

115TH CONGRESS
2^D SESSION

H. R. 6757

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 28, 2018

Received; read twice and referred to the Committee on Finance

AN ACT

To amend the Internal Revenue Code of 1986 to encourage retirement and family savings, and for other purposes.

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

1 **SECTION 1. SHORT TITLE; ETC.**

2 (a) **SHORT TITLE.**—This Act may be cited as the
3 “Family Savings Act of 2018”.

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

Sec. 1. Short title; etc.

TITLE I—EXPANDING AND PRESERVING RETIREMENT SAVINGS

Sec. 101. Multiple employer plans; pooled employer plans.

Sec. 102. Rules relating to election of safe harbor 401(k) status.

Sec. 103. Certain taxable non-tuition fellowship and stipend payments treated
as compensation for IRA purposes.

Sec. 104. Repeal of maximum age for traditional IRA contributions.

Sec. 105. Qualified employer plans prohibited from making loans through credit
cards and other similar arrangements.

Sec. 106. Portability of lifetime income investments.

Sec. 107. Treatment of custodial accounts on termination of section 403(b)
plans.

Sec. 108. Clarification of retirement income account rules relating to church-
controlled organizations.

Sec. 109. Exemption from required minimum distribution rules for individuals
with certain account balances.

Sec. 110. Clarification of treatment of certain retirement plan contributions
picked up by governmental employers for new or existing em-
ployees.

Sec. 111. Elective deferrals by members of the Ready Reserve of a reserve com-
ponent of the Armed Forces.

TITLE II—ADMINISTRATIVE IMPROVEMENTS

Sec. 201. Plan adopted by filing due date for year may be treated as in effect
as of close of year.

Sec. 202. Modification of nondiscrimination rules to protect older, longer serv-
ice participants.

Sec. 203. Fiduciary safe harbor for selection of lifetime income provider.

TITLE III—OTHER SAVINGS PROVISIONS

Sec. 301. Universal Savings Accounts.

Sec. 302. Expansion of section 529 plans.

Sec. 303. Penalty-free withdrawals from retirement plans for individuals in case
of birth of child or adoption.

TITLE IV—BUDGETARY EFFECTS

Sec. 401. Budgetary effects.

1 **TITLE I—EXPANDING AND PRE-**
2 **SERVING RETIREMENT SAV-**
3 **INGS**

4 **SEC. 101. MULTIPLE EMPLOYER PLANS; POOLED EM-**
5 **PLOYER PLANS.**

6 (a) QUALIFICATION REQUIREMENTS.—

7 (1) IN GENERAL.—Section 413 of the Internal
8 Revenue Code of 1986 is amended by adding at the
9 end the following new subsection:

10 “(e) APPLICATION OF QUALIFICATION REQUIRE-
11 MENTS FOR CERTAIN MULTIPLE EMPLOYER PLANS WITH
12 POOLED PLAN PROVIDERS.—

13 “(1) IN GENERAL.—Except as provided in para-
14 graph (2), if a defined contribution plan to which
15 subsection (c) applies—

16 “(A) is maintained by employers which
17 have a common interest other than having
18 adopted the plan, or

19 “(B) in the case of a plan not described in
20 subparagraph (A), has a pooled plan provider,
21 then the plan shall not be treated as failing to meet
22 the requirements under this title applicable to a plan
23 described in section 401(a) or to a plan that consists
24 of individual retirement accounts described in sec-
25 tion 408 (including by reason of subsection (c)

1 thereof), whichever is applicable, merely because one
2 or more employers of employees covered by the plan
3 fail to take such actions as are required of such em-
4 ployers for the plan to meet such requirements.

5 “(2) LIMITATIONS.—

6 “(A) IN GENERAL.—Paragraph (1) shall
7 not apply to any plan unless the terms of the
8 plan provide that in the case of any employer
9 in the plan failing to take the actions described
10 in paragraph (1)—

11 “(i) the assets of the plan attributable
12 to employees of such employer (or bene-
13 ficiaries of such employees) will be trans-
14 ferred to a plan maintained only by such
15 employer (or its successor), to an eligible
16 retirement plan as defined in section
17 402(c)(8)(B) for each individual whose ac-
18 count is transferred, or to any other ar-
19 rangement that the Secretary determines is
20 appropriate, unless the Secretary deter-
21 mines it is in the best interests of the em-
22 ployees of such employer (and the bene-
23 ficiaries of such employees) to retain the
24 assets in the plan, and

1 “(ii) such employer (and not the plan
2 with respect to which the failure occurred
3 or any other employer in such plan) shall,
4 except to the extent provided by the Sec-
5 retary, be liable for any liabilities with re-
6 spect to such plan attributable to employ-
7 ees of such employer (or beneficiaries of
8 such employees).

9 “(B) FAILURES BY POOLED PLAN PRO-
10 VIDERS.—If the pooled plan provider of a plan
11 described in paragraph (1)(B) does not perform
12 substantially all of the administrative duties
13 which are required of the provider under para-
14 graph (3)(A)(i) for any plan year, the Secretary
15 may provide that the determination as to
16 whether the plan meets the requirements under
17 this title applicable to a plan described in sec-
18 tion 401(a) or to a plan that consists of indi-
19 vidual retirement accounts described in section
20 408 (including by reason of subsection (c)
21 thereof), whichever is applicable, shall be made
22 in the same manner as would be made without
23 regard to paragraph (1).

24 “(3) POOLED PLAN PROVIDER.—

1 “(A) IN GENERAL.—For purposes of this
2 subsection, the term ‘pooled plan provider’
3 means, with respect to any plan, a person
4 who—

5 “(i) is designated by the terms of the
6 plan as a named fiduciary (within the
7 meaning of section 402(a)(2) of the Em-
8 ployee Retirement Income Security Act of
9 1974), as the plan administrator, and as
10 the person responsible to perform all ad-
11 ministrative duties (including conducting
12 proper testing with respect to the plan and
13 the employees of each employer in the
14 plan) which are reasonably necessary to
15 ensure that—

16 “(I) the plan meets any require-
17 ment applicable under the Employee
18 Retirement Income Security Act of
19 1974 or this title to a plan described
20 in section 401(a) or to a plan that
21 consists of individual retirement ac-
22 counts described in section 408 (in-
23 cluding by reason of subsection (c)
24 thereof), whichever is applicable, and

1 “(II) each employer in the plan
2 takes such actions as the Secretary or
3 such person determines are necessary
4 for the plan to meet the requirements
5 described in subclause (I), including
6 providing to such person any disclo-
7 sures or other information which the
8 Secretary may require or which such
9 person otherwise determines are nec-
10 essary to administer the plan or to
11 allow the plan to meet such require-
12 ments,

13 “(ii) registers as a pooled plan pro-
14 vider with the Secretary, and provides such
15 other information to the Secretary as the
16 Secretary may require, before beginning
17 operations as a pooled plan provider,

18 “(iii) acknowledges in writing that
19 such person is a named fiduciary (within
20 the meaning of section 402(a)(2) of the
21 Employee Retirement Income Security Act
22 of 1974), and the plan administrator, with
23 respect to the plan, and

24 “(iv) is responsible for ensuring that
25 all persons who handle assets of, or who

1 are fiduciaries of, the plan are bonded in
2 accordance with section 412 of the Em-
3 ployee Retirement Income Security Act of
4 1974.

