

106TH CONGRESS  
1ST SESSION

# H. R. 2190

To amend the Internal Revenue Code of 1986 to provide small business employees with a simple, secure, and fully portable defined benefit plan.

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## IN THE HOUSE OF REPRESENTATIVES

JUNE 14, 1999

Mrs. JOHNSON of Connecticut (for herself and Mr. POMEROY) introduced the following bill; which was referred to the Committee on Ways and Means

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## A BILL

To amend the Internal Revenue Code of 1986 to provide small business employees with a simple, secure, and fully portable defined benefit plan.

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

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Secure Assets For Em-  
5       ployees (SAFE) Plan Act of 1999”.

6       **SEC. 2. SAFE ANNUITIES AND TRUSTS.**

7       (a) IN GENERAL.—Subpart A of part I of subchapter  
8       D of chapter 1 of the Internal Revenue Code of 1986 is  
9       amended by inserting after section 408A the following new  
10      section:

1 **“SEC. 408B. SAFE ANNUITIES AND TRUSTS.**

2 **“(a) EMPLOYER ELIGIBILITY.—**

3 **“(1) IN GENERAL.—**An employer may establish  
4 and maintain a SAFE annuity or a SAFE trust for  
5 any year only if—

6 **“(A) the employer is an eligible employer**  
7 **(as defined in section 408(p)(2)(C)), and**

8 **“(B) the employer does not maintain (and**  
9 **no predecessor of the employer maintains) a**  
10 **qualified plan (other than a permissible plan)**  
11 **with respect to which contributions were made,**  
12 **or benefits were accrued, for service in any year**  
13 **in the period beginning with the year such an-**  
14 **nuity or trust became effective and ending with**  
15 **the year for which the determination is being**  
16 **made.**

17 **“(2) DEFINITIONS.—For purposes of paragraph**  
18 **(1)—**

19 **“(A) QUALIFIED PLAN.—**The term ‘quali-  
20 fied plan’ has the meaning given such term by  
21 section 408(p)(2)(D)(ii).

22 **“(B) PERMISSIBLE PLAN.—**The term ‘per-  
23 missible plan’ means—

24 **“(i) a plan under which only elective**  
25 **deferrals described in section 402(g)(3),**  
26 **deferred compensation described in section**

1                   457, or employer matching contributions  
2                   may be made, and

3                   “(ii) any collectively bargained plan.

4                   “(b) SAFE ANNUITY.—

5                   “(1) IN GENERAL.—For purposes of this title,  
6                   the term ‘SAFE annuity’ means an individual retire-  
7                   ment annuity (as defined in section 408(b) without  
8                   regard to paragraph (2) thereof and without regard  
9                   to the limitation on aggregate annual premiums con-  
10                  tained in the flush language of section 408(b)) if—

11                  “(A) such annuity meets the requirements  
12                  of paragraphs (2) through (6), and

13                  “(B) the only contributions to such annu-  
14                  ity are employer contributions.

15                  Nothing in this section shall be construed as pre-  
16                  venting an employer from using a group annuity  
17                  contract which is divisible into individual retirement  
18                  annuities for purposes of providing SAFE annuities.

19                  “(2) PARTICIPATION REQUIREMENTS.—

20                  “(A) IN GENERAL.—The requirements of  
21                  this paragraph are met for any year only if all  
22                  employees of the employer who—

23                  “(i) received at least \$5,000 in com-  
24                  pensation from the employer during any 2  
25                  consecutive preceding years, and

1 “(ii) received at least \$5,000 in com-  
2 pensation during the year,  
3 are entitled to the benefit described in para-  
4 graph (5) for such year.

5 “(B) EXCLUDABLE EMPLOYEES.—An em-  
6 ployer may elect to exclude from the require-  
7 ments under subparagraph (A) employees de-  
8 scribed in section 410(b)(3).

9 “(3) VESTING.—The requirements of this para-  
10 graph are met if the employee’s rights to any bene-  
11 fits are nonforfeitable.

