114TH CONGRESS
2D SESSION

S. 2472

To establish an American Savings Account Fund and create a retirement savings plan available to all employees, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JANUARY 28, 2016

Mr. MERKLEY introduced the following bill; which was read twice and referred to the Committee on Finance

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A BILL

To establish an American Savings Account Fund and create a retirement savings plan available to all employees, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "American Savings Account Act of 2016".

SEC. 2. AMERICAN SAVINGS ACCOUNTS.

(a) IN GENERAL.—The Employee Retirement Income Security Act of 1974 is amended by adding at the end the following:

"TITLE V—AMERICAN SAVINGS ACCOUNTS

"Subtitle A—Administration

"SEC. 5001. AMERICAN SAVINGS ACCOUNT BOARD OF DIRECTORS.

"(a) IN GENERAL.—There is established an American Savings Account Board of Directors (hereafter referred to in this title as the 'Board') as a federally chartered organization. Except as otherwise provided, such Board has perpetual existence.

"(b) PURPOSE.—The purpose of the Board is—

"(1) to establish policies for the investment and management of the American Savings Account Fund; and

"(2) to carry out the responsibilities of the Board under section 5002.

"(c) MEMBERSHIP.—The Board shall be composed of 9 members appointed by the President in consultation with the Secretary of Labor and with the advice and consent of the Senate, to include—

"(1) the Secretary of Labor or a delegate of the Secretary;

"(2) 1 representative of employers;

"(3) 1 representative of the private retirement savings investment industry;

"(4) 1 representative of employees;

"(5) 1 representative of retirees; and

"(6) the Executive Director and 3 additional members of the Federal Retirement Thrift Investment Board established under section 8472(a) of title 5, United States Code.

Of such 9 members, 1 shall be elected by the members of the Board as the Chair.

"(d) TERMS AND VACANCIES.—

"(1) TERM.—A member of the Board shall be appointed for a term of 4 years and, after the expiration of such term, may be reappointed immediately to a subsequent term.

"(2) VACANCY.—A vacancy on the Board shall be filled in the manner in which the original appointment was made and shall be subject to any conditions which applied with respect to the original appointment. An individual chosen to fill a vacancy shall be appointed for the unexpired term of the member replaced.

"(3) EXPIRATION.—The term of any member shall not expire before the date on which the member's successor takes office.

"(e) RESPONSIBILITY.—The members of the Board shall discharge their responsibilities solely in the interest of participants and beneficiaries under this title.

"(f) COMPENSATION.—

"(1) IN GENERAL.—Each member of the Board who is not an officer or employee of the Federal Government shall be compensated at the daily rate of basic pay for grade GS–18 of the General Schedule under subchapter III of chapter 53 of title 5, United States Code, for each day during which such member is engaged in performing a function of the Board.

"(2) PER DIEM, ETC.—A member of the Board shall be paid travel, per diem, and other necessary expenses while traveling away from such member's home or regular place of business in the performance of the duties of the Board.

"(3) PAYMENTS.—Payments authorized under this subsection shall be paid from the American Savings Account Fund.

"SEC. 5002. RESPONSIBILITIES OF AMERICAN SAVINGS ACCOUNT BOARD OF DIRECTORS.

"(a) ESTABLISHMENT OF INVESTMENT FUNDS AND OPTIONS.—The Board shall select or establish a list of investment funds and options similar to those described in subsection (b) of section 8438 of title 5, United States Code, among which an individual participating in an American Savings Account established under section 5003(a) may elect under subsection (b)(2).

"(b) INVESTMENT OF SUMS.—

"(1) IN GENERAL.—The Chair of the Board shall invest the sums available in the American Savings Account Fund for investment as provided in elections made under paragraph (2). If an election has not been made with respect to any sums in the American Savings Account Fund available for investment, the Chair shall invest such sums in a portfolio similar to the age-appropriate target date asset allocation portfolio established by the Federal Retirement Thrift Investment Board under section 8438(b) of title 5, United States Code, in the same manner as sums in the Thrift Savings Fund established under section 8437 of title 5, United States Code, are invested under such section.

"(2) ELECTION.—

"(A) IN GENERAL.—At least twice each year, an individual participating in an American Savings Account established under subsection (c)(1) may elect any of the investment funds and options referred to in subsection (a) into which the sums in the American Savings Account Fund credited to such individual's American Savings Account are to be invested or reinvested in the same manner as sums in the Thrift Savings Fund are invested under section 8438 of title 5, United States Code.

"(B) FORM AND MANNER OF ELECTION.—An election may be made under subparagraph (A) only in such manner and within such period as shall be provided by the Chair of the Board.

"(c) ACCOUNTING AND INFORMATION.—

"(1) IN GENERAL.—The Chair of the Board shall establish and maintain—

"(A) an American Savings Account described in paragraph (1) of section 5021(a); or

"(B) at the election of the individual pursuant to section 5021(b)(2), an American Savings Account described in paragraph (2) of section 5021(a);

for each individual who makes contributions under section 5021(b)(3), or for whom contributions are made under section 5022, to the American Savings Account Fund.

"(2) BALANCE; ALLOCATION OF EARNINGS AND LOSSES, ETC.—Rules similar to the rules of paragraphs (2) and (3) of section 8439(a) of title 5, United States Code, shall apply for purposes of an individual's American Savings Account established under paragraph (1).

"(3) EXAMINATION BY QUALIFIED PUBLIC ACCOUNTANT; REPORTING, ETC.—Rules similar to the requirements of subsections (b), (c), and (d) of section 8439 of title 5, United States Code, shall apply with respect to individuals for whom an American Savings Account is maintained under this subsection (in the case of such subsection (d), applied as if each such individual were an employee described in such subsection).

