXPENSES.—The term "postsecondary educational expenses" means the following:

(I) TUITION AND FEES.—Tuition and fees required for the enrollment or attendance of a student at an eligible educational institution.

(II) FEES, BOOKS, SUPPLIES, AND EQUIPMENT.—Fees, books, supplies, and equipment required for courses of instruction at an eligible educational institution.

(ii) ELIGIBLE EDUCATIONAL INSTITUTION.—The term "eligible educational institution" means the following:

(I) INSTITUTION OF HIGHER EDUCATION.—An institution described in section 101 or 102 of the Higher Education Act of 1965.

(II) POSTSECONDARY VOCATIONAL EDUCATION SCHOOL.—An area vocational education school (as defined in subparagraph (C) or (D) of section 521(4) of the Carl D. Perkins Vocational and Applied Technology Education Act (20 U.S.C. 2471(4))) which is in any State (as defined in section 521(33) of such Act), as such sections are in effect on the date of enactment of this title.

(B) FIRST-HOME PURCHASE.—Qualified acquisition costs with respect to a principal residence for a qualified first-time homebuyer, if paid from an individual development account directly to the persons to whom the amounts are due. In this subparagraph:

(i) PRINCIPAL RESIDENCE.—The term "principal residence" means a main residence, the qualified acquisition costs of which do not exceed 120 percent of the average area purchase price applicable to such residence.

(ii) QUALIFIED ACQUISITION COSTS.—The term "qualified acquisition costs" means the costs of acquiring, constructing, or reconstructing a residence. The term includes any usual or reasonable settlement, financing, or other closing costs.

(iii) QUALIFIED FIRST-TIME HOMEBUYER.—

(I) IN GENERAL.—The term "qualified first-time homebuyer" means an individual participating in the project involved (and, if married, the individual's spouse) who has no present ownership interest in a principal residence during the 3-year period ending on the date of acquisition of the principal residence to which this subparagraph applies.

(II) DATE OF ACQUISITION.—The term "date of acquisition" means the date on which a binding contract to acquire, construct, or reconstruct the principal residence to which this subparagraph applies is entered into.

(C) BUSINESS CAPITALIZATION.—Amounts paid from an individual development account directly to a business capitalization account that is established in a federally insured financial institution (or in a State insured financial institution if no federally insured financial institution is available) and is restricted to use solely for qualified business capitalization expenses. In this subparagraph:

(i) QUALIFIED BUSINESS CAPITALIZATION EXPENSES.—The term "qualified business capitalization expenses" means qualified expenditures for the capitalization of a qualified business pursuant to a qualified plan.

(ii) QUALIFIED EXPENDITURES.—The term "qualified expenditures" means expenditures included in a qualified plan, including capital, plant, equipment, working capital, and inventory expenses.

(iii) QUALIFIED BUSINESS.—The term "qualified business" means any business that does not contravene any law or public policy (as determined by the Secretary).

(iv) QUALIFIED PLAN.—The term "qualified plan" means a business plan, or a plan to use a business asset purchased, which—

(I) is approved by a financial institution, a microenterprise development organization, or a nonprofit loan fund having demonstrated fiduciary integrity;

(II) includes a description of services or goods to be sold, a marketing plan, and projected financial statements; and

(III) may require the eligible individual to obtain the assistance of an experienced entrepreneurial adviser.

(D) TRANSFERS TO IDAS OF FAMILY MEMBERS.—Amounts paid from an individual development account directly into another such account established for the benefit of an eligible individual who is—

(i) the individual's spouse; or

(ii) any dependent of the individual with respect to whom the individual is allowed a deduction under section 151 of the Internal Revenue Code of 1986.

(9) QUALIFIED SAVINGS OF THE INDIVIDUAL FOR THE PERIOD.—The term "qualified savings of the individual for the period" means the aggregate of the amounts contributed by an individual to the individual development account of the individual during the period.

(10) SECRETARY.—The term "Secretary" means the Secretary of Health and Human Services, acting through the Director of Community Services.

(11) TRIBAL GOVERNMENT.—The term "tribal government" means a tribal organization, as defined in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b) or a Native Hawaiian organization, as defined in section 6207 of the Native Hawaiian Education Act.

* * * * * * *

SEC. 406. DEMONSTRATION AUTHORITY; ANNUAL GRANTS.

(a) DEMONSTRATION AUTHORITY.—If the Secretary approves an application ⟦to conduct a demonstration project under this title⟧

under section 405, the Secretary shall, not later than 10 months after the date of enactment of this title, authorize the applicant to conduct the project for 5 project years in accordance with the approved application and the requirements of this title.

(b) GRANT AUTHORITY.—For each project year of a demonstration project [conducted under this title] *approved under section 405*, the Secretary may make a grant to the qualified entity authorized to conduct the project. In making such a grant, the Secretary shall make the grant on the first day of the project year in an amount not to exceed the lesser of—

(1) the aggregate amount of funds committed as matching contributions from non-Federal public or private sector sources; or

(2) $1,000,000.

SEC. 407. RESERVE FUND.

(a) ESTABLISHMENT.—A qualified entity under this title, other than a State or local government agency or a tribal government, shall establish a Reserve Fund that shall be maintained in accordance with this section.