5 “(B) AUDITS, EXAMINATIONS AND INVES-
6 TIGATIONS.—The Secretary may perform au-
7 dits, examinations, and investigations of pooled
8 plan providers as may be necessary to enforce
9 and carry out the purposes of this subsection.

10 “(C) AGGREGATION RULES.—For purposes
11 of this paragraph, in determining whether a
12 person meets the requirements of this para-
13 graph to be a pooled plan provider with respect
14 to any plan, all persons who perform services
15 for the plan and who are treated as a single
16 employer under subsection (b), (c), (m), or (o)
17 of section 414 shall be treated as one person.

18 “(D) TREATMENT OF EMPLOYERS AS PLAN
19 SPONSORS.—Except with respect to the admin-
20 istrative duties of the pooled plan provider de-
21 scribed in subparagraph (A)(i), each employer
22 in a plan which has a pooled plan provider shall
23 be treated as the plan sponsor with respect to
24 the portion of the plan attributable to employ-

1 ees of such employer (or beneficiaries of such
2 employees).

3 “(4) GUIDANCE.—The Secretary shall issue
4 such guidance as the Secretary determines appro-
5 priate to carry out this subsection, including guid-
6 ance—

7 “(A) to identify the administrative duties
8 and other actions required to be performed by
9 a pooled plan provider under this subsection,

10 “(B) which describes the procedures to be
11 taken to terminate a plan which fails to meet
12 the requirements to be a plan described in para-
13 graph (1), including the proper treatment of,
14 and actions needed to be taken by, any em-
15 ployer in the plan and the assets and liabilities
16 of the plan attributable to employees of such
17 employer (or beneficiaries of such employees),
18 and

19 “(C) identifying appropriate cases to which
20 the rules of paragraph (2)(A) will apply to em-
21 ployers in the plan failing to take the actions
22 described in paragraph (1).

23 The Secretary shall take into account under sub-
24 paragraph (C) whether the failure of an employer or
25 pooled plan provider to provide any disclosures or

1 other information, or to take any other action, nec-
2 essary to administer a plan or to allow a plan to
3 meet requirements applicable to the plan under sec-
4 tion 401(a) or 408, whichever is applicable, has con-
5 tinued over a period of time that demonstrates a
6 lack of commitment to compliance.

7 “(5) MODEL PLAN.—The Secretary shall pub-
8 lish model plan language which meets the require-
9 ments of this subsection and of paragraphs (43) and
10 (44) of section 3 of the Employee Retirement In-
11 come Security Act of 1974 and which may be adopt-
12 ed in order for a plan to be treated as a plan de-
13 scribed in paragraph (1)(B).”.

14 (2) CONFORMING AMENDMENT.—Section
15 413(c)(2) of such Code is amended by striking “sec-
16 tion 401(a)” and inserting “sections 401(a) and
17 408(c)”.

18 (3) TECHNICAL AMENDMENT.—Section 408(c)
19 of such Code is amended by inserting after para-
20 graph (2) the following new paragraph:

21 “(3) There is a separate accounting for any in-
22 terest of an employee or member (or spouse of an
23 employee or member) in a Roth IRA.”.

24 (b) NO COMMON INTEREST REQUIRED FOR POOLED
25 EMPLOYER PLANS.—Section 3(2) of the Employee Retire-

1 ment Income Security Act of 1974 (29 U.S.C. 1002(2))
 2 is amended by adding at the end the following:

3 “(C) A pooled employer plan shall be treat-
 4 ed as—

5 “(i) a single employee pension benefit
 6 plan or single pension plan; and

7 “(ii) a plan to which section 210(a)
 8 applies.”.

9 (c) POOLED EMPLOYER PLAN AND PROVIDER DE-
 10 FINED.—

11 (1) IN GENERAL.—Section 3 of the Employee
 12 Retirement Income Security Act of 1974 (29 U.S.C.
 13 1002) is amended by adding at the end the fol-
 14 lowing:

15 “(43) POOLED EMPLOYER PLAN.—

16 “(A) IN GENERAL.—The term ‘pooled em-
 17 ployer plan’ means a plan—

18 “(i) which is an individual account
 19 plan established or maintained for the pur-
 20 pose of providing benefits to the employees
 21 of 2 or more employers;

22 “(ii) which is a plan described in sec-
 23 tion 401(a) of the Internal Revenue Code
 24 of 1986 which includes a trust exempt
 25 from tax under section 501(a) of such

1 Code or a plan that consists of individual
2 retirement accounts described in section
3 408 of such Code (including by reason of
4 subsection (c) thereof); and

5 “(iii) the terms of which meet the re-
6 quirements of subparagraph (B).

7 Such term shall not include a plan maintained
8 by employers which have a common interest
9 other than having adopted the plan.