"(d) REPORTING REQUIREMENTS.—

"(1) ANNUAL REPORT.—The Board shall, not later than June 30 of each year, submit to Congress an annual report on the operations of the American Savings Account Fund. Such report shall include, for the prior calendar year, information on the number of participants as of the last day of such prior calendar year, the median balance in participants' accounts as of such last day, demographic information on participants, the percentage allocation of amounts among investment funds or options, the status of the development and implementation of the mutual fund window, the diversity demographics of any company, investment adviser, or other entity retained to invest and manage the assets of the American Savings Account Fund, and such other information as the Board considers appropriate. A copy of each annual report under this subsection shall be made available to the public through an Internet website.

"(2) REPORTING OF FEES AND OTHER INFORMATION.—

"(A) IN GENERAL.—The Board shall provide to each individual for whom an account is maintained—

"(i) a periodic statement relating to the individual's account;

"(ii) a summary description of the investment funds and options under subsection (a) covering, and an evaluation of, each such option during the 5-year period preceding the date as of which such evaluation is made;

"(iii) a statement of the amount of the investment management fees, administrative expenses, and any other fees or expenses paid with respect to each such investment fund and option; and

"(iv) a statement notifying participants as to how they may access the annual report described in paragraph (1), as well as any other information concerning American Savings Accounts that might be useful.

If the fees and expenses described in clause (iii) exceed the fees charged to a similarly situated individual who contributes to the Thrift Savings Fund established under section 8437 of title 5, United States Code, the information required under the preceding sentence shall include a statement identifying the reason for such excess.

"(B) TIME WHEN SENT.—Information under subparagraph (A) with respect to each participant shall be provided immediately upon payment of the participant's first contribution to the American Savings Account Fund and on a regular basis thereafter, in a manner designed to facilitate informed decisionmaking with respect to elections under subsection (b)(2). Nothing in this subparagraph shall be considered to limit the dissemination of information only to the times required under the preceding sentence.

"(C) USE OF ESTIMATES.—For purposes of providing the information required under this paragraph, the Board may provide a reasonable and representative estimate of any fees or expenses described in subparagraph (A) and shall indicate any such estimate as being such an estimate. Any such estimate shall be based on the previous year's experience.

"SEC. 5003. FIDUCIARY RESPONSIBILITIES; LIABILITY AND PENALTIES.

"(a) DEFINITIONS.—For purposes of this section—

"(1) the term 'adequate consideration' means—

"(A) in the case of a security for which there is a generally recognized market—

"(i) the price of the security prevailing on a national securities exchange which is registered under section 6 of the Securities Exchange Act of 1934; or

"(ii) if the security is not traded on such a national securities exchange, a price not less favorable to the American Savings Account Fund than the offering price for the security as established by the current bid and asked prices quoted by persons independent of the issuer and of any party in interest; and

''(B) in the case of an asset other than a security for which there is a generally recognized market, the fair market value of the asset as determined in good faith by a fiduciary or fiduciaries in accordance with regulations prescribed by the Secretary of Labor;

''(2) the term 'fiduciary' means—

''(A) a member of the Board, including the Chair;

''(B) any person who has or exercises discretionary authority or discretionary control over the management or disposition of the assets of the American Savings Account Fund; and

''(C) any person who, with respect to the American Savings Account Fund, is described in section 3(21)(A); and

''(3) the term 'party in interest' includes—

''(A) any fiduciary;

“(B) any counsel to a person who is a fiduciary, with respect to the actions of such person as a fiduciary;

“(C) any participant;

“(D) any person providing services to the Board and, with respect to the actions of the Chair as a fiduciary, any person providing services to the Chair;

“(E) a labor organization, the members of which are participants;

“(F) a spouse, sibling, ancestor, lineal descendant, or spouse of a lineal descendant of a person described in subparagraph (A), (B), or (D);

“(G) a corporation, partnership, or trust or estate of which, or in which, at least 50 percent of—

“(i) the combined voting power of all classes of stock entitled to vote or the total value of shares of all classes of stock of such corporation;

“(ii) the capital interest or profits interest of such partnership; or

“(iii) the beneficial interest of such trust or estate, is owned, directly or indirectly, or held by a person described in subparagraph (A), (B), (D), or (E);

"(H) an official (including a director) of, or an individual employed by, a person described in subparagraph (A), (B), (D), (E), or (G), or an individual having powers or responsibilities similar to those of such an official;

"(I) a holder (directly or indirectly) of at least 10 percent of the shares in a person described in any subparagraph referred to in subparagraph (H); and

"(J) a person who, directly or indirectly, is at least a 10 percent partner or joint venturer (measured in capital or profits) in a person described in any subparagraph referred to in subparagraph (H).

"(b) IN GENERAL.—

"(1) DISCHARGE OF RESPONSIBILITIES.—To the extent not inconsistent with the provisions of this title and the policies prescribed by the Board, a fiduciary shall discharge the fiduciary's responsibilities with respect to the American Savings Account Fund or applicable portion thereof solely in the interest of the participants and beneficiaries and—

“(A) for the exclusive purpose of—

“(i) providing benefits to participants and their beneficiaries; and

“(ii) defraying reasonable expenses of administering the American Savings Account Fund or applicable portions thereof;

“(B) with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent individual acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like objectives; and

“(C) to the extent permitted by this title, by diversifying the investments of the American Savings Account Fund or applicable portions thereof so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so.

“(2) OWNERSHIP.—No fiduciary may maintain the indicia of ownership of any assets of the American Savings Account Fund outside the jurisdiction of the district courts of the United States.