(b) AMOUNTS IN RESERVE FUND.—

(1) IN GENERAL.—As soon after receipt as is practicable, a qualified entity shall deposit in the Reserve Fund established under subsection (a)—

(A) all funds provided to the qualified entity from any public or private source in connection with the demonstration project; and

(B) the proceeds from any investment made under subsection (c)(2).

(2) UNIFORM ACCOUNTING REGULATIONS.—The Secretary shall prescribe regulations with respect to accounting for amounts in the Reserve Fund established under subsection (a).

(c) USE OF AMOUNTS IN THE RESERVE FUND.—

(1) IN GENERAL.—A qualified entity shall use the amounts in the Reserve Fund established under subsection (a) to—

(A) assist participants in the demonstration project in obtaining the skills (including economic literacy, budgeting, credit, and counseling skills) and information necessary to achieve economic self-sufficiency through activities requiring qualified expenses *or, in the case of a participant in a project conducted under section 418, other permitted expenses*;

(B) provide deposits in accordance with section 410 *or subsection (f) of section 418* for individuals selected by the qualified entity to participate in the demonstration project;

(C) administer the demonstration project; and

(D) provide the research organization evaluating the demonstration project under section 414 with such information with respect to the demonstration project as may be required for the evaluation.

(2) AUTHORITY TO INVEST FUNDS.—

(A) GUIDELINES.—The Secretary shall establish guidelines for investing amounts in the Reserve Fund established under subsection (a) in a manner that provides an appropriate balance between return, liquidity, and risk.

(B) INVESTMENT.—A qualified entity shall invest the amounts in its Reserve Fund that are not immediately needed to carry out the provisions of paragraph (1), in accordance with the guidelines established under subparagraph (A).

(3) LIMITATION ON USES.—Not more than 15 percent of the amounts provided to a qualified entity under section 406(b) *or section 418(d)(1)* shall be used by the qualified entity for the purposes described in subparagraphs (A), (C), and (D) of paragraph (1), of which not less than 2 percent of the amounts shall be used by the qualified entity for the purposes described in paragraph (1)(D). Of the total amount specified in this paragraph, not more than 7.5 percent shall be used for administrative functions under paragraph (1)(C), including program management, reporting requirements, recruitment and enrollment of individuals, and monitoring. The remainder of the total amount specified in this paragraph (not including the amount specified for use for the purposes described in paragraph (1)(D)) shall be used for nonadministrative functions described in paragraph (1)(A), including case management, budgeting, economic literacy, and credit counseling. If the cost of nonadministrative functions described in paragraph (1)(A) is less than 5.5 percent of the total amount specified in this paragraph, such excess funds may be used for administrative functions. If two or more qualified entities are jointly administering a project, no qualified entity shall use more than its proportional share for the purposes described in subparagraphs (A), (C), and (D) of paragraph (1).

(d) UNUSED FEDERAL GRANT FUNDS TRANSFERRED TO THE SECRETARY WHEN PROJECT TERMINATES.—Notwithstanding subsection (c), upon the termination of any demonstration project authorized under this section, the qualified entity conducting the project shall transfer to the Secretary an amount equal to—

(1) the amounts in its Reserve Fund at the time of the termination; multiplied by

(2) a percentage equal to—

(A) the aggregate amount of grants made to the qualified entity under section 406(b) *or section 418(d)(1)*; divided by

(B) the aggregate amount of all funds provided to the qualified entity from all sources to conduct the project.

SEC. 408. ELIGIBILITY FOR PARTICIPATION.

(a) IN GENERAL.—Any individual who is a member of a household that is eligible for assistance under the State temporary assistance for needy families program established under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.), or that meets each of the following requirements shall be eligible to participate in a demonstration project [conducted under this title] *approved under section 405*:

(1) INCOME TEST.—The adjusted gross income of the household is equal to or less than 200 percent of the poverty line (as determined by the Office of Management and Budget) or the earned income amount described in section 32 of the Internal Revenue Code of 1986 (taking into account the size of the household).

(2) NET WORTH TEST.—

(A) IN GENERAL.—The net worth of the household, as of the end of the calendar year preceding the determination of eligibility, does not exceed $10,000.

(B) DETERMINATION OF NET WORTH.—For purposes of subparagraph (A), the net worth of a household is the amount equal to—

(i) the aggregate market value of all assets that are owned in whole or in part by any member of the household; minus

(ii) the obligations or debts of any member of the household.

(C) EXCLUSIONS.—For purposes of determining the net worth of a household, a household's assets shall not be considered to include the primary dwelling unit and one motor vehicle owned by a member of the household.

(b) INDIVIDUALS UNABLE TO COMPLETE THE PROJECT.—The Secretary shall establish such regulations as are necessary to ensure compliance with this title if an individual participating in the demonstration project moves from the community in which the project is conducted or is otherwise unable to continue participating in that project, including regulations prohibiting future eligibility to participate in any other demonstration project ⟦conducted under this title⟧ *approved under section 405*.

SEC. 409. SELECTION OF INDIVIDUALS TO PARTICIPATE.

From among the individuals eligible to participate in a demonstration project ⟦conducted under this title⟧ *approved under section 405*, each qualified entity shall select the individuals—

(1) that the qualified entity determines to be best suited to participate; and

(2) to whom the qualified entity will provide deposits in accordance with section 410.