12 “(4) BENEFIT FORM.—The requirements of  
13 this paragraph are met if the only form of benefit  
14 is—

15 “(A) a benefit payable annually in the  
16 form of a single life annuity with monthly pay-  
17 ments (with no ancillary benefits) beginning at  
18 age 65, or

19 “(B) any other form of benefit which is the  
20 actuarial equivalent (based on the assumptions  
21 specified in the SAFE annuity) of the benefit  
22 described in subparagraph (A).

23 The requirements of section 401(a)(11) shall apply  
24 to the benefits described in this paragraph.

1           “(5) AMOUNT OF ANNUAL ACCRUED BEN-  
2       EFIT.—

3           “(A) IN GENERAL.—The requirements of  
4       this paragraph are met for any plan year if the  
5       accrued benefit of each participant derived from  
6       employer contributions for such year, when ex-  
7       pressed as a benefit described in paragraph  
8       (4)(A), equals the applicable percentage of the  
9       participant’s compensation for such year.

10          “(B) APPLICABLE PERCENTAGE.—For  
11       purposes of this paragraph—

12           “(i) IN GENERAL.—The term ‘applica-  
13       ble percentage’ means 3 percent.

14           “(ii) ELECTION OF LOWER PERCENT-  
15       AGE.—An employer may elect to apply an  
16       applicable percentage of 1 percent, 2 per-  
17       cent or zero percent for any year for all  
18       employees eligible to participate in the plan  
19       for such year if the employer notifies the  
20       employees of such percentage within a rea-  
21       sonable period before the beginning of such  
22       year.

23          “(C) COMPENSATION LIMIT.—The com-  
24       pensation taken into account under this para-  
25       graph for any year shall not exceed the limita-

tion in effect for such year under section 401(a)(17).

“(D) CREDIT FOR SERVICE BEFORE PLAN ADOPTED.—

“(i) IN GENERAL.—An employer may elect to take into account a specified number of years of service (not greater than 10) performed before the adoption of the plan (each hereinafter referred to as a ‘prior service year’) as service under the plan if the same specified number of years is available to all employees eligible to participate in the plan for the first plan year.

“(ii) ACCRUAL OF PRIOR SERVICE BENEFIT.—Such an election shall be effective for a prior service year only if the requirements of this paragraph are met for an eligible plan year (with respect to employees entitled to credit for such prior service year) by doubling the applicable percentage (if any) for such plan year. For purposes of the preceding sentence, an eligible plan year is a plan year in the period of consecutive plan years (but not more than the number specified under clause (i))

beginning with the first plan year that the plan is in effect.

“(iii) ELECTION MAY NOT APPLY TO CERTAIN PRIOR SERVICE YEARS.—This subparagraph shall not apply with respect to any prior service year of an employee if—

“(I) for any part of such prior service year such employee was an active participant (within the meaning of section 219(g)(5)) under any defined benefit plan of the employer (or any predecessor thereof), or

“(II) such employee received during such prior service year less than \$5,000 in compensation from the employer.

“(6) FUNDING.—

“(A) IN GENERAL.—The requirements of this paragraph are met only if the employer is required to contribute to the annuity for each plan year the amount necessary (determined in accordance with subparagraph (B)) to fund the accrued benefit for each participant entitled to such benefit for such year.

1           “(B) ACTUARIAL ASSUMPTIONS.—In deter-  
2           mining the amount required to be contributed  
3           under subparagraph (A)—

4                   “(i) the assumed interest rate shall be  
5                   not less than 3 percent and not greater  
6                   than 5 percent per year,

7                   “(ii) the assumed mortality shall be  
8                   determined under the applicable mortality  
9                   table (as defined in section 417(e)(3), as  
10                  modified by the Secretary so that it does  
11                  not include any assumption for preretire-  
12                  ment mortality),

13                  “(iii) the assumed retirement age  
14                  shall be 65, and

15                  “(iv) an assumption for reasonable ex-  
16                  penses shall be permitted consistent with  
17                  State law.

18           “(C) TIME WHEN CONTRIBUTIONS  
19           DEEMED MADE.—For purposes of this para-  
20           graph, any contribution made for a plan year  
21           during the 8½-month period beginning on the  
22           day after the last day of such plan year shall  
23           be deemed to have been made on such last day.