“(c) PROHIBITED TRANSACTIONS.—

"(1) IN GENERAL.—A fiduciary shall not permit the American Savings Account Fund to engage in any of the following transactions, except in exchange for adequate consideration:

"(A) A transfer of any assets of the American Savings Account Fund to any person the fiduciary knows or should know to be a party in interest or the use of such assets by any such person.

"(B) An acquisition of any property from or sale of any property to the American Savings Account Fund by any person the fiduciary knows or should know to be a party in interest.

"(C) A transfer or exchange of services between the American Savings Account Fund and any person the fiduciary knows or should know to be a party in interest.

"(2) SPECIAL RULES.—Notwithstanding paragraph (1), a fiduciary with respect to the American Savings Account Fund shall not—

"(A) deal with any assets of the American Savings Account Fund in the fiduciary's own interest or for the fiduciary's own account;

"(B) act, in an individual capacity or any other capacity, in any transaction involving the

American Savings Account Fund on behalf of a party, or representing a party, whose interests are adverse to the interests of the American Savings Account Fund or the interests of its participants or beneficiaries; or

"(C) receive any consideration for the fiduciary's own personal account from any party dealing with sums credited to the American Savings Account Fund in connection with a transaction involving assets of the American Savings Account Fund.

"(3) GRANTING OF EXEMPTIONS.—

"(A) The Secretary may, in accordance with procedures which the Secretary shall by regulation prescribe, grant a conditional or unconditional exemption of any fiduciary or transaction, or class of fiduciaries or transactions, from all or part of the restrictions imposed by paragraph (2).

"(B) An exemption granted under this paragraph shall not relieve a fiduciary from any other applicable provision of this title.

"(C) The Secretary may not grant an exemption under this paragraph unless the Secretary finds that such exemption is—

“(i) administratively feasible;

“(ii) in the interests of the American Savings Account Fund and of its participants and beneficiaries; and

“(iii) protective of the rights of participants and beneficiaries of such Fund.

“(D) An exemption under this paragraph may not be granted unless—

“(i) notice of the proposed exemption is published in the Federal Register;

“(ii) interested persons are given an opportunity to present views; and

“(iii) the Secretary affords an opportunity for a hearing and makes a determination on the record with respect to the respective requirements of clauses (i), (ii), and (iii) of subparagraph (C).

“(E) Notwithstanding subparagraph (D), the Secretary may determine that an exemption granted for any class of fiduciaries or transactions under section 408(a) shall, upon publication of notice in the Federal Register under this subparagraph, constitute an exemption for purposes of the provisions of paragraph (2).

"(d) ALLOWANCES.—This section does not prohibit any fiduciary from—

"(1) receiving any benefit which the fiduciary is entitled to receive under this title as a participant or beneficiary;

"(2) receiving any reasonable compensation authorized by this title for services rendered, or for reimbursement of expenses properly and actually incurred, in the performance of the fiduciary's duties under this title; or

"(3) serving as a fiduciary in addition to being an officer, employee, agent, or other representative of a party in interest.

"(e) LIABILITY.—

"(1) IN GENERAL.—

"(A) Any fiduciary that breaches the responsibilities, duties, and obligations set out in subsection (b) or violates subsection (c) shall be personally liable to the American Savings Account Fund for any losses to such Fund resulting from each such breach or violation and to restore to such Fund any profits made by the fiduciary through use of assets of such Fund by the fiduciary, and shall be subject to such other equitable or remedial relief as a court considers appropriate, except as provided in paragraphs (3) and (4). A fiduciary may be removed for a breach referred to in the preceding sentence.

"(B) The Secretary may assess a civil penalty against a party in interest with respect to each transaction which is engaged in by the party in interest and is prohibited by subsection (c). The amount of such penalty shall be equal to 5 percent of the amount involved in each such transaction (as defined in section 4975(f)(4) of the Internal Revenue Code of 1986) for each year or part thereof during which the prohibited transaction continues, except that, if the transaction is not corrected (in such manner as the Secretary shall prescribe by regulation consistent with section 4975(f)(5) of such Code) within 90 days after the date the Secretary transmits notice to the party in interest (or such longer period as the Secretary may permit), such penalty may be in an amount not more than 100 percent of the amount involved.

"(C)(i) A fiduciary shall not be liable under subparagraph (A) with respect to a breach of fiduciary duty under subsection (b) committed before becoming a fiduciary or after ceasing to be a fiduciary.

"(ii) A fiduciary shall not be liable under subparagraph (A), and no civil action may be brought against a fiduciary—

"(I) for providing for the automatic enrollment of a participant in accordance with this title; or

"(II) for enrolling a participant or beneficiary in a default investment fund or option in accordance with this title.

"(D) A fiduciary shall be jointly and severally liable under subparagraph (A) for a breach of fiduciary duty under subsection (b) by another fiduciary only if—

"(i) the fiduciary participates knowingly in, or knowingly undertakes to conceal, an act or omission of such other fiduciary, knowing such act or omission is such a breach;

"(ii) by the fiduciary's failure to comply with subsection (b) in the administration of the fiduciary's specific responsibilities which give rise to the fiduciary status, the fiduciary has enabled such other fiduciary to commit such a breach; or

"(iii) the fiduciary has knowledge of a breach by such other fiduciary, unless the fiduciary makes reasonable efforts under the circumstances to remedy the breach.

"(E) The Secretary shall prescribe, in regulations, procedures for allocating fiduciary responsibilities among fiduciaries, including investment managers. Any fiduciary who, pursuant to such procedures, allocates to a person or persons any fiduciary responsibility shall not be liable for an act or omission of such person or persons unless—

"(i) such fiduciary violated subsection (b) with respect to the allocation, with respect to the implementation of the procedures prescribed by the Secretary, or in continuing such allocation; or

"(ii) such fiduciary would otherwise be liable in accordance with subparagraph (D).