SEC. 410. DEPOSITS BY QUALIFIED ENTITIES.

(a) IN GENERAL.—Not less than once every 3 months during each project year, each qualified entity ⟦under this title⟧ *conducting a demonstration project approved under section 405* shall deposit in the individual development account of each individual participating in the project, or into a parallel account maintained by the qualified entity—

(1) from the non-Federal funds described in section 405(c)(4), a matching contribution of not less than $0.50 and not more than $4 for every $1 of earned income (as defined in section 911(d)(2) of the Internal Revenue Code of 1986) deposited in the account by a project participant during that period;

(2) from the grant made under section 406(b), an amount equal to the matching contribution made under paragraph (1); and

(3) any interest that has accrued on amounts deposited under paragraph (1) or (2) on behalf of that individual into the individual development account of the individual or into a parallel account maintained by the qualified entity.

(b) LIMITATION ON DEPOSITS FOR AN INDIVIDUAL.—Not more than $2,000 from a grant made under section 406(b) shall be provided to any one individual over the course of the demonstration project.

(c) LIMITATION ON DEPOSITS FOR A HOUSEHOLD.—Not more than $4,000 from a grant made under section 406(b) shall be provided to any one household over the course of the demonstration project.

(d) WITHDRAWAL OF FUNDS.—The Secretary shall establish such guidelines as may be necessary to ensure that funds held in an individual development account are not withdrawn, except for one or more qualified expenses, or for an emergency withdrawal. Such guidelines shall include a requirement that a responsible official of the qualified entity conducting a project approve a withdrawal from such an account in writing. The guidelines shall provide that no individual may withdraw funds from an individual development account earlier than 6 months after the date on which the individual first deposits funds in the account.

(e) REIMBURSEMENT.—An individual shall reimburse an individual development account for any funds withdrawn from the account for an emergency withdrawal, not later than 12 months after the date of the withdrawal. If the individual fails to make the reimbursement, the qualified entity administering the account shall transfer the funds deposited into the account or a parallel account under this section to the Reserve Fund of the qualified entity, and use the funds to benefit other individuals participating in the demonstration project involved.

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SEC. 413. SANCTIONS.

(a) AUTHORITY TO TERMINATE DEMONSTRATION PROJECT.—If the Secretary determines that a qualified entity under this title is not operating a demonstration project in accordance with the entity's approved application under section 405 *or section 418(c)* or the requirements of this title (and has not implemented any corrective recommendations directed by the Secretary), the Secretary shall terminate such entity's authority to conduct the demonstration project.

(b) ACTIONS REQUIRED UPON TERMINATION.—If the Secretary terminates the authority to conduct a demonstration project, the Secretary—

(1) shall suspend the demonstration project;

(2) shall take control of the Reserve Fund established pursuant to section 407;

(3) shall make every effort to identify another qualified entity (or entities) willing and able to conduct the project in accordance with the approved application (or, if modification is necessary to incorporate the recommendations, the application as modified) and the requirements of this title;

(4) shall, if the Secretary identifies an entity (or entities) described in paragraph (3)—

(A) authorize the entity (or entities) to conduct the project in accordance with the approved application (or, if modification is necessary to incorporate the recommendations, the application as modified) and the requirements of this title;

(B) transfer to the entity (or entities) control over the Reserve Fund established pursuant to section 407; and

(C) consider, for purposes of this title—

(i) such other entity (or entities) to be the qualified entity (or entities) originally authorized to conduct the demonstration project; and

(ii) the date of such authorization to be the date of the original authorization; and

(5) if, by the end of the 1-year period beginning on the date of the termination, the Secretary has not found a qualified entity (or entities) described in paragraph (3), shall—

(A) terminate the project; and

(B) from the amount remaining in the Reserve Fund established as part of the project, remit to each source that provided funds under section 405(c)(4) to the entity originally authorized to conduct the project, an amount that bears the same ratio to the amount so remaining as the amount provided from the source under section 405(c)(4) bears to the amount provided from all such sources under that section.

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SEC. 415. NO REDUCTION IN BENEFITS.

Notwithstanding any other provision of Federal law (other than the Internal Revenue Code of 1986) that requires consideration of one or more financial circumstances of an individual, for the purpose of determining eligibility to receive, or the amount of, any assistance or benefit authorized by such law to be provided to or for the benefit of such individual, funds (including interest accruing) in an individual development account *or innovation development account* under this Act shall be disregarded for such purpose with respect to any period during which such individual maintains or makes contributions into such an account.

SEC. 416. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated to carry out this title, $25,000,000 for each of fiscal years 1999, 2000, 2001, 2002, and 2003, to remain available until expended*, and, subject to section 417, $25,000,000 for each of fiscal years 2024, 2025, 2026, 2027, and 2028, to remain available until expended*.

SEC. 417. RESERVATION OF FUNDS.

(a) IN GENERAL.—Subject to subsections (b) and (c), from the funds appropriated for each of fiscal years 2024, 2025, 2026, 2027, and 2028 under section 416, the Secretary shall reserve—

(1) $3,000,000 for general research and evaluation; and

(2) any amounts remaining after application of paragraph (1) to fund Assets for Independence innovation projects under section 418.