10 “(B) REQUIREMENTS FOR PLAN TERMS.—
11 The requirements of this subparagraph are met
12 with respect to any plan if the terms of the
13 plan—

14 “(i) designate a pooled plan provider
15 and provide that the pooled plan provider
16 is a named fiduciary of the plan;

17 “(ii) designate one or more trustees
18 meeting the requirements of section
19 408(a)(2) of the Internal Revenue Code of
20 1986 (other than an employer in the plan)
21 to be responsible for collecting contribu-
22 tions to, and holding the assets of, the
23 plan and require such trustees to imple-
24 ment written contribution collection proce-

1 dures that are reasonable, diligent, and
2 systematic;

3 “(iii) provide that each employer in
4 the plan retains fiduciary responsibility
5 for—

6 “(I) the selection and monitoring
7 in accordance with section 404(a) of
8 the person designated as the pooled
9 plan provider and any other person
10 who, in addition to the pooled plan
11 provider, is designated as a named fi-
12 duciary of the plan; and

13 “(II) to the extent not otherwise
14 delegated to another fiduciary by the
15 pooled plan provider and subject to
16 the provisions of section 404(c), the
17 investment and management of the
18 portion of the plan’s assets attrib-
19 utable to the employees of the em-
20 ployer (or beneficiaries of such em-
21 ployees);

22 “(iv) provide that employers in the
23 plan, and participants and beneficiaries,
24 are not subject to unreasonable restric-
25 tions, fees, or penalties with regard to

1 ceasing participation, receipt of distribu-
2 tions, or otherwise transferring assets of
3 the plan in accordance with section 208 or
4 paragraph (44)(C)(i)(II);

5 “(v) require—

6 “(I) the pooled plan provider to
7 provide to employers in the plan any
8 disclosures or other information which
9 the Secretary may require, including
10 any disclosures or other information
11 to facilitate the selection or any moni-
12 toring of the pooled plan provider by
13 employers in the plan; and

14 “(II) each employer in the plan
15 to take such actions as the Secretary
16 or the pooled plan provider determines
17 are necessary to administer the plan
18 or for the plan to meet any require-
19 ment applicable under this Act or the
20 Internal Revenue Code of 1986 to a
21 plan described in section 401(a) of
22 such Code or to a plan that consists
23 of individual retirement accounts de-
24 scribed in section 408 of such Code
25 (including by reason of subsection (c)

1 thereof), whichever is applicable, in-
2 cluding providing any disclosures or
3 other information which the Secretary
4 may require or which the pooled plan
5 provider otherwise determines are nec-
6 essary to administer the plan or to
7 allow the plan to meet such require-
8 ments; and

9 “(vi) provide that any disclosure or
10 other information required to be provided
11 under clause (v) may be provided in elec-
12 tronic form and will be designed to ensure
13 only reasonable costs are imposed on
14 pooled plan providers and employers in the
15 plan.

16 “(C) EXCEPTIONS.—The term ‘pooled em-
17 ployer plan’ does not include—

18 “(i) a multiemployer plan; or

19 “(ii) a plan established before the
20 date of the enactment of the Family Sav-
21 ings Act of 2018 unless the plan adminis-
22 trator elects that the plan will be treated
23 as a pooled employer plan and the plan
24 meets the requirements of this title appli-

1 cable to a pooled employer plan established
2 on or after such date.

3 “(D) TREATMENT OF EMPLOYERS AS PLAN
4 SPONSORS.—Except with respect to the admin-
5 istrative duties of the pooled plan provider de-
6 scribed in paragraph (44)(A)(i), each employer
7 in a pooled employer plan shall be treated as
8 the plan sponsor with respect to the portion of
9 the plan attributable to employees of such em-
10 ployer (or beneficiaries of such employees).

11 “(44) POOLED PLAN PROVIDER.—

12 “(A) IN GENERAL.—The term ‘pooled plan
13 provider’ means a person who—

14 “(i) is designated by the terms of a
15 pooled employer plan as a named fiduciary,
16 as the plan administrator, and as the per-
17 son responsible for the performance of all
18 administrative duties (including conducting
19 proper testing with respect to the plan and
20 the employees of each employer in the
21 plan) which are reasonably necessary to
22 ensure that—

23 “(I) the plan meets any require-
24 ment applicable under this Act or the
25 Internal Revenue Code of 1986 to a

1 plan described in section 401(a) of
2 such Code or to a plan that consists
3 of individual retirement accounts de-
4 scribed in section 408 of such Code
5 (including by reason of subsection (c)
6 thereof), whichever is applicable; and

7 “(II) each employer in the plan
8 takes such actions as the Secretary or
9 pooled plan provider determines are
10 necessary for the plan to meet the re-
11 quirements described in subclause (I),
12 including providing the disclosures
13 and information described in para-
14 graph (43)(B)(v)(II);

15 “(ii) registers as a pooled plan pro-
16 vider with the Secretary, and provides to
17 the Secretary such other information as
18 the Secretary may require, before begin-
19 ning operations as a pooled plan provider;

20 “(iii) acknowledges in writing that
21 such person is a named fiduciary, and the
22 plan administrator, with respect to the
23 pooled employer plan; and

24 “(iv) is responsible for ensuring that
25 all persons who handle assets of, or who

1 are fiduciaries of, the pooled employer plan
2 are bonded in accordance with section 412.

3 “(B) AUDITS, EXAMINATIONS AND INVESTIGATIONS.—The Secretary may perform au-
4 dits, examinations, and investigations of pooled
5 plan providers as may be necessary to enforce
6 and carry out the purposes of this paragraph
7 and paragraph (43).

8 “(C) GUIDANCE.—The Secretary shall
9 issue such guidance as the Secretary determines
10 appropriate to carry out this paragraph and
11 paragraph (43), including guidance—

12 “(i) to identify the administrative du-
13 ties and other actions required to be per-
14 formed by a pooled plan provider under ei-
15 ther such paragraph; and
16 “(ii) which requires in appropriate

17 cases that if an employer in the plan fails
18 to take the actions required under sub-
19 paragraph (A)(i)(II)—

20 “(I) the assets of the plan attrib-
21 utable to employees of such employer
22 (or beneficiaries of such employees)
23 are transferred to a plan maintained
24 only by such employer (or its suc-
25

1 cessor), to an eligible retirement plan
2 as defined in section 402(c)(8)(B) of
3 the Internal Revenue Code of 1986
4 for each individual whose account is
5 transferred, or to any other arrange-
6 ment that the Secretary determines is
7 appropriate in such guidance; and

8 “(II) such employer (and not the
9 plan with respect to which the failure
10 occurred or any other employer in
11 such plan) shall, except to the extent
12 provided in such guidance, be liable
13 for any liabilities with respect to such
14 plan attributable to employees of such
15 employer (or beneficiaries of such em-
16 ployees).

17 The Secretary shall take into account under
18 clause (ii) whether the failure of an employer or
19 pooled plan provider to provide any disclosures
20 or other information, or to take any other ac-
21 tion, necessary to administer a plan or to allow
22 a plan to meet requirements described in sub-
23 paragraph (A)(i)(II) has continued over a pe-
24 riod of time that demonstrates a lack of com-
25 mitment to compliance. The Secretary may

1 waive the requirements of subclause (ii)(I) in
2 appropriate circumstances if the Secretary de-
3 termines it is in the best interests of the em-
4 ployees of the employer referred to in such
5 clause (and the beneficiaries of such employees)
6 to retain the assets in the plan with respect to
7 which the employer’s failure occurred.