"(2) CIVIL ACTION ONLY AS PROVIDED.—No civil action may be maintained against any fiduciary with respect to the responsibilities, liabilities, and penalties authorized or provided for in this section except in accordance with paragraphs (3) and (4).

"(3) RULES REGARDING CIVIL ACTIONS.—A civil action may be brought in the district courts of the United States—

"(A) by the Secretary against any fiduciary other than a Member of the Board or the Chair of the Board—

"(i) to determine and enforce a liability under paragraph (1)(A);

"(ii) to collect any civil penalty under paragraph (1)(B);

"(iii) to enjoin any act or practice which violates any provision of subsection (b) or (c);

"(iv) to obtain any other appropriate equitable relief to redress a violation of any such provision; or

"(v) to enjoin any act or practice which violates section 5001(e);

"(B) by any participant, beneficiary, or fiduciary against any fiduciary—

"(i) to enjoin any act or practice which violates any provision of subsection (b) or (c);

"(ii) to obtain any other appropriate equitable relief to redress a violation of any such provision; or

"(iii) to enjoin any act or practice which violates section 5001(e); or

"(C) by any participant or beneficiary—

"(i) to recover benefits of such participant or beneficiary under the provisions of this title, to enforce any right of such participant or beneficiary under such provisions, or to clarify any such right to future benefits under such provisions; or

"(ii) to enforce any claim otherwise cognizable under sections 1346(b) and 2671 through 2680 of title 28, United States Code, provided that the remedy against the United States provided by sections 1346(b) and 2672 of title 28, United States Code, for damages for injury or loss of property caused by the negligent or wrongful act or omission of any fiduciary while acting within the scope of the fiduciary's duties or employment shall be exclusive of any other civil action or proceeding by the participant or beneficiary for recovery of money by reason of the same subject matter against the fiduciary (or the estate of such fiduciary) whose act or omission gave rise to such action or proceeding, whether or not such action or proceeding is based on an alleged violation of subsection (b) or (c).

"(4) OTHER RULES.—

"(A) In all civil actions under paragraph (3)(A), attorneys appointed by the Secretary may represent the Secretary (except as provided in section 518(a) of title 28, United States Code), however all such litigation shall be subject to the direction and control of the Attorney General.

"(B) The Attorney General shall defend any civil action or proceeding brought in any court against any fiduciary referred to in paragraph (3)(C)(ii) (or the estate of such fiduciary) for any such injury. Any fiduciary against whom such a civil action or proceeding is brought shall deliver, within such time after date of service or knowledge of service as determined by the Attorney General, all process served upon such fiduciary (or an attested copy thereof) to the Chair of the Board, who shall promptly furnish copies of the pleading and process to the Attorney General and the United States Attorney for the district wherein the action or proceeding is brought.

''(C) Upon certification by the Attorney General that a fiduciary described in paragraph (3)(C)(ii) was acting in the scope of such fiduciary's duties or employment as a fiduciary at the time of the occurrence or omission out of which the action arose, any such civil action or proceeding commenced in a State court shall be—

''(i) removed without bond at any time before trial by the Attorney General to the district court of the United States for the district and division in which it is pending; and

''(ii) deemed a tort action brought against the United States under the provisions of title 28, United States Code, and all references thereto.

''(D) The Attorney General may compromise or settle any claim asserted in such civil action or proceeding in the manner provided in section 2677 of title 28, United States Code, and with the same effect. To the extent section 2672 of title 28, United States Code, provides that persons other than the Attorney General or the Attorney General's designee may compromise and settle claims, and that payment of such claims may be made from agency appropriations, such provisions shall not apply to claims based upon an alleged violation of subsection (b) or (c).

"(E) For the purposes of paragraph (3)(C)(ii) the provisions of sections 2680(h) of title 28, United States Code, shall not apply to any claim based upon an alleged violation of subsection (b) or (c).

"(F) Notwithstanding sections 1346(b) and 2671 through 2680 of title 28, United States Code, whenever an award, compromise, or settlement is made under such sections upon any claim based upon an alleged violation of subsection (b) or (c), payment of such award, compromise, or settlement shall be made to the appropriate account within the American Savings Account Fund, or where there is no such appropriate account, to the participant or beneficiary bringing the claim.

"(G) For purposes of paragraph (3)(C)(ii), the term 'fiduciary' includes only the Members of the Board and the Board's Chair.

"(5) PROHIBITION OF MONETARY RELIEF.—Any relief awarded against a Member of the Board or the Chair of the Board in a civil action authorized by paragraph (3) may not include any monetary damages or any other recovery of money.

"(6) LIMITATION.—An action may not be commenced under paragraph (3)(A) or (B) with respect to a fiduciary's breach of any responsibility, duty, or obligation under subsection (b) or a violation of subsection (c) after the earlier of—

"(A) 6 years after—

"(i) the date of the last action which constituted a part of the breach or violation; or

"(ii) in the case of an omission, the latest date on which the fiduciary could have cured the breach or violation; or

"(B) 3 years after the earliest date on which the plaintiff had actual knowledge of the breach or violation, except that, in the case of fraud or concealment, such action may be commenced not later than 6 years after the date of discovery of such breach or violation.

"(7) JURISDICTION.—

"(A) The district courts of the United States shall have exclusive jurisdiction of civil actions under this subsection.

"(B) An action under this subsection may be brought in the District Court of the United States for the District of Columbia or a district court of the United States in the district where the breach alleged in the complaint or petition filed in the action took place or in the district where a defendant resides or may be found. Process may be served in any other district where a defendant resides or may be found.

"(8) SERVICE.—

"(A) A copy of the complaint or petition filed in any action brought under this subsection (other than by the Secretary) shall be served on the Chair, the Secretary, and the Secretary of the Treasury by certified mail.