(b) PILOT PROGRAM FUNDING.—From the amounts reserved under subsection (a) for each of fiscal years 2024, 2025, and 2026, the Secretary shall make available for operating the pilot program established under section 7(c) of the Protecting America's Retirement Security Act of 2022—

(1) 50 percent of the amount reserved for the relevant fiscal year under paragraph (1) of subsection (a) (after any adjustment under subsection (c)); and

(2) 25 percent of the amount reserved for the relevant fiscal year under paragraph (2) of subsection (a) (after any adjustment under subsection (c)).

(c) PROPORTIONAL ADJUSTMENT.—In any of fiscal years 2024, 2025, 2026, 2027, and 2028, if the amount appropriated for such fiscal year is greater or less than the amount authorized for such fiscal year under section 416, the amounts reserved under subsection (a) shall be increased or decreased for such fiscal year so that each such amount bears the same proportion to the amount appropriated as each of the amounts reserved under such subsection bears to the amount authorized.

SEC. 418. ASSETS FOR INDEPENDENCE INNOVATION PROJECTS.

(a) IN GENERAL.—The Secretary is authorized to make grants to qualified entities to conduct Assets for Independence innovation projects under this section.

(b) DEFINITIONS.—For purposes of this section:

(1) ASSETS FOR INDEPENDENCE INNOVATION PROJECT.—The term "Assets for Independence innovation project" means a demonstration project carried out by a qualified entity under this section.

(2) INNOVATION DEVELOPMENT ACCOUNT.—The term "innovation development account" means an account that is established in a federally insured financial institution or a State insured financial institution and meets such other requirements as are established by the Secretary.

(c) APPLICATION.—

(1) CRITERIA AND PREFERENCES.—

(A) IN GENERAL.—Subject to subparagraph (B), in considering an application to conduct an Assets for Independence innovation project, the Secretary shall apply subsections (c) and (d) of section 405 to the application in the same manner that such subsections apply to an application to conduct a demonstration project under section 405.

(B) MODIFICATION.—For purposes of this paragraph, paragraph (1) of section 405(c) shall be applied without regard to the phrase "through activities requiring one or more qualified expenses".

(2) APPROVAL OF ASSETS FOR INDEPENDENCE INNOVATION PROJECTS.—Not later than 12 months after the date of the enactment of this section, the Secretary shall, on a competitive basis, approve such applications to conduct Assets for Independence innovation projects as the Secretary considers to be appropriate, taking into account the considerations required by paragraph (1). The Secretary shall ensure, to the maximum extent practicable, that the applications that are approved involve a range of communities (spread out both geographically and in rural and urban areas) and diverse populations.

(d) PROJECT DURATION AND GRANT AMOUNT.—

(1) DURATION.—The Secretary shall award grants under this section for a period not to exceed 5 project years.

(2) GRANT AMOUNT.—For each project year of an Assets for Independence innovation project approved under this section, the Secretary may make a grant to the qualified entity authorized to conduct the project. In making such a grant, the Sec-

retary shall make the grant on the first day of the project year in an amount not to exceed the lesser of—

(A) the aggregate amount of funds committed as matching contributions from non-Federal public or private sector sources; or

(B) $1,000,000.

(e) ELIGIBILITY AND SELECTION OF INDIVIDUALS TO PARTICIPATE IN AN ASSETS FOR INDEPENDENCE INNOVATION PROJECT.—

(1) ELIGIBILITY CRITERIA.—Subject to the approval of the Secretary, each qualified entity conducting an Assets for Independence innovation project shall establish eligibility requirements for participants in the project. Such requirements shall—

(A) be more expansive than the requirements established under section 408; and

(B) ensure that eligibility is limited to low-income individuals.

(2) SELECTION OF INDIVIDUALS TO PARTICIPATE.—Each qualified entity conducting an Assets for Independence innovation project shall select, from among the individuals that meet the eligibility requirements established by the entity under paragraph (1), the individuals—

(A) that the qualified entity determines to be most appropriate to participate; and

(B) to whom the qualified entity will make disbursements or deposits in accordance with subsection (f).

(f) DISBURSEMENTS BY QUALIFIED ENTITIES.—

(1) IN GENERAL.—Each qualified entity conducting an Assets for Independence innovation project shall, in a manner consistent with the program requirements established by such entity, disburse to a third-party or deposit into the innovation development account of each individual participating in the project from the funds described in subsection (d)(2), a matching contribution of not less than $0.50 and not more than $8 for every $1 deposited in the account by a project participant, except that the rate of matching shall be equal for all individuals participating in the project conducted by such qualified entity.

(2) LIMITATION ON DISBURSEMENTS FOR AN INDIVIDUAL.—Not more than $5,000 from a grant made under subsection (d)(1) shall be provided to any one individual over the course of the Assets for Independence innovation project.

(3) LIMITATION ON DISBURSEMENTS FOR A HOUSEHOLD.—Not more than $10,000 from a grant made under subsection (d)(1) shall be provided to any one household over the course of the Assets for Independence innovation project.

(4) ADJUSTMENT FOR INFLATION.—

(A) IN GENERAL.—For each calendar year after 2023, the dollar amounts in paragraphs (2) and (3) shall be increased by an amount equal to the product of—

(i) such dollar amount, and

(ii) the cost-of-living adjustment determined under section 1(f)(3) of the Internal Revenue Code of 1986 for the calendar year, determined by substituting "2022" for "2016" in subparagraph (A)(ii) thereof.