8 “(D) AGGREGATION RULES.—For purposes
9 of this paragraph, in determining whether a
10 person meets the requirements of this para-
11 graph to be a pooled plan provider with respect
12 to any plan, all persons who perform services
13 for the plan and who are treated as a single
14 employer under subsection (b), (c), (m), or (o)
15 of section 414 of the Internal Revenue Code of
16 1986 shall be treated as one person.”.

17 (2) BONDING REQUIREMENTS FOR POOLED EM-
18 PLOYER PLANS.—The last sentence of section 412(a)
19 of the Employee Retirement Income Security Act of
20 1974 (29 U.S.C. 1112(a)) is amended by inserting
21 “or in the case of a pooled employer plan (as defined
22 in section 3(43))” after “section 407(d)(1)”.

23 (3) CONFORMING AND TECHNICAL AMEND-
24 MENTS.—Section 3 of the Employee Retirement In-

1 come Security Act of 1974 (29 U.S.C. 1002) is
2 amended—

3 (A) in paragraph (16)(B)—

4 (i) by striking “or” at the end of
5 clause (ii); and

6 (ii) by striking the period at the end
7 and inserting “, or (iv) in the case of a
8 pooled employer plan, the pooled plan pro-
9 vider.”; and

10 (B) by striking the second paragraph (41).

11 (d) POOLED EMPLOYER AND MULTIPLE EMPLOYER
12 PLAN REPORTING.—

13 (1) ADDITIONAL INFORMATION.—Section 103
14 of the Employee Retirement Income Security Act of
15 1974 (29 U.S.C. 1023) is amended—

16 (A) in subsection (a)(1)(B), by striking
17 “applicable subsections (d), (e), and (f)” and
18 inserting “applicable subsections (d), (e), (f),
19 and (g)”; and

20 (B) by amending subsection (g) to read as
21 follows:

22 “(g) ADDITIONAL INFORMATION WITH RESPECT TO
23 POOLED EMPLOYER AND MULTIPLE EMPLOYER
24 PLANS.—An annual report under this section for a plan
25 year shall include—

1 “(1) with respect to any plan to which section
2 210(a) applies (including a pooled employer plan), a
3 list of employers in the plan, a good faith estimate
4 of the percentage of total contributions made by
5 such employers during the plan year, and the aggregate
6 account balances attributable to each employer
7 in the plan (determined as the sum of the account
8 balances of the employees of such employer (and the
9 beneficiaries of such employees)); and

10 “(2) with respect to a pooled employer plan, the
11 identifying information for the person designated
12 under the terms of the plan as the pooled plan pro-
13 vider.”.

14 (2) SIMPLIFIED ANNUAL REPORTS.—Section
15 104(a) of the Employee Retirement Income Security
16 Act of 1974 (29 U.S.C. 1024(a)) is amended by
17 striking paragraph (2)(A) and inserting the fol-
18 lowing:

19 “(2)(A) With respect to annual reports required
20 to be filed with the Secretary under this part, the
21 Secretary may by regulation prescribe simplified an-
22 nual reports for any pension plan that—

23 “(i) covers fewer than 100 participants; or

24 “(ii) is a plan described in section 210(a)

25 that covers fewer than 1,000 participants, but

1 only if no single employer in the plan has 100
2 or more participants covered by the plan.”.

3 (e) EFFECTIVE DATE.—

4 (1) IN GENERAL.—The amendments made by
5 this section shall apply to plan years beginning after
6 December 31, 2019.

7 (2) RULE OF CONSTRUCTION.—Nothing in the
8 amendments made by subsection (a) shall be con-
9 strued as limiting the authority of the Secretary of
10 the Treasury or the Secretary’s delegate (determined
11 without regard to such amendments) to provide for
12 the proper treatment of a failure to meet any re-
13 quirement applicable under the Internal Revenue
14 Code of 1986 with respect to one employer (and its
15 employees) in a multiple employer plan.

16 **SEC. 102. RULES RELATING TO ELECTION OF SAFE HARBOR**
17 **401(k) STATUS.**

18 (a) LIMITATION OF ANNUAL SAFE HARBOR NOTICE
19 TO MATCHING CONTRIBUTION PLANS.—

20 (1) IN GENERAL.—Section 401(k)(12)(A) of the
21 Internal Revenue Code of 1986 is amended by strik-
22 ing “if such arrangement” and all that follows and
23 inserting “if such arrangement—

1 “(i) meets the contribution require-
2 ments of subparagraph (B) and the notice
3 requirements of subparagraph (D), or

4 “(ii) meets the contribution require-
5 ments of subparagraph (C).”.

6 (2) AUTOMATIC CONTRIBUTION ARRANGE-
7 MENTS.—Section 401(k)(13)(B) of such Code is
8 amended by striking “means” and all that follows
9 and inserting “means a cash or deferred arrange-
10 ment—

11 “(i) which is described in subpara-
12 graph (D)(i)(I) and meets the applicable
13 requirements of subparagraphs (C)
14 through (E), or

15 “(ii) which is described in subpara-
16 graph (D)(i)(II) and meets the applicable
17 requirements of subparagraphs (C) and
18 (D).”.

19 (b) NONELECTIVE CONTRIBUTIONS.—Section
20 401(k)(12) of such Code is amended by redesignating sub-
21 paragraph (F) as subparagraph (G), and by inserting
22 after subparagraph (E) the following new subparagraph:

23 “(F) TIMING OF PLAN AMENDMENT FOR
24 EMPLOYER MAKING NONELECTIVE CONTRIBU-
25 TIONS.—

1 “(i) IN GENERAL.—Except as pro-
2 vided in clause (ii), a plan may be amend-
3 ed after the beginning of a plan year to
4 provide that the requirements of subpara-
5 graph (C) shall apply to the arrangement
6 for the plan year, but only if the amend-
7 ment is adopted—

8 “(I) at any time before the 30th
9 day before the close of the plan year,
10 or

11 “(II) at any time before the last
12 day under paragraph (8)(A) for dis-
13 tributing excess contributions for the
14 plan year.