"(B) Any officer referred to in subparagraph (A) shall have the right in the officer's discretion to intervene in any action. If the Secretary brings an action under paragraph (2) on behalf of a participant or beneficiary, the Secretary shall notify the Chair and the Secretary of the Treasury.

"(f) REGULATIONS.—The Secretary may prescribe regulations to carry out this section.

"(g) AUDITS BY SECRETARY.—

"(1) IN GENERAL.—The Secretary of Labor shall establish a program to carry out audits to determine the level of compliance with the requirements of this section relating to fiduciary responsibilities and prohibited activities of fiduciaries.

"(2) CONTRACTS, ETC.—An audit under this subsection may be conducted by the Secretary, by contract with a qualified nongovernmental organization, or in cooperation with the Comptroller General of the United States, as the Secretary considers appropriate.

"SEC. 5004. AMERICAN SAVINGS ACCOUNT FUND ADVISORY COUNCIL.

"(a) IN GENERAL.—The Board shall establish an American Savings Account Fund Advisory Council, to be composed of 14 members appointed by the Chair of the Board. The Chair of the Board shall designate 1 member of the Council to serve as head of the Council.

"(b) TERMS AND VACANCIES.—

"(1) TERM.—A member of the Council shall be appointed for a term of 4 years.

"(2) VACANCIES.—

"(A) A vacancy in the Council shall be filled in the manner in which the original appointment was made and shall be subject to any conditions which applied with respect to the original appointment.

"(B) An individual chosen to fill a vacancy shall be appointed for the unexpired term of the member replaced.

"(C) The term of any member shall not expire before the date on which the member's successor takes office.

"(c) ACTION BY MAJORITY RESOLUTION.—The Council shall act by resolution of a majority of the members.

"(d) RESPONSIBILITIES.—The Council shall—

"(1) advise the Board and the Chair of the Board on matters relating to—

"(A) investment policies for the American Savings Account Fund; and

"(B) the administration of this title; and

"(2) perform such other duties as the Board may direct with respect to investment funds established in accordance with this title.

"Subtitle B—American Savings Account Fund

"SEC. 5011. AMERICAN SAVINGS ACCOUNT FUND.

"(a) IN GENERAL.—There is established in the Treasury of the United States an American Savings Account Fund.

"(b) AMOUNTS IN FUND.—The American Savings Account Fund consists of the sum of all amounts contributed under section 5022, increased by the total net earnings from investments of sums in the American Savings Account Fund or reduced by the total net losses from investments of the American Savings Account Fund, and reduced by the total amount of payments made from the American Savings Account Fund (including payments for administrative expenses).

"(c) APPROPRIATIONS FROM FUND.—The sums in the American Savings Account Fund are appropriated and shall remain available without fiscal year limitation—

"(1) to invest as provided in section 5002(b)(1);

"(2) to pay benefits or purchase annuity contracts under section 5021(b);

"(3) to pay the administrative expenses of the Board relating to the responsibilities under section 5002; and

"(4) at the discretion of the Chair of the Board, to purchase insurance to cover potential liability of persons who serve in a fiduciary capacity with respect to the American Savings Account Fund, in a manner consistent with rules similar to the provisions of section 8479 of title 5, United States Code.

"(d) BENEFITS INALIENABLE AND NONFORFEITABLE.—

"(1) IN GENERAL.—Subject to paragraphs (3) and (4) of subsection (c) and paragraphs (3) and (4) of this subsection, sums in the American Savings Account Fund credited to the American Savings Account of a participant may not be used for, or diverted to, purposes other than for the exclusive benefit of the participant or the participant's beneficiaries.

"(2) PROTECTION FROM ALIENATION.—Except as provided in paragraphs (3) and (4), sums in the American Savings Account Fund may not be assigned or alienated and are not subject to execution, levy, attachment, garnishment, or other legal process.

"(3) CERTAIN EXCEPTIONS.—Moneys due or payable from the American Savings Account Fund to any individual shall be subject to legal process for the enforcement of the individual's legal obligations to provide child support or make alimony payments as provided in section 459 of the Social Security Act, the enforcement of an order for restitution under section 3663A of title 18, United States Code, or an obligation of the Chair of the Board to make a payment to another person under paragraph (4), and shall be subject to a Federal tax levy under section 6331 of the Internal Revenue Code of 1986.

"(4) COURT ORDERS.—Rules similar to the rules of section 8467 of title 5, United States Code, shall apply with respect to payments which would otherwise be made to a participant under section 5021(b).

"(e) LIMITATION ON FURTHER APPROPRIATION.—The sums in the American Savings Account Fund shall not be appropriated for any purpose other than the purposes specified in this section and may not be used for any other purpose.

"(f) AMOUNTS HELD IN TRUST.—All sums contributed to the American Savings Account Fund by a participant or by an employer for the benefit of such participant and all net earnings in such Fund attributable to investment of such sums are held in such Fund in trust for such participant.

"SEC. 5012. TAX TREATMENT OF THE AMERICAN SAVINGS ACCOUNT FUND.

"(a) IN GENERAL.—For purposes of the Internal Revenue Code of 1986—

"(1) the American Savings Account Fund shall be treated as a trust described in section 401(a) of such Code which is exempt from taxation under section 501(a) of such Code;

"(2) any contribution to, or distribution from, the American Savings Account Fund shall be treated in the same manner as contributions to or distributions from such a trust;

"(3) contributions to the American Savings Account Fund shall not be treated as distributed or made available to a participant nor as a contribution made to the Fund by an individual merely because the individual has, under section 5022(b)(1)(C), made an election whether the contribution will be made to the American Savings Account Fund or received by the individual in cash; and

"(4) the rules of section 414(w) of such Code shall apply with respect to American Savings Accounts, except that paragraph (2)(B) thereof shall be applied by substituting 'the due date for the return of tax for the taxable year in which the first elective contribution is made with respect to the employee under the arrangement' for 'the date which is 90 days after the date of the first elective contribution with respect to the employee under the arrangement'.