24           “(D) PENALTY FOR FAILURE TO MAKE RE-  
25           QUIRED CONTRIBUTION.—The taxes imposed by



1 section 4971 shall apply to a failure to make  
2 the contribution required by this paragraph in  
3 the same manner as if the amount of the failure  
4 were an accumulated funding deficiency to  
5 which such section applies.

6 “(7) DEFINITIONS AND SPECIAL RULE.—

7 “(A) DEFINITIONS.—The definitions in  
8 section 408(p)(6) shall apply for purposes of  
9 this subsection.

10 “(B) USE OF DESIGNATED FINANCIAL IN-  
11 STITUTIONS.—A rule similar to the rule of sec-  
12 tion 408(p)(7) (without regard to the last sen-  
13 tence thereof) shall apply for purposes of this  
14 subsection.

15 “(c) SAFE TRUST.—

16 “(1) IN GENERAL.—For purposes of this title,  
17 the term ‘SAFE trust’ means a trust forming part  
18 of a defined benefit plan if—

19 “(A) such trust meets the requirements of  
20 section 401(a) as modified by subsection (d),

21 “(B) a participant’s benefits under the  
22 plan are based solely on the balance of a sepa-  
23 rate account in such plan of such participant,

24 “(C) such plan meets the requirements of  
25 paragraphs (2) through (8), and

1           “(D) the only contributions to such trust  
2           are employer contributions.

3           “(2) PARTICIPATION REQUIREMENTS.—A plan  
4           meets the requirements of this paragraph for any  
5           year only if the requirements of subsection (b)(2)  
6           are met for such year.

7           “(3) VESTING.—A plan meets the requirements  
8           of this paragraph for any year only if the require-  
9           ments of subsection (b)(3) are met for such year.

10          “(4) BENEFIT FORM.—

11               “(A) IN GENERAL.—Except as provided in  
12               subparagraph (B), a plan meets the require-  
13               ments of this paragraph only if the require-  
14               ments of subsection (b)(4) are met for purposes  
15               of this subparagraph, a plan may satisfy the re-  
16               quirements of subsection (b)(4) by purchasing  
17               an annuity contract which meets the require-  
18               ments of subsection (b)(4).

19               “(B) DIRECT TRANSFERS TO INDIVIDUAL  
20               RETIREMENT PLAN OR SAFE ANNUITY.—A plan  
21               shall not fail to meet the requirements of this  
22               paragraph by reason of permitting, at the elec-  
23               tion of the employee, a trustee-to-trustee trans-  
24               fer of the entire balance to the credit of the em-  
25               ployee to an individual retirement account de-

scribed in section 408(a), an individual retirement annuity described in section 408(b) (other than an endowment contract), or a SAFE annuity.

“(5) AMOUNT OF ANNUAL ACCRUED BENEFIT.—A plan meets the requirements of this paragraph for any year only if the requirements of subsection (b)(5) are met for such year.

“(6) FUNDING.—

“(A) IN GENERAL.—A plan meets the requirements of this paragraph for any year only if—

“(i) the requirements of subsection (b)(6) are met for such year, and

“(ii) in the case of a plan which has an unfunded prior year liability as of the close of such plan year, the plan requires that the employer make an additional contribution to such plan for such year equal to the amount of such unfunded prior year liability.

“(B) UNFUNDED PRIOR YEAR LIABILITY.—For purposes of this paragraph, the term ‘unfunded prior year liability’ means, with respect to any plan year, the excess (if any) of—

1 “(i) the aggregate of the accrued li-  
 2 abilities under the plan as of the close of  
 3 the prior plan year, over

4 “(ii) the value of the plan’s assets de-  
 5 termined under section 412(c)(2) as of the  
 6 close of the plan year (determined without  
 7 regard to any contributions for such plan  
 8 year).

9 Such accrued liabilities shall be determined  
 10 using the assumptions specified in subsection  
 11 (b)(6)(B).

12 “(C) CHANGES IN MORTALITY TABLE.—If  
 13 the applicable mortality table under section  
 14 417(e)(3) for any plan year is not the same as  
 15 such table for the prior plan year, the Secretary  
 16 shall prescribe regulations which phase in the  
 17 effect of the changes over a reasonable period  
 18 of plan years determined by the Secretary.