15 “(ii) EXCEPTION WHERE PLAN PRO-
16 VIDED FOR MATCHING CONTRIBUTIONS.—
17 Clause (i) shall not apply to any plan year
18 if the plan provided at any time during the
19 plan year that the requirements of sub-
20 paragraph (B) or paragraph (13)(D)(i)(I)
21 applied to the plan year.

22 “(iii) 4-PERCENT CONTRIBUTION RE-
23 QUIREMENT.—Clause (i)(II) shall not
24 apply to an arrangement unless the
25 amount of the contributions described in

1 subparagraph (C) which the employer is
2 required to make under the arrangement
3 for the plan year with respect to any em-
4 ployee is an amount equal to at least 4
5 percent of the employee’s compensation.”.

6 (c) AUTOMATIC CONTRIBUTION ARRANGEMENTS.—
7 Section 401(k)(13) of such Code is amended by adding
8 at the end the following:

9 “(F) TIMING OF PLAN AMENDMENT FOR
10 EMPLOYER MAKING NONELECTIVE CONTRIBU-
11 TIONS.—

12 “(i) IN GENERAL.—Except as pro-
13 vided in clause (ii), a plan may be amend-
14 ed after the beginning of a plan year to
15 provide that the requirements of subpara-
16 graph (D)(i)(II) shall apply to the arrange-
17 ment for the plan year, but only if the
18 amendment is adopted—

19 “(I) at any time before the 30th
20 day before the close of the plan year,
21 or

22 “(II) at any time before the last
23 day under paragraph (8)(A) for dis-
24 tributing excess contributions for the
25 plan year.

1 “(ii) EXCEPTION WHERE PLAN PRO-
2 VIDED FOR MATCHING CONTRIBUTIONS.—
3 Clause (i) shall not apply to any plan year
4 if the plan provided at any time during the
5 plan year that the requirements of sub-
6 paragraph (D)(i)(I) or paragraph (12)(B)
7 applied to the plan year.

8 “(iii) 4-PERCENT CONTRIBUTION RE-
9 QUIREMENT.—Clause (i)(II) shall not
10 apply to an arrangement unless the
11 amount of the contributions described in
12 subparagraph (D)(i)(II) which the em-
13 ployer is required to make under the ar-
14 rangement for the plan year with respect
15 to any employee is an amount equal to at
16 least 4 percent of the employee’s com-
17 pensation.”.

18 (d) EFFECTIVE DATE.—The amendments made by
19 this section shall apply to plan years beginning after De-
20 cember 31, 2018.

21 **SEC. 103. CERTAIN TAXABLE NON-TUITION FELLOWSHIP**
22 **AND STIPEND PAYMENTS TREATED AS COM-**
23 **PENSATION FOR IRA PURPOSES.**

24 (a) IN GENERAL.—Section 219(f)(1) of the Internal
25 Revenue Code of 1986 is amended by adding at the end

1 the following: “The term ‘compensation’ shall include any
2 amount included in gross income and paid to an individual
3 to aid the individual in the pursuit of graduate or
4 postdoctoral study.”.

5 (b) EFFECTIVE DATE.—The amendment made by
6 this section shall apply to taxable years beginning after
7 December 31, 2018.

8 **SEC. 104. REPEAL OF MAXIMUM AGE FOR TRADITIONAL IRA**
9 **CONTRIBUTIONS.**

10 (a) IN GENERAL.—Section 219(d) of the Internal
11 Revenue Code of 1986 is amended by striking paragraph
12 (1).

13 (b) CONFORMING AMENDMENT.—Section 408A(c) of
14 the Internal Revenue Code of 1986 is amended by striking
15 paragraph (4) and by redesignating paragraphs (5), (6),
16 and (7) as paragraphs (4), (5), and (6), respectively.

17 (c) EFFECTIVE DATE.—The amendments made by
18 this section shall apply to contributions made for taxable
19 years beginning after December 31, 2018.

20 **SEC. 105. QUALIFIED EMPLOYER PLANS PROHIBITED FROM**
21 **MAKING LOANS THROUGH CREDIT CARDS**
22 **AND OTHER SIMILAR ARRANGEMENTS.**

23 (a) IN GENERAL.—Section 72(p)(2) of the Internal
24 Revenue Code of 1986 is amended by redesignating sub-

1 paragraph (D) as subparagraph (E) and by inserting after
2 subparagraph (C) the following new subparagraph:

3 “(D) PROHIBITION OF LOANS THROUGH
4 CREDIT CARDS AND OTHER SIMILAR ARRANGE-
5 MENTS.—Notwithstanding subparagraph (A),
6 paragraph (1) shall apply to any loan which is
7 made through the use of any credit card or any
8 other similar arrangement.”.

9 (b) EFFECTIVE DATE.—The amendments made by
10 subsection (a) shall apply to loans made after the date
11 of the enactment of this Act.

12 **SEC. 106. PORTABILITY OF LIFETIME INCOME INVEST-**
13 **MENTS.**

14 (a) IN GENERAL.—Section 401(a) of the Internal
15 Revenue Code of 1986 is amended by inserting after para-
16 graph (37) the following new paragraph:

17 “(38) PORTABILITY OF LIFETIME INCOME IN-
18 VESTMENTS.—

19 “(A) IN GENERAL.—Except as may be oth-
20 erwise provided by regulations, a trust forming
21 part of a defined contribution plan shall not be
22 treated as failing to constitute a qualified trust
23 under this section solely by reason of allowing—

24 “(i) qualified distributions of a life-
25 time income investment, or

1 “(ii) distributions of a lifetime income
2 investment in the form of a qualified plan
3 distribution annuity contract,
4 on or after the date that is 90 days prior to the
5 date on which such lifetime income investment
6 is no longer authorized to be held as an invest-
7 ment option under the plan.