(B) ROUNDING.—If any increase determined under subparagraph (A) is not a multiple of $50, such increase shall be rounded up to the next lowest multiple of $50.

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MINORITY VIEWS

INTRODUCTION

All Americans should have the opportunity to save enough money for a long and comfortable retirement. Workers save for retirement through employer-provided benefit plans, individual retirement accounts, and other tax-preferred savings vehicles. In 1974, Congress enacted the *Employee Retirement Income Security Act* (ERISA), which governs and sets minimum standards for employee benefit plans, including retirement plans. Since the enactment of ERISA, the Committee and Congress have worked on a bipartisan basis to address the financial needs of the nation's retirement savers and retirees.

The two major forms of employer-sponsored retirement plans are defined benefit plans, often referred to as traditional pensions, and defined contributions plans, which establish an individual account for the worker that is funded by contributions from the employer, the worker, or both, and is then invested. Defined contribution plans are the nation's most common form of employer-sponsored retirement plan. More than 109 million Americans participate in a defined contribution plan, including 91 million participants in 401(k) plans. Americans hold $7.4 trillion in defined contribution plans, including $6.2 trillion in 401(k) plans.[1]

More Americans than ever are saving for their future through employer sponsored-retirement plans. At a recent retirement policy hearing, Dr. Andrew Biggs with the American Enterprise Institute stated the following:

> Compared to the 1970s, when participation in traditional "defined benefit" pensions peaked at less than 40 percent of the private sector workforce, more Americans are saving for retirement; they are contributing a larger share of their salaries toward retirement; they have amassed over seven times the total retirement savings, with savings increasing among every age, income, education and racial or ethnic group; they are working longer and delaying claiming Social Security benefits; more retirees are receiving benefits from private retirement plans.[2]

Despite these positive trends, Committee Republicans acknowledge the current system is not perfect. More work is necessary to improve the retirement readiness of America's workers and their families. That is precisely why Committee Republicans are working with Committee Democrats on a bipartisan basis to pass much-

[1] https://www.dol.gov/sites/dolgov/files/EBSA/researchers/statistics/retirement-bulletins/private-pension-plan-bulletins-abstract-2019.pdf.

[2] *Improving Retirement Security and Access to Mental Health Benefits: Hearing Before the Subcomm. on Health, Emp., Lab., & Pensions of the H. Comm. on Educ. & Labor.*, 117th Cong. (2022) (statement of Dr. Andrew Biggs, Senior Fellow, Am. Enterprise Inst., at 1).

needed reforms to the retirement system. On November 10, 2021, the Committee reported by voice vote H.R. 5891, the *Retirement Improvement and Savings Enhancement Act* (RISE Act), which includes 11 commonsense improvements to ensure the retirement system better serves workers, retirees, and employers. On March 29, 2022, the House of Representatives passed H.R. 2954, the *Securing a Strong Retirement Act* (SSRA), which includes the RISE Act provisions, by an overwhelming majority vote of 414–5.

Unfortunately, Committee Democrats are rushing ahead with H.R. 7310, a partisan retirement bill that misses the mark. H.R. 7310 takes a heavy-handed, government-knows-best approach to retirement saving. This legislation second-guesses employees and spends taxpayer dollars on new and unnecessary government programs. The bill also makes it more difficult—sometimes impossible—for workers and retirees to access savings during emergencies or hardships. Further, H.R. 7310 places additional burdens on plan sponsors, which will ultimately increase the costs of providing benefits to workers.

H.R. 7310 LACKS SUFFICIENT RESEARCH

Under current law, 401(k) plans require a married participant to obtain written consent from his or her spouse only if the participant wishes to name a primary beneficiary other than the spouse. Section 4 of H.R. 7310 goes beyond current law and requires written consent of the spouse witnessed by a notary public or plan administrator to receive distributions from an individual account plan other than required minimum distributions. There are no exceptions for hardship distributions, plan loans, or qualified birth or adoption distributions.

Section 4 in effect extends defined benefit pension plan rules to all individual account plans. Federal law requires the default form of benefit for married participants of defined benefit plans to be a joint-and-survivor annuity.[3] The participant in defined benefit plans must receive written consent from his or her spouse witnessed by a notary public or plan administrator to change the manner of benefit distribution.

H.R. 7310 lacks sufficient research on whether applying blanket spousal consent requirements to defined contribution plans would harm the retirement system, including its effects on participants and plan sponsors. It remains unclear how often a spouse uses retirement plan assets for non-retirement expenses without the knowledge of the other spouse, according to the American Retirement Association:

> At this time, no study or data has been produced that shows how often a spouse uses 401(k) plan assets for non-retirement expenses without the knowledge of the other spouse. . . . A new requirement imposed on all distributions that will disrupt the retirement system and participants should not be implemented if there is insufficient

[3] Retirement Equity Act of 1984, Pub. L. No. 98–397 (1984).

analysis on whether this proposed solution is the proper course of action.[4]