19 “(D) DISREGARD ASSUMPTIONS FOR EX-  
 20 PENSES.—For purposes of this paragraph, the  
 21 assumption specified in subsection (b)(6)(B)(iv)  
 22 shall be disregarded.

23 “(7) SEPARATE ACCOUNTS FOR PARTICI-  
 24 PANTS.—A plan meets the requirements of this  
 25 paragraph for any year only if the plan provides—

1           “(A) for an individual account for each  
2 participant, and

3           “(B) for benefits based solely on—

4               “(i) the amount contributed to the  
5 participant’s account, and

6               “(ii) any income, expenses, gains and  
7 losses, and any forfeitures of accounts of  
8 other participants which may be allocated  
9 to such participant’s account.

10           “(8) TRUST MAY NOT HOLD SECURITIES WHICH  
11 ARE NOT READILY TRADABLE.—A plan meets the  
12 requirements of this paragraph only if the plan pro-  
13 hibits the trust from holding directly or indirectly se-  
14 curities which are not readily tradable on an estab-  
15 lished securities market or otherwise. Nothing in  
16 this paragraph shall prohibit the trust from holding  
17 insurance company products regulated by State law.

18           “(9) DEFINITIONS AND SPECIAL RULE.—The  
19 definitions and special rule applicable under sub-  
20 section (b)(7) shall apply for purposes of this sub-  
21 section.

22           “(d) SPECIAL RULES FOR SAFE ANNUITIES AND  
23 TRUSTS.—

24           “(1) CERTAIN REQUIREMENTS TREATED AS  
25 MET.—For purposes of section 401(a), a SAFE an-

1       nuity and a SAFE trust shall be treated as meeting  
2       the requirements of the following provisions:

3               “(A) Section 401(a)(4) (relating to non-  
4       discrimination rules).

5               “(B) Section 401(a)(26) (relating to min-  
6       imum participation).

7               “(C) Section 410 (relating to minimum  
8       participation and coverage requirements).

9               “(D) Section 411(b) (relating to accrued  
10      benefit requirements).

11              “(E) Paragraphs (6) and (7) of section  
12      412(c) (relating to full funding limitation).

13              “(F) Section 415 (relating to limitations  
14      on benefits and contributions under qualified  
15      plans).

16              “(G) Section 416 (relating to special rules  
17      for top-heavy plans).

18              “(2) CONTRIBUTIONS NOT TAKEN INTO AC-  
19      COUNT IN APPLYING LIMITS TO OTHER PLANS.—  
20      Contributions to a SAFE annuity or a SAFE trust  
21      shall not be taken into account in applying sections  
22      404 and 415 to other plans maintained by the em-  
23      ployer.”

24              (b) DEDUCTION LIMITS NOT TO APPLY TO EM-  
25      PLOYER CONTRIBUTIONS.—

1           (1) IN GENERAL.—Section 404 of such Code  
 2           (relating to deductions for contributions of an em-  
 3           ployer to pension, etc., plans) is amended by adding  
 4           at the end the following new subsection:

5           “(n) SPECIAL RULES FOR SAFE ANNUITIES AND  
 6 TRUSTS.—

7           “(1) IN GENERAL.—Employer contributions to  
 8           a SAFE annuity or SAFE trust shall be treated as  
 9           if they are made to a plan subject to the require-  
 10          ments of this section.

11          “(2) TIMING.—

12           “(A) DEDUCTION.—Contributions de-  
 13           scribed in paragraph (1) shall be deductible in  
 14           the taxable year of the employer with or within  
 15           which the calendar year for which the contribu-  
 16           tions were made ends.

17           “(B) CONTRIBUTIONS AFTER END OF  
 18           YEAR.—For purposes of this subsection, con-  
 19           tributions shall be treated as made for a taxable  
 20           year if they are made on account of the taxable  
 21           year and are made not later than the time pre-  
 22           scribed by law for filing the return for the tax-  
 23           able year (including extensions thereof).”

24          (2) COORDINATION WITH DEDUCTION UNDER  
 25          SECTION 219.—

1 (A) Section 219(b) of such Code (relating  
 2 to maximum amount of deduction) is amended  
 3 by adding at the end the following new para-  
 4 graph:

5 “(5) SPECIAL RULE FOR SAFE ANNUITIES.—  
 6 This section shall not apply with respect to any  
 7 amount contributed to a SAFE annuity established  
 8 under section 408B(b).”