8 “(B) DEFINITIONS.—For purposes of this
9 subsection—

10 “(i) the term ‘qualified distribution’
11 means a direct trustee-to-trustee transfer
12 described in paragraph (31)(A) to an eligi-
13 ble retirement plan (as defined in section
14 402(c)(8)(B)),

15 “(ii) the term ‘lifetime income invest-
16 ment’ means an investment option which is
17 designed to provide an employee with elec-
18 tion rights—

19 “(I) which are not uniformly
20 available with respect to other invest-
21 ment options under the plan, and

22 “(II) which are to a lifetime in-
23 come feature available through a con-
24 tract or other arrangement offered
25 under the plan (or under another eli-

1 gible retirement plan (as so defined),
2 if paid by means of a direct trustee-
3 to-trustee transfer described in para-
4 graph (31)(A) to such other eligible
5 retirement plan),

6 “(iii) the term ‘lifetime income fea-
7 ture’ means—

8 “(I) a feature which guarantees a
9 minimum level of income annually (or
10 more frequently) for at least the re-
11 mainder of the life of the employee or
12 the joint lives of the employee and the
13 employee’s designated beneficiary, or

14 “(II) an annuity payable on be-
15 half of the employee under which pay-
16 ments are made in substantially equal
17 periodic payments (not less frequently
18 than annually) over the life of the em-
19 ployee or the joint lives of the em-
20 ployee and the employee’s designated
21 beneficiary, and

22 “(iv) the term ‘qualified plan distribu-
23 tion annuity contract’ means an annuity
24 contract purchased for a participant and
25 distributed to the participant by a plan or

1 contract described in subparagraph (B) of
2 section 402(c)(8) (without regard to
3 clauses (i) and (ii) thereof).”.

4 (b) CASH OR DEFERRED ARRANGEMENT.—

5 (1) IN GENERAL.—Section 401(k)(2)(B)(i) of
6 such Code is amended by striking “or” at the end
7 of subclause (IV), by striking “and” at the end of
8 subclause (V) and inserting “or”, and by adding at
9 the end the following new subclause:

10 “(VI) except as may be otherwise
11 provided by regulations, with respect
12 to amounts invested in a lifetime in-
13 come investment (as defined in sub-
14 section (a)(38)(B)(ii)), the date that
15 is 90 days prior to the date that such
16 lifetime income investment may no
17 longer be held as an investment option
18 under the arrangement, and”.

19 (2) DISTRIBUTION REQUIREMENT.—Section
20 401(k)(2)(B) of such Code, as amended by para-
21 graph (1), is amended by striking “and” at the end
22 of clause (i), by striking the semicolon at the end of
23 clause (ii) and inserting “, and”, and by adding at
24 the end the following new clause:

1 “(iii) except as may be otherwise pro-
2 vided by regulations, in the case of
3 amounts described in clause (i)(VI), will be
4 distributed only in the form of a qualified
5 distribution (as defined in subsection
6 (a)(38)(B)(i)) or a qualified plan distribu-
7 tion annuity contract (as defined in sub-
8 section (a)(38)(B)(iv)),”.

9 (c) SECTION 403(b) PLANS.—

10 (1) ANNUITY CONTRACTS.—Section 403(b)(11)
11 of such Code is amended by striking “or” at the end
12 of subparagraph (B), by striking the period at the
13 end of subparagraph (C) and inserting “, or”, and
14 by inserting after subparagraph (C) the following
15 new subparagraph:

16 “(D) except as may be otherwise provided
17 by regulations, with respect to amounts invested
18 in a lifetime income investment (as defined in
19 section 401(a)(38)(B)(ii))—

20 “(i) on or after the date that is 90
21 days prior to the date that such lifetime
22 income investment may no longer be held
23 as an investment option under the con-
24 tract, and

1 “(ii) in the form of a qualified dis-
2 tribution (as defined in section
3 401(a)(38)(B)(i)) or a qualified plan dis-
4 tribution annuity contract (as defined in
5 section 401(a)(38)(B)(iv)).”.

6 (2) CUSTODIAL ACCOUNTS.—Section
7 403(b)(7)(A) of such Code is amended by striking
8 “if—” and all that follows and inserting “if the
9 amounts are to be invested in regulated investment
10 company stock to be held in that custodial account,
11 and under the custodial account—

12 “(i) no such amounts may be paid or
13 made available to any distributee (unless
14 such amount is a distribution to which sec-
15 tion 72(t)(2)(G) applies) before—

16 “(I) the employee dies,

17 “(II) the employee attains age
18 59½,

19 “(III) the employee has a sever-
20 ance from employment,

21 “(IV) the employee becomes dis-
22 abled (within the meaning of section
23 72(m)(7)),

24 “(V) in the case of contributions
25 made pursuant to a salary reduction

1 agreement (within the meaning of sec-
2 tion 3121(a)(5)(D)), the employee en-
3 counters financial hardship, or

4 “(VI) except as may be otherwise
5 provided by regulations, with respect
6 to amounts invested in a lifetime in-
7 come investment (as defined in section
8 401(a)(38)(B)(ii)), the date that is 90
9 days prior to the date that such life-
10 time income investment may no longer
11 be held as an investment option under
12 the contract, and

13 “(ii) in the case of amounts described
14 in clause (i)(VI), such amounts will be dis-
15 tributed only in the form of a qualified dis-
16 tribution (as defined in section
17 401(a)(38)(B)(i)) or a qualified plan dis-
18 tribution annuity contract (as defined in
19 section 401(a)(38)(B)(iv)).”.

20 (d) ELIGIBLE DEFERRED COMPENSATION PLANS.—

21 (1) IN GENERAL.—Section 457(d)(1)(A) of
22 such Code is amended by striking “or” at the end
23 of clause (ii), by inserting “or” at the end of clause
24 (iii), and by adding after clause (iii) the following:

1 “(iv) except as may be otherwise pro-
2 vided by regulations, in the case of a plan
3 maintained by an employer described in
4 subsection (e)(1)(A), with respect to
5 amounts invested in a lifetime income in-
6 vestment (as defined in section
7 401(a)(38)(B)(ii)), the date that is 90
8 days prior to the date that such lifetime
9 income investment may no longer be held
10 as an investment option under the plan.”.

11 (2) DISTRIBUTION REQUIREMENT.—Section
12 457(d)(1) of such Code is amended by striking
13 “and” at the end of subparagraph (B), by striking
14 the period at the end of subparagraph (C) and in-
15 serting “, and”, and by inserting after subparagraph
16 (C) the following new subparagraph:

17 “(D) except as may be otherwise provided
18 by regulations, in the case of amounts described
19 in subparagraph (A)(iv), such amounts will be
20 distributed only in the form of a qualified dis-
21 tribution (as defined in section
22 401(a)(38)(B)(i)) or a qualified plan distribu-
23 tion annuity contract (as defined in section
24 401(a)(38)(B)(iv)).”.

1 (e) EFFECTIVE DATE.—The amendments made by
2 this section shall apply to plan years beginning after De-
3 cember 31, 2018.