Further, H.R. 7310 fails to consider the important differences between defined contribution plans and traditional pensions. Most 401(k) plans permit plan participants to take loans from the plan and receive benefit distributions before retirement during times of hardship because of an immediate financial need, birth or adoption of a child, or purchase of a first home.[5] In contrast, a defined benefit plan generally may not make distributions to a participant prior to retirement, and very few defined benefit plans allow participants to take loans. Data from EBSA's Private Pension Bulletin indicates that in 2019, defined benefit plans had $86 million in outstanding loans to participants, which accounts for an infinitesimal 0.00027 percent of total defined benefit plan assets. In comparison, defined contributions plans had $73.8 billion in outstanding loans to participants, which was 1.06 percent of total defined contribution plan assets.[6] Moreover, according to a survey conducted by the Plan Sponsor Council of America (PSCA), roughly 84 percent of 401(k) and profit-sharing plans permitted loans and roughly 92 percent permitted hardship withdrawals in 2020.

By applying defined benefit plan spousal consent rules to defined contribution plans, the bill represents a major shift in plan administration and participant access to savings. Recognizing this lack of data, on March 24, 2022, Senate Committee on Health, Education, Labor, and Pensions Chair Patty Murray (D–WA) and Ranking Member Richard Burr (R–NC) sent a letter to the Government Accountability Office (GAO) requesting it examine spousal consent requirements in defined contribution plans.[7] The House should not rush to pass such a major change to the retirement system without fully understanding the consequences.

H.R. 7310 WILL DELAY ACCESS TO FUNDS IN EMERGENCIES

H.R. 7310's spousal consent requirements may have unintended consequences to the detriment of workers and families. The U.S. Chamber of Commerce identified potential adverse effects of the bill in a written statement to the Committee:

> [H.R. 7310 would] add administrative costs and burdens not only for plans but for participants that it is aimed at protecting by: Increasing the time to process distributions by at least 6 days, if not more, which is especially troubling for hardship or natural disaster distributions, which generally are used within a week of a request.[8]

The American Retirement Association highlighted similar concerns:

[4] Letter from Brian H. Graff, Exec. Dir./CEO, Am. Ret. Ass'n, to Reps. Bobby Scott and Virginia Foxx (Apr. 5, 2022).

[5] https://www.irs.gov/retirement-plans/plan-participant-employee/401k-resource-guide-plan-participants-general-distribution-rules.

[6] https://www.dol.gov/sites/dolgov/files/EBSA/researchers/statistics/retirement-bulletins/private-pension-plan-bulletins-abstract-2019.pdf#page=11.

[7] PSCA'S 64TH ANNUAL SURVEY OF PROFIT SHARING AND 401(K) PLANS: REFLECTING 2020 PLAN EXPERIENCE, https://www.psca.org/research/401k/64thAR.

[8] *Improving Retirement Security and Access to Mental Health Benefits: Hearing Before the Subcomm. on Health, Emp., Lab., & Pensions of the H. Comm. on Educ. & Lab.*, 117th Cong. (2022) (statement of U.S. Chamber of Com. at 6).

> If an individual needs to take a hardship distribution due to a medical emergency, repair their home following a disaster, or some other immediate financial need, [H.R. 7310] would delay access to needed funds by days or even weeks due to the onerous consent requirements.[9]

Plan participants would also be burdened by the added steps of locating and traveling to a notary public and paying for the service.[10]

At the start of the COVID–19 pandemic, Congress recognized the needs of workers to access savings quickly during emergencies by passing the *Coronavirus Aid, Relief, and Economic Security Act* (CARES Act).[11] The CARES Act temporarily removed the 10 percent tax penalty for early withdrawals from retirement accounts for individuals affected by COVID–19. Data released from financial services firms suggests that 4–7 percent of participants in plans that adopted the CARES Act relief took coronavirus-related distributions from their plans in 2020.[12] A report from the Department of the Treasury (Treasury) and the Joint Committee on Taxation found that total withdrawals from retirement plans increased by 25 percent in 2020 compared to 2019 and that the total amount of penalized distributions fell by 50 percent.[13] This data indicates that CARES Act relief was used by plan participants; had H.R. 7310 been enacted at that time, it would have inhibited and delayed worker and retiree access to such distributions.

Finally, the SSRA as passed by the House included an important provision allowing victims of domestic abuse to take penalty-free distributions from their retirement accounts. Under H.R. 7310, these victims would either need to receive the consent of their abuser or disclose their situation to their employer before accessing the retirement account—hurdles that inappropriately limit access to funds.

H.R. 7310 INTERFERES WITH EMPLOYEE DECISIONS

H.R. 7310 requires retirement plans that adopt an automatic contribution arrangement (also known as automatic enrollment) to reenroll participants every three years who have already affirmatively opted not to participate. In other words, the bill forces individuals back into the plan every three years, even though they have already chosen not to participate. Committee Republicans support the objective of having more Americans participating in employer-sponsored retirement plans and saving for the future. However, Republicans also recognize that a worker's decision not to participate should be respected and not second-guessed by the federal government.

Under current law, employers may already automatically enroll workers in 401(k) plans subject to certain conditions. Existing auto-

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[9] Graff letter, *supra* note 4.