9 (B) Section 219(g)(5)(A) of such Code  
 10 (defining active participant) is amended by  
 11 striking “or” at the end of clause (v) and by  
 12 adding at the end the following new clause:

13 “(vii) any SAFE annuity (within the  
 14 meaning of section 408B), or”.

15 (c) CONTRIBUTIONS AND DISTRIBUTIONS.—

16 (1) Section 402 of such Code (relating to tax-  
 17 ability of beneficiary of employees’ trust) is amended  
 18 by adding at the end the following new subsection:

19 “(1) TREATMENT OF SAFE ANNUITIES.—Rules simi-  
 20 lar to the rules of paragraphs (1) and (3) of subsection  
 21 (h) shall apply to contributions and distributions with re-  
 22 spect to a SAFE annuities under section 408B.”

23 (2) Section 408(d)(3) of such Code is amended  
 24 by adding at the end the following new subpara-  
 25 graph:



1           “(H) SAFE ANNUITIES.—This paragraph  
 2           shall not apply to any amount paid or distrib-  
 3           uted out of a SAFE annuity (as defined in sec-  
 4           tion 408B) unless it is paid in a trustee-to-  
 5           trustee transfer into another SAFE annuity.”

6           (d) INCREASED PENALTY ON EARLY WITH-  
 7           DRAWALS.—Section 72(t) of such Code (relating to addi-  
 8           tional tax on early distributions) is amended by adding  
 9           at the end the following new paragraph:

10           “(9) SPECIAL RULES FOR SAFE ANNUITIES AND  
 11           TRUSTS.—In the case of any amount received from  
 12           a SAFE annuity or a SAFE trust (within the mean-  
 13           ing of section 408B), paragraph (1) shall be applied  
 14           by substituting ‘20 percent’ for ‘10 percent’.”

15           (e) SIMPLIFIED EMPLOYER REPORTS.—

16           (1) SAFE ANNUITIES.—Section 408(l) of such  
 17           Code (relating to simplified employer reports) is  
 18           amended by adding at the end the following new  
 19           paragraph:

20           “(3) SAFE ANNUITIES.—

21           “(A) SIMPLIFIED REPORT.—The employer  
 22           maintaining any SAFE annuity (within the  
 23           meaning of section 408B) shall file a simplified  
 24           annual return with the Secretary containing

1           only the information described in subparagraph  
2           (B).

3           “(B) CONTENTS.—The return required by  
4           subparagraph (A) shall set forth—

5                   “(i) the name and address of the em-  
6                   ployer,

7                   “(ii) the date the plan was adopted,

8                   “(iii) the number of employees of the  
9                   employer,

10                  “(iv) the number of such employees  
11                  who are eligible to participate in the plan,

12                  “(v) the total amount contributed by  
13                  the employer to each such annuity for such  
14                  year and the minimum amount required  
15                  under section 408B to be so contributed,

16                  “(vi) the percentage elected under sec-  
17                  tion 408B(b)(5)(B), and

18                  “(vii) the number of employees with  
19                  respect to whom contributions are required  
20                  to be made for such year under section  
21                  408B(b)(5)(D).

22           “(C) REPORTING BY ISSUER OF SAFE AN-  
23           NUITY.—

24                   “(i) IN GENERAL.—The issuer of each  
25                   SAFE annuity shall provide to the owner

1 of the annuity for each year a statement  
2 setting forth as of the close of such year—

3 “(I) the benefits guaranteed at  
4 age 65 under the annuity, and

5 “(II) the cash surrender value of  
6 the annuity.

7 “(ii) SUMMARY DESCRIPTION.—The  
8 issuer of any SAFE annuity shall provide  
9 to the employer maintaining the annuity  
10 for each year a description containing the  
11 following information:

12 “(I) The name and address of  
13 the employer and the issuer.

14 “(II) The requirements for eligi-  
15 bility for participation.

16 “(III) The benefits provided with  
17 respect to the annuity.