4 **SEC. 107. TREATMENT OF CUSTODIAL ACCOUNTS ON TER-**
5 **MINATION OF SECTION 403(b) PLANS.**

6 (a) IN GENERAL.—Section 403(b)(7) of the Internal
7 Revenue Code of 1986 is amended by adding at the end
8 the following:

9 “(D) TREATMENT OF CUSTODIAL AC-
10 COUNT UPON PLAN TERMINATION.—

11 “(i) IN GENERAL.—If—

12 “(I) an employer terminates the
13 plan under which amounts are con-
14 tributed to a custodial account under
15 subparagraph (A), and

16 “(II) the person holding the as-
17 sets of the account has demonstrated
18 to the satisfaction of the Secretary
19 under section 408(a)(2) that the per-
20 son is qualified to be a trustee of an
21 individual retirement plan,

22 then, as of the date of the termination, the
23 custodial account shall be deemed to be an
24 individual retirement plan for purposes of
25 this title.

1 “(ii) TREATMENT AS ROTH IRA.—Any
2 custodial account treated as an individual
3 retirement plan under clause (i) shall be
4 treated as a Roth IRA only if the custodial
5 account was a designated Roth account.”.

6 (b) EFFECTIVE DATE.—The amendment made by
7 this section shall apply to plan terminations occurring
8 after December 31, 2018.

9 **SEC. 108. CLARIFICATION OF RETIREMENT INCOME AC-**
10 **COUNT RULES RELATING TO CHURCH-CON-**
11 **TROLLED ORGANIZATIONS.**

12 (a) IN GENERAL.—Section 403(b)(9)(B) of the Inter-
13 nal Revenue Code of 1986 is amended by inserting “(in-
14 cluding an employee described in section 414(e)(3)(B))”
15 after “employee described in paragraph (1)”.

16 (b) EFFECTIVE DATE.—The amendment made by
17 this section shall apply to plan years beginning after De-
18 cember 31, 2008.

19 **SEC. 109. EXEMPTION FROM REQUIRED MINIMUM DIS-**
20 **TRIBUTION RULES FOR INDIVIDUALS WITH**
21 **CERTAIN ACCOUNT BALANCES.**

22 (a) IN GENERAL.—Section 401(a)(9) of the Internal
23 Revenue Code of 1986 is amended by adding at the end
24 the following new subparagraph:

1 “(H) EXCEPTION FROM REQUIRED MIN-
2 IMUM DISTRIBUTIONS DURING LIFE OF EM-
3 PLOYEE WHERE ASSETS DO NOT EXCEED
4 \$50,000.—

5 “(i) IN GENERAL.—If on the last day
6 of any calendar year the aggregate value of
7 an employee’s entire interest under all ap-
8 plicable eligible retirement plans does not
9 exceed \$50,000, then the requirements of
10 subparagraph (A) with respect to any dis-
11 tribution relating to such year shall not
12 apply with respect to such employee.

13 “(ii) APPLICABLE ELIGIBLE RETIRE-
14 MENT PLAN.—For purposes of this sub-
15 paragraph, the term ‘applicable eligible re-
16 tirement plan’ means an eligible retirement
17 plan (as defined in section 402(c)(8)(B))
18 other than a defined benefit plan.

19 “(iii) LIMIT ON REQUIRED MINIMUM
20 DISTRIBUTION.—The required minimum
21 distribution determined under subpara-
22 graph (A) for an employee under all appli-
23 cable eligible retirement plans shall not ex-
24 ceed an amount equal to the excess of—

1 “(I) the aggregate value of an
2 employee’s entire interest under such
3 plans on the last day of the calendar
4 year to which such distribution re-
5 lates, over

6 “(II) the dollar amount in effect
7 under clause (i) for such calendar
8 year.

9 The Secretary in regulations or other guid-
10 ance may provide how such amount shall
11 be distributed in the case of an individual
12 with more than one applicable eligible re-
13 tirement plan.

14 “(iv) INFLATION ADJUSTMENT.—In
15 the case of any calendar year beginning
16 after 2019, the \$50,000 amount in clause
17 (i) shall be increased by an amount equal
18 to—

19 “(I) such dollar amount, multi-
20 plied by

21 “(II) the cost of living adjust-
22 ment determined under section 1(f)(3)
23 for the calendar year, determined by
24 substituting ‘calendar year 2018’ for

1 ‘calendar year 2016’ in subparagraph
2 (A)(ii) thereof.

3 Any increase determined under this clause
4 shall be rounded to the next lowest mul-
5 tiple of \$5,000.

6 “(v) PLAN ADMINISTRATOR RELIANCE
7 ON EMPLOYEE CERTIFICATION.—An appli-
8 cable eligible retirement plan described in
9 clause (iii), (iv), (v), or (vi) of section
10 402(c)(8)(B) shall not be treated as failing
11 to meet the requirements of this paragraph
12 in the case of any failure to make a re-
13 quired minimum distribution for a cal-
14 endar year if—

15 “(I) the aggregate value of an
16 employee’s entire interest under all
17 applicable eligible retirement plans of
18 the employer on the last day of the
19 calendar year to which such distribu-
20 tion relates does not exceed the dollar
21 amount in effect for such year under
22 clause (i), and

23 “(II) the employee certifies that
24 the aggregate value of the employee’s
25 entire interest under all applicable eli-

1 gible retirement plans on the last day
2 of the calendar year to which such
3 distribution relates did not exceed the
4 dollar amount in effect for such year
5 under clause (i).

6 “(vi) AGGREGATION RULE.—All em-
7 ployers treated as a single employer under
8 subsection (b), (c), (m), or (o) of section
9 414 shall be treated as a single employer
10 for purposes of clause (v).”.

11 (b) PLAN ADMINISTRATOR REPORTING.—Section
12 6047 of such Code is amended by redesignating subsection
13 (h) as subsection (i) and by inserting after subsection (g)
14 the following new subsection:

15 “(h) ACCOUNT BALANCE FOR PARTICIPANTS WHO
16 HAVE ATTAINED AGE 69.—

17 “(1) IN GENERAL.—Not later than January 31
18 of each year, the plan administrator (as defined in
19 section 414(g)) of each applicable eligible retirement
20 plan (as defined in section 401(a)(9)(H)) shall make
21 a return to the Secretary with respect to each par-
22 ticipant of such plan who has attained age 69 as of
23 the end of the preceding calendar year which
24 states—

1 “(A) the name and plan number of the
2 plan,

3 “(B) the name and address of the plan ad-
4 ministrator,

5 “(C) the name, address, and taxpayer
6 identification number of the participant, and

7 “(D) the account balance of such partici-
8 pant as of the end of the preceding calendar
9 year.