"(b) COORDINATION WITH SOCIAL SECURITY ACT.—Subsection (a) shall not be construed to provide that any amount of the employee's compensation which is contributed to the American Savings Account Fund shall not be included in the term 'wages' for the purposes of section 209 of the Social Security Act or section 3121(a) of the Internal Revenue Code of 1986.

"Subtitle C—American Savings Accounts

"SEC. 5021. AMERICAN SAVINGS ACCOUNTS.

"(a) IN GENERAL.—For purposes of this title, the term 'American Savings Account' means—

"(1) an individual retirement account (as defined in section 408(a) of the Internal Revenue Code of 1986); and

"(2) in the case of an individual making the election under subsection (b)(2), a Roth IRA (as defined in section 408A(b) of such Code);

established and maintained by the Board, as trustee of such account.

"(b) SPECIAL RULES.—

"(1) ELIGIBILITY.—

"(A) IN GENERAL.—All qualified employees shall be eligible to participate in an American Savings Account.

"(B) QUALIFIED EMPLOYEE.—For purposes of this subtitle—

"(i) IN GENERAL.—The term 'qualified employee' means an employee (other than an employee described in section 410(b)(3)(C) of the Internal Revenue Code of 1986) of an American employer if the employer does not provide the opportunity for the employee to participate in a defined contribution plan (within the meaning of section 414(i) of the Internal Revenue Code of 1986) maintained by the employer that satisfies the requirements of section 401(a) or 403(b) of the Internal Revenue Code of 1986.

"(ii) EXCEPTION FOR EMPLOYEES COVERED BY COLLECTIVE BARGAINING AGREEMENTS.—Such term shall not include any employee who is included in a group of employees covered by a collective bargaining agreement described in section 410(b)(3)(A) of such Code.

"(iii) AMERICAN EMPLOYER.—The term 'American employer' has the meaning given such term by section 3121(h) of such Code.

"(2) ELECTION TO CONVERT TO ROTH IRA.—Subject to the rules of section 408A(d)(3) of the Internal Revenue Code of 1986, an individual may elect at any time to convert all or a portion of the individual retirement account established for the individual under section 5002(c)(1)(A) to a Roth IRA (as defined in section 408A(b) of such Code).

"(3) CONTRIBUTIONS.—

"(A) IN GENERAL.—Subject to section 5022(b)(1), an individual may contribute to the American Savings Account Fund in any year, pursuant to an election under section 5002(b)(2), an amount not to exceed the limitation described in subparagraph (C). Contributions pursuant to such an election shall, with respect to each pay period for which such election remains in effect, be made in accordance with a program of regular contributions as prescribed by the Chair.

"(B) ELIGIBLE ROLLOVER DISTRIBUTIONS.—An individual may contribute to the American Savings Account Fund an eligible rollover that an individual retirement account or Roth IRA could accept under section 408 or 408A of the Internal Revenue Code of 1986, whichever is applicable (after the application of subparagraph (C)). In the case of an eligible rollover distribution (as defined in section 402(c)(4) of such Code), the maximum amount transferred to the American Savings Account Fund shall not exceed the amount which would otherwise have been included in the individual's gross income for Federal income tax purposes.

"(C) MODIFICATION OF CONTRIBUTION LIMITATION.—In lieu of the contribution limitations for individual retirement accounts or Roth

IRAs, whichever is applicable, under part I of subchapter D of chapter 1 of the Internal Revenue Code of 1986, the annual contribution limitation applicable to an American Savings Account shall be equal to the limitation applicable under section 415(c) of the Internal Revenue Code of 1986 to contributions to a defined contribution plan.

"(4) ANNUITIES, ETC.—

"(A) IN GENERAL.—The Board shall prescribe methods of payment of annuities similar to the methods available under section 8434(a)(2) of title 5, United States Code.

"(B) RULES APPLICABLE.—Rules similar to the rules of subsections (b), (c), (d), and (e) of section 8434 of title 5, United States Code, shall apply for purposes of this paragraph.

"(5) PROTECTIONS FOR SPOUSES AND FORMER SPOUSES.—

"(A) IN GENERAL.—Except as provided in subparagraph (A), rules similar to the rules of sections 8433(e) and 8435 of title 5, United States Code, shall apply for purposes of this subsection.

"(B) ADDITIONAL PROTECTION FOR SURVIVING SPOUSES.—A surviving spouse shall be the first party entitled to receive benefits (before any designated beneficiary other than the surviving spouse) unless the surviving spouse consents in writing to the application of the order of precedence in effect but for this subparagraph.

"SEC. 5022. EMPLOYER REQUIREMENTS.

"(a) IN GENERAL.—Except as provided in subsections (a) and (b) of section 5023, each United States employer shall make contributions meeting the requirements of subsection (b) on behalf of such qualified employee to the American Savings Account Fund, beginning with the later of—

"(1) the first pay period for which the employee receives compensation from the employer; or

"(2) the first pay period beginning on or after the contribution beginning date.

"(b) CONTRIBUTIONS.—The requirements of this subsection are met for a taxable year with respect to contributions to the American Savings Account Fund on behalf of a qualified employee if—

"(1) CONTRIBUTION AMOUNT.—With respect to any pay period beginning in such taxable year—

"(A) IN GENERAL.—Except as provided in subparagraphs (B) and (C), such contributions are equal to 3 percent of the compensation of the employee for such period.