[10] Requiring workers and retirees to find and pay a notary public to witness the spousal consent is an added cost to plan participants. The U.S. Chamber of Commerce noted, "The costs of witnessing a document range from $5 to $15 in most states that set a maximum charge. Some states do not set any maximum, such as Alaska and Maine, where cost could be higher." Chamber statement, *supra* note 6.

[11] Pub. L. No. 116–136 (2020).

[12] https://www.crs.gov/Reports/R46837.

[13] https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4072053.

matic enrollment features are an effective tool to increase employee participation in retirement plans, and the vast majority of workers do not opt out. The data is clear:

- Fidelity Investments found that 90 percent of employees who are automatically enrolled do not opt out.[14]
- In plans serviced by T. Rowe Price, the participation rate for plans offering auto enrollment was 85 percent compared with 39 percent for those without automatic enrollment.[15]
- According to a Vanguard study of newly hired employees, retirement plan participation rates triple to 91 percent under automatic enrollment.[16]
- The Plan Sponsor Council of America found that 92.5 percent of surveyed 401(k) and profit-sharing plans that automatically enroll participants have an employee opt-out rate of 10 percent or less.[17]

The SSRA includes a bipartisan provision requiring new retirement plans to enroll employees in the plan automatically. Given that opt-out rates are low, requiring plans to reenroll employees automatically every three years simply second-guesses employee decisions without producing a meaningful increase in participation.

H.R. 7310's auto-reenrollment provision would also increase the costs of offering and administering a plan. The ERISA Industry Committee expressed this concern in a letter to the Committee ahead of the April 5, 2022, markup:

> Retirement policy changes should not make retirement plans more costly and less flexible. . . . Specifically, Sections 4 and 5 (expanding consent requirements and requiring automatic reenrollment after three years where participants had previously opted-out) are new requirements that will increase plan costs and may also have negatives consequences on participants.[18]

H.R. 7310 INAPPROPRIATELY EXPANDS GOVERNMENT AND EXPENDS TAXPAYER DOLLARS

Section 7 of H.R. 7310 directs the Department of Labor (DOL or Department) to establish an "Employee Ownership and Participation Initiative" and authorizes a new federal grant program to promote employee ownership and employee participation in business decision-making. In carrying out the Initiative, the Secretary of Labor must support existing state programs and facilitate the formation of new programs in states or other entities.

The authorization of new grant programs inappropriately expands the role of the federal government in retirement and business succession planning. H.R. 7310 would promote, with the use of taxpayer dollars, one form of retirement savings and business succession at the expense of others. While proponents of the provi-

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[14] https://fmr.my.salesforce.com/sfc/p/#300000000ZLP/a/2J0000007ufb/7BDlUF0PHcwb671dBcRLaWXaeX9bAv0zqf1_al9flGg.

[15] https://www.troweprice.com/content/dam/retirement-plan-services/pdfs/insights/savings-insights/REFERENCE_POINT_2022.pdf.

[16] https://institutional.vanguard.com/iam/pdf/ISGAE_022020.pdf.

[17] PSCA'S 64TH ANNUAL SURVEY OF PROFIT SHARING AND 401(K) PLANS, *supra* note 7, at 61.

[18] Letter from Andrew Banducci, Senior Vice President, Retirement & Comp. Pol'y, The ERISA Indus. Comm., to H. Comm. on Educ. & Lab. Members? (Apr. 5, 2022)

sion argue that it is intended to promote the formation of employee stock ownership plans (ESOPs), the underlying text is broad and allows for grants to be distributed to other organizations, such as unions or worker centers, for purposes unrelated to ESOPs. For instance, if a state does not apply for a grant under the program, "nonprofit organizations," which are not defined, may apply for grants.

Employee-owned businesses are an important piece of the American business fabric. Unfortunately, H.R. 7310 adopts a misguided approach to employee ownership. The bill puts taxpayers on the hook for programs that many states are already sponsoring to promote employee ownership. Rather than authorize more government spending, the Committee can foster employee ownership by examining DOL's aggressive enforcement against ESOPs through litigation, which has had a chilling effect on employee ownership.[19] Finally, the SSRA already includes a provision simplifying how small businesses may offer stock ownership to employees, including tax incentives for small employer ESOPs.

H.R. 7310 DISRUPTS A BALANCED REVIEW OF REPORTING AND DISCLOSURE REQUIREMENTS

Section 2 of H.R. 7310 directs DOL to review ERISA regulations regarding the disclosure of fees in defined contribution plans. The SSRA already includes a balanced provision directing DOL, Treasury, and the Pension Benefit Guaranty Corporation to review ERISA and tax code reporting as well as disclosure requirements and to make recommendations to Congress to consolidate, simplify, standardize, and improve such requirements. Section 2 of H.R. 7310 would divert DOL's attention away from reviewing and simplifying all of ERISA's extensive disclosure and reporting requirements. DOL, which H.R. 7310 tasks with reviewing fee disclosures, has acknowledged as much. In response to GAO recommendations on 401(k) fee information, DOL stated the following:

> Implementation of recommendations would also require the Department to undertake a lengthy, resource-intensive, and demanding notice and comment rulemaking process. Such a major rulemaking initiative would require the Department to forego other regulatory initiatives, including other disclosure and reporting initiatives that may be important to plans and plan participants. Before undertaking such a demanding project, we would have to carefully consider other EBSA regulatory priorities . . . as well as the likelihood that the project would appreciably change retirement investor understanding and outcomes.[20]

Plan sponsors are also concerned with H.R. 7310's emphasis on fee disclosure and prefer the approach taken in the SSRA. According to the ERISA Industry Committee, H.R. 7310 "should be improved to provide direction to regulators to avoid new complex

[19] https://esopassociation.org/sites/tea-master/files/2019-12/ESOPS%20and%20DOL%20Leave%20Behind%20Final.docx.