10 “(2) STATEMENT FURNISHED TO PARTICI-
11 PANT.—Every person required to make a return
12 under paragraph (1) with respect to a participant
13 shall furnish a copy of such return to such partici-
14 pant.

15 “(3) APPLICATION TO INDIVIDUAL RETIREMENT
16 PLANS AND ANNUITIES.—In the case of an applica-
17 ble eligible retirement plan described in clause (i) or
18 (ii) of section 402(c)(8)(B)—

19 “(A) any reference in this subsection to
20 the plan administrator shall be treated as a ref-
21 erence to the trustee or issuer, as the case may
22 be, and

23 “(B) any reference in this subsection to
24 the participant shall be treated as a reference

1 to the individual for whom such account or an-
2 nuity is maintained.”.

3 (c) EFFECTIVE DATE.—The amendments made by
4 this section shall apply to distributions required to be
5 made in calendar years beginning more than 120 days
6 after the date of the enactment of this Act.

7 **SEC. 110. CLARIFICATION OF TREATMENT OF CERTAIN RE-**
8 **TIREMENT PLAN CONTRIBUTIONS PICKED UP**
9 **BY GOVERNMENTAL EMPLOYERS FOR NEW**
10 **OR EXISTING EMPLOYEES.**

11 (a) IN GENERAL.—Section 414(h)(2) of the Internal
12 Revenue Code of 1986 is amended—

13 (1) by striking “For purposes of paragraph
14 (1)” and inserting the following:

15 “(A) IN GENERAL.—For purposes of para-
16 graph (1)”, and

17 (2) by adding at the end the following new sub-
18 paragraph:

19 “(B) TREATMENT OF ELECTIONS BE-
20 TWEEN ALTERNATIVE BENEFIT FORMULAS.—

21 For purposes of subparagraph (A), a contribu-
22 tion shall not fail to be treated as picked up by
23 an employing unit merely because the employee
24 may make an irrevocable election between the
25 application of two alternative benefit formulas

1 involving the same or different levels of em-
2 ployee contributions.”.

3 (b) **EFFECTIVE DATE.**—The amendment made by
4 this section shall apply to plan years beginning after the
5 date of the enactment of this Act.

6 **SEC. 111. ELECTIVE DEFERRALS BY MEMBERS OF THE**
7 **READY RESERVE OF A RESERVE COMPONENT**
8 **OF THE ARMED FORCES.**

9 (a) **IN GENERAL.**—Section 402(g) of the Internal
10 Revenue Code of 1986 is amended by adding at the end
11 the following new paragraph:

12 “(9) **ELECTIVE DEFERRALS BY MEMBERS OF**
13 **READY RESERVE.**—

14 “(A) **IN GENERAL.**—In the case of a quali-
15 fied ready reservist for any taxable year, the
16 limitations of subparagraphs (A) and (C) of
17 paragraph (1) shall be applied separately with
18 respect to—

19 “(i) elective deferrals of such qualified
20 ready reservist with respect to compensa-
21 tion described in subparagraph (B), and

22 “(ii) all other elective deferrals of
23 such qualified ready reservist.

24 “(B) **QUALIFIED READY RESERVIST.**—For
25 purposes of this paragraph, the term ‘qualified

1 ready reservist’ means any individual for any
 2 taxable year if such individual received com-
 3 pensation for service as a member of the Ready
 4 Reserve of a reserve component (as defined in
 5 section 101 of title 37, United States Code)
 6 during such taxable year.”.

7 (b) EFFECTIVE DATE.—The amendment made by
 8 this section shall apply to plan years beginning after De-
 9 cember 31, 2018.

10 **TITLE II—ADMINISTRATIVE** 11 **IMPROVEMENTS**

12 **SEC. 201. PLAN ADOPTED BY FILING DUE DATE FOR YEAR** 13 **MAY BE TREATED AS IN EFFECT AS OF CLOSE** 14 **OF YEAR.**

15 (a) IN GENERAL.—Section 401(b) of the Internal
 16 Revenue Code of 1986 is amended—

17 (1) by striking “RETROACTIVE CHANGES IN
 18 PLAN.—A stock bonus” and inserting “PLAN
 19 AMENDMENTS.—

20 “(1) CERTAIN RETROACTIVE CHANGES IN
 21 PLAN.—A stock bonus”, and

22 (2) by adding at the end the following new
 23 paragraph:

24 “(2) ADOPTION OF PLAN.—If an employer
 25 adopts a stock bonus, pension, profit-sharing, or an-

1 nuity plan after the close of a taxable year but be-
2 fore the time prescribed by law for filing the employ-
3 er’s return of tax for the taxable year (including ex-
4 tensions thereof), the employer may elect to treat
5 the plan as having been adopted as of the last day
6 of the taxable year.”.

7 (b) EFFECTIVE DATE.—The amendments made by
8 this section shall apply to plans adopted for taxable years
9 beginning after December 31, 2018.

10 **SEC. 202. MODIFICATION OF NONDISCRIMINATION RULES**

11 **TO PROTECT OLDER, LONGER SERVICE PAR-**
12 **TICIPANTS.**

13 (a) IN GENERAL.—Section 401 of the Internal Rev-
14 enue Code of 1986 is amended—

15 (1) by redesignating subsection (o) as sub-
16 section (p), and

17 (2) by inserting after subsection (n) the fol-
18 lowing new subsection:

19 “(o) SPECIAL RULES FOR APPLYING NON-
20 DISCRIMINATION RULES TO PROTECT OLDER, LONGER
21 SERVICE AND GRANDFATHERED PARTICIPANTS.—

22 “(1) TESTING OF DEFINED BENEFIT PLANS
23 WITH CLOSED CLASSES OF PARTICIPANTS.—

24 “(A) BENEFITS, RIGHTS, OR FEATURES
25 PROVIDED TO CLOSED CLASSES.—A defined

1 benefit plan which provides benefits, rights, or
2 features to a closed class of participants shall
3 not fail to satisfy the requirements of sub-
4 section (a)(4) by reason of the composition of
5 such closed class or the benefits, rights, or fea-
6 tures provided to such closed class, if—

7 “(i) for the plan year as of which the
8 class closes and the 2 succeeding plan
9 years, such benefits, rights, and features
10 satisfy the requirements of subsection
11 (a)(4) (without regard to this subpara-