18 “(IV) The procedures for, and ef-  
19 fects of, withdrawals (including roll-  
20 overs) from the annuity.

21 “(D) TIME AND MANNER OF REPORT-  
22 ING.—Any return, report, or statement required  
23 under this paragraph shall be made in such  
24 form and at such time as the Secretary shall  
25 prescribe.”

1           (2) SAFE TRUSTS.—Section 6059 (relating to  
2       actuarial reports) is amended by redesignating sub-  
3       sections (c) and (d) as subsections (d) and (e), re-  
4       spectively, and by inserting after subsection (b) the  
5       following new subsection:

6       “(c) SAFE TRUSTS.—In the case of a SAFE Trust  
7       (within the meaning of section 408B), the Secretary shall  
8       require a simplified actuarial report which contains infor-  
9       mation similar to the information required in section  
10      408(l)(3)(B).”

11      (f) CONFORMING AMENDMENTS.—

12           (1) Section 280G(b)(6) of such Code is amend-  
13       ed by striking “or” at the end of subparagraph (C),  
14       by striking the period at the end of subparagraph  
15       (D) and inserting “, or” and by adding after sub-  
16       paragraph (D) the following new subparagraph:

17           “(E) a SAFE annuity described in section  
18       408B.”

19           (2) Subsections (b), (c), (m)(4)(B), and  
20       (n)(3)(B) of section 414 of such Code are each  
21       amended by inserting “408B,” after “408(p),”.

22           (3) Section 4972(d)(1)(A) of such Code is  
23       amended by striking “and” at the end of clause (iii),  
24       by striking the period at the end of clause (iv) and

1 inserting “, and”, and by adding after clause (iv)  
2 the following new clause:

3 “(v) any SAFE annuity (within the  
4 meaning of section 408B).”

5 (g) MODIFICATIONS OF ERISA.—

6 (1) EXEMPTION FROM INSURANCE COV-  
7 ERAGE.—Subsection (b) of section 4021 of the Em-  
8 ployee Retirement Income Security Act of 1974 (29  
9 U.S.C. 1321) is amended by striking “or” at the end  
10 of paragraph (12), by striking the period at the end  
11 of paragraph (13) and inserting “; or”, and by add-  
12 ing at the end the following new paragraph:

13 “(14) which is established and maintained as  
14 part of a SAFE trust (as defined in section 408B  
15 of the Internal Revenue Code of 1986).”

16 (2) REPORTING REQUIREMENTS.—Section 101  
17 of such Act (29 U.S.C. 1021) is amended by redes-  
18 ignating the second subsection (h) as subsection (j)  
19 and by inserting after the first subsection (h) the  
20 following new subsection:

21 “(i) SAFE ANNUITIES.—

22 “(1) NO EMPLOYER REPORTS.—Except as pro-  
23 vided in this subsection, no report shall be required  
24 under this section by an employer maintaining a

1       SAFE annuity under section 408B(b) of the Inter-  
2       nal Revenue Code of 1986.

3               “(2) SUMMARY DESCRIPTION.—The issuer of  
4       any SAFE annuity shall provide to the employer  
5       maintaining the annuity for each year a description  
6       containing the following information:

7               “(A) The name and address of the em-  
8       ployer and the issuer.

9               “(B) The requirements for eligibility for  
10       participation.

11              “(C) The benefits provided with respect to  
12       the annuity.

13              “(D) The procedures for, and effects of,  
14       withdrawals (including rollovers) from the an-  
15       nuity.

16              “(3) EMPLOYEE NOTIFICATION.—The employer  
17       shall provide each employee eligible to participate in  
18       the SAFE annuity with the description described in  
19       paragraph (2) at the same time as the notification  
20       required under section 408B(b)(5)(B) of the Inter-  
21       nal Revenue Code of 1986.”

22       (h) CLERICAL AMENDMENT.—The table of sections  
23       for subpart A of part I of subchapter D of chapter 1 of  
24       such Code is amended by inserting after the item relating  
25       to section 408A the following new item:

          “Sec. 408B. SAFE annuities and trusts.”

1       (i) EFFECTIVE DATE.—The amendments made by  
2 this section shall apply to years beginning after December  
3 31, 1999.

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