"(B) COORDINATION WITH LIMITATIONS.—The total contributions to the Fund on behalf of the employee for pay periods in any taxable year do not exceed the contribution limitation described in section 5021(b)(3)(C).

"(C) ELECTION.—After the first pay period with respect to which a contribution is made with respect to a qualified employee under subsection (a), the qualified employee may elect—

"(i) to change the percentage of compensation which is contributed to the Fund on behalf of such employee, except that such percentage may not be less than 2 percent or greater than the highest percentage that would not cause total contributions during the taxable year to exceed the limitation under subparagraph (B); or

"(ii) to discontinue contributions to the Fund and withdraw all contributions previously made through a salary reduction arrangement in the same calendar year other than nonelective contributions made by the employer on behalf of the employee.

In the event a qualified employee elects to withdraw all contributions previously made to the Fund under the preceding sentence, the amount of any nonelective contributions made by the employer on behalf of the employee shall be withdrawn and paid to the employer.

"(D) CONTRIBUTIONS MAY BE MADE THROUGH SALARY REDUCTION ARRANGEMENT.—Contributions by an employer shall not fail to meet the requirements of this subsection solely because the employee may elect to have the employer make payments—

"(i) to the American Savings Account of the employee; or

"(ii) to the employee directly in cash.

The preceding sentence shall apply only if the contributions on behalf of all qualified employees of the employer for a pay period are in a uniform dollar amount or a uniform percentage of compensation.

"(E) MANDATORY PERCENTAGE INCREASE OFFER.—

"(i) IN GENERAL.—If a qualified employee elects under subparagraph (C) a contribution percentage that is less than 5 percent, then 12 months after such election is made and every 12 months thereafter the Board shall notify the employee in writing that such contribution percentage will be increased by 0.5 percent unless the employee objects within 30 days of receipt of such notice. If the employee does not so object, upon notification by the Board, the employer shall increase the percentage of the employee's compensation which is contributed to the Fund on behalf of the employee by 0.5 percent.

"(ii) APPLICABILITY.—

"(I) IN GENERAL.—Clause (i) shall cease to apply once the percentage of compensation contributed to the Fund on behalf of the employee is greater than or equal to 5 percent.

"(II) COORDINATION WITH LIMITATIONS.—Clause (i) shall not apply during a taxable year if, as so increased, the percentage of compensation contributed to the Fund on behalf of the employee would exceed the percentage described in subparagraph (C)(i).

"(2) FREQUENCY AND TIMING OF CONTRIBUTIONS.—Contributions under subsection (a) are made not less frequently than monthly during such year, and each such contribution is made not later than 30 days after the close of the pay period to which it relates.

"(c) EXCEPTIONS.—Subsection (a) shall not apply to an employer that is a church or convention or association of churches which is exempt from tax under section 501(a) of the Internal Revenue Code of 1986. If such an employer elects to make contributions to the American Savings Account Fund on behalf of qualified employees of the employer, such contributions must meet the requirements of paragraph (1).

"(d) SELF-EMPLOYED INDIVIDUALS.—An individual—

"(1) who has net earnings from self-employment (as defined in section 1402(a) of the Internal Revenue Code of 1986);

"(2) who is not a qualified employee with respect to any employer; and

"(3) who is not eligible to participate in a defined contribution plan (within the meaning of section 414(i) of the Internal Revenue Code of 1986) maintained by any employer;

may elect to make contributions on the individual's own behalf to the American Savings Account Fund. Such contributions shall be made under rules similar to the rules of section 5021(b)(3).

"(e) CONTRIBUTION BEGINNING DATE.—For purposes of this section, the term 'contribution beginning date' means January 1 of the 3rd calendar year beginning after the date of the enactment of the American Savings Account Act of 2016.

"SEC. 5023. STATE RETIREMENT SAVINGS PLANS.

"(a) IN GENERAL.—If a State—

"(1) maintains a public retirement savings plan that allows all covered employers in the State to enroll all employees of the employer automatically in such plan; or

"(2) allows all covered employers in the State to make contributions to an individual retirement plan (as defined in section 7701(a)(37) of the Internal Revenue Code of 1986) on behalf of the employees of the employer;

such State may prohibit employers in the State from making contributions to the American Savings Account Fund on behalf of their employees, and section 5022 shall not apply to covered employers to which such prohibition applies.

"(b) EXEMPTION.—For purposes of this Act, the term 'employee pension benefit plan' shall not include a payroll deduction program established by a State for the purpose of making contributions to 1 or more individual retirement plans (as defined in section 7701(a)(37) of the Internal Revenue Code of 1986), including such a program which provides for automatic enrollment.

"(c) WAIVER OF PENALTY.—The penalty under section 6672(f) of the Internal Revenue Code of 1986 shall not apply to a failure to make a contribution on behalf of a qualified employee if the employer makes contributions to a State plan described in subsection (a) or (b) on behalf of such employee that satisfy the applicable requirements of such State plan. The employer shall certify to the Secretary of the Treasury, in such manner as shall be determined by such Secretary, that such contributions have been made.

"(d) COVERED EMPLOYER.—For purposes of this section, the term 'covered employer' means an employer—

"(1) that does not provide the opportunity for employees to participate in a defined contribution plan (within the meaning of section 414(i) of the Internal Revenue Code of 1986) maintained by the employer; and

"(2) whose employees are not covered by a collective bargaining agreement described in section 410(b)(3)(A) of the Internal Revenue Code of 1986.

"SEC. 5024. DEFINITIONS.

"Any term used in this subtitle which is also used in section 408(k) of the Internal Revenue Code of 1986 has the same meaning as when used in such section.".