[20] GAO, 401(K) RETIREMENT PLANS: MANY PARTICIPANTS DO NOT UNDERSTAND FEE INFORMATION, BUT DOL COULD TAKE ADDITIONAL STEPS TO HELP THEM 114 (July 2021), https://www.gao.gov/assets/gao-21-357.pdf.

mandatory disclosures, consistent with the bipartisan goal of simplification endorsed in SSRA." [21]

Finally, H.R. 7310's emphasis on fee disclosures is out of touch with what plan participants view as the most important information on account statements. A recent SPARK Institute report found that participants "show very little interest in reviewing the makeup of the investment and administrative fees, despite recent trends emphasizing fee transparency." [22] According to the report, 401(k) plan participants view current account balance, investment performance, and projected monthly income in retirement as the most important information in account statements. In comparison, only 2 percent of participants view explanation of investment fees and administrative fees as the most important information.

REJECTED AMENDMENTS THAT WOULD HAVE IMPROVED THE BILL

During consideration of H.R. 7310, Committee Republicans offered several amendments to improve the bill, which were rejected by the Democrats. Rep. Diana Harshbarger (R–TN) offered an amendment to ensure that the Committee receives needed data and evidence as it considers H.R. 7310. The amendment strikes section 4 of the bill and replaces it with a requirement that GAO conduct a study on the effects on workers, retirees, and plan sponsors of applying spousal consent requirements to defined contribution plans.

Before considering any legislation, the Committee should first determine whether the proposal is actually needed and then should always carefully study the legislation to determine whether it will adequately and positively address the issue. Section 4 is a significant departure from current law's requirements on withdrawing funds from an individual account plan. The Committee lacks information on the prevalence of misuse of retirement funds by a spouse. There are situations when requiring spousal consent would be impossible, inappropriate, or unnecessary. Sens. Murray and Burr's GAO request is a step towards providing insight on the issue, and Rep. Harshbarger's amendment recognizes the need for such clarity. Passing H.R. 7310 without more information would be premature at best. Choosing instead to legislate in the dark, Democrats unanimously rejected this prudent amendment.

A second amendment was offered by Rep. Tim Walberg (R–MI) to protect taxpayers from new government spending and to shed light on DOL's aggressive enforcement of ESOPs. The amendment strikes the authorization of a new federal grant program administered by DOL. The amendment also clarifies that unions or worker centers may not be recipients of funds, and that no funds may be used to hold or fund annual conferences. Finally, the amendment directs DOL's ERISA Advisory Council (EAC) [23] to complete a review of DOL's ESOP stock appraisal litigation program and the history of the Department's approach to resolving ESOP litigation,

[21] Banducci letter, *supra* note 18.
[22] SPARK INSTITUTE, MARKETPLACE UPDATE 2021, at 10.
[23] The ERISA Advisory Council consists of representatives of employee organizations, employers, the general public, and industry experts; it advises the Secretary of Labor by submitting recommendations regarding his functions under ERISA.

including whether the conditions the Department has required in its settlement agreements are consistent with ERISA.

Rather than authorize more government spending, the Committee can foster employee ownership by examining DOL's aggressive litigation against ESOPs. DOL has released very little guidance on substantive issues facing ESOPs, including their valuation. This makes it difficult for ESOP companies to make business decisions and to find a willing plan fiduciary. The EAC has yet to tackle the important issue DOL's approach to resolving ESOP litigation, and the amendment is an important first step in addressing the challenges facing ESOPs and employee ownership. Choosing instead to expand government and burden taxpayers, Democrats unanimously rejected this amendment.

Lastly, Rep. Scott Fitzgerald (R–WI) offered an amendment to protect employee decisions not to participate in a retirement plan. The amendment strikes the provision of H.R. 7310 that forces individuals who have already affirmatively opted out of participating in a retirement plan back into the plan unless they affirmatively opt out again. The SSRA already includes a provision that, for the first time, requires all new retirement plans to enroll workers automatically. As previously discussed, automatic enrollment is already an effective mechanism for increasing participation. However, if a worker has already taken the proactive step to unenroll from a plan, that decision should be respected. Unfortunately, Democrats insisted on a paternalistic approach and unanimously rejected this amendment.

CONCLUSION

The way Americans plan for retirement has evolved. Neither employers nor employee benefit plans fit into the same cookie-cutter mold they may have when ERISA was enacted in 1974. That is why Committee Republicans supported the RISE Act and the passage of the SSRA. Unfortunately, H.R. 7310 fails to improve retirement policies for workers and retirees. Before Committee Democrats push a partisan bill, they should work with Republicans to enact the RISE Act and the SSRA.

VIRGINIA FOXX,
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GLENN "GT" THOMPSON.
TIM WALBERG.
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ELISE M. STEFANIK.
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