(b) CLERICAL AMENDMENT.—The table of contents of the Employee Retirement Income Security Act of 1974 is amended by adding at the end the following:

(c) CONFORMING AMENDMENT.—Section 7701 of the Internal Revenue Code of 1986 is amended by redesignating subsection (p) as subsection (q) and by inserting after subsection (o) the following new subsection:

"(p) TAX TREATMENT OF AMERICAN SAVINGS ACCOUNT FUND.—

"(1) IN GENERAL.—For purposes of this title—

"(A) the American Savings Account Fund shall be treated as a trust described in section 401(a) which is exempt from taxation under section 501(a);

"(B) any contribution to, or distribution from, the American Savings Account Fund shall be treated in the same manner as contributions to or distributions from such a trust;

"(C) contributions to the American Savings Account Fund shall not be treated as distributed or made available to a participant nor as a contribution made to the Fund by an individual merely because the individual has, under section 5022(b)(1)(C) of the Employee Retirement Income Security Act of 1974, made an election whether the contribution will be made to the American Savings Account Fund or received by the individual in cash; and

"(D) the rules of section 414(w) shall apply with respect to American Savings Accounts, except that paragraph (2)(B) thereof shall be applied by substituting 'the due date for the return of tax for the taxable year in which the first elective contribution is made with respect to the employee under the arrangement' for 'the date which is 90 days after the date of the first elective contribution with respect to the employee under the arrangement'.

"(2) COORDINATION WITH SOCIAL SECURITY ACT.—Paragraph (1) shall not be construed to provide that any amount of the employee's compensation which is contributed to the American Savings Account Fund shall not be included in the term 'wages' for the purposes of section 209 of the Social Security Act or section 3121(a) of this title.

"(3) DEFINITIONS.—For purposes of this subsection, the terms 'employee' and 'American Savings Account Fund' shall have the same respective meanings as when used in title V of the Employee Retirement Income Security Act of 1974.

"(4) COORDINATION WITH OTHER PROVISIONS OF LAW.—No provision of law not contained in this title shall apply for purposes of determining the treatment under this title of the American Savings Account Fund or any contribution to, or distribution from, such Fund.''.

(d) TREATMENT OF CONTRIBUTIONS TO AMERICAN SAVINGS ACCOUNT FUND.—

(1) IN GENERAL.—Part III of subchapter B of chapter 1 of the Internal Revenue Code of 1986 is amended by inserting after section 139E the following new section:

''SEC. 139F. AMOUNTS CONTRIBUTED TO AMERICAN SAVINGS ACCOUNTS.

''(a) IN GENERAL.—Gross income does not include so much of the contributions made to the American Savings Account Fund on behalf of an individual for pay periods in the taxable year as does not exceed the limitation applicable under section 415(c) of the Internal Revenue Code of 1986 to contributions to a defined contribution plan.

''(b) AMERICAN SAVINGS ACCOUNT FUND.—For purposes of this section, the term 'American Savings Account Fund' means the Fund established under section 5011 of the Employee Retirement Income Security Act of 1974.''.

(2) DENIAL OF DEDUCTION.—Subsection (b) of section 219 of such Code is amended by adding at the end the following new paragraph:

"(6) SPECIAL RULE FOR AMERICAN SAVINGS ACCOUNTS.—This section shall not apply with respect to any amount contributed to an individual retirement account (as defined in section 408(a)) or a Roth IRA (as defined in section 408A(b)) which is an American Savings Account (as defined in section 5021 of the Employee Retirement Income Security Act of 1974).".

(3) CLERICAL AMENDMENT.—The table of sections for part III of subchapter B of chapter 1 of such Code is amended by inserting after the item relating to section 139E the following new item:

"Sec. 139F. Amounts contributed to American Savings Accounts.".

(e) TREATMENT OF DISTRIBUTIONS AS SEPARATE FROM OTHER IRAS AND ROTH IRAS.—Subparagraph (A) of section 408(d)(2) of the Internal Revenue Code of 1986 is amended by striking "plans" and inserting "plans (other than American Savings Accounts, within the meaning of section 5021 of the Employee Retirement Income Security Act of 1974)".

(f) EFFECTIVE DATE.—

(1) PROGRAM.—The Chair of the American Savings Account Board of Directors shall establish the American Savings Account program such that the American Savings Account Fund is prepared to begin receiving contributions on January 1 of the

3rd calendar year beginning after the date of the enactment of this Act.

(2) TREATMENT OF CONTRIBUTIONS.—Except as provided in paragraph (1), the amendments made by this section shall apply to contributions made to the American Savings Account Fund, as established by the amendments made by subsection (a), after December 31 of the 2nd calendar year beginning after the date of the enactment of this Act.

SEC. 3. PENALTY FOR EMPLOYER NONCOMPLIANCE.

Section 6672 of the Internal Revenue Code of 1986 is amended by adding at the end the following new subsection:

"(f) EMPLOYER NONCOMPLIANCE WITH REQUIREMENTS OF AMERICAN SAVINGS ACCOUNT ACT.—Except as provided in section 5023(c) of the Employee Retirement Income Security Act of 1974, any employer that fails to make any contribution required by section 5022 of such Act shall be treated for purposes of subsection (a) as if the employer had willfully failed to collect a tax in the amount of such required contribution.".

SEC. 4. OUTREACH.

The Commissioner of Internal Revenue shall provide to any person filing Form 1099 information on contributing to the American Savings Account Fund.

SEC. 5. INDEPENDENT CONTRACTORS.

The Secretary of Labor shall promulgate rules allowing employers to—

(1) request explicit authorization from independent contractors with such employers to contribute on behalf of such independent contractors to the American Savings Account Fund; and

(2) automatically withhold and transmit a set amount or percentage of compensation paid to such independent contractors to such Fund.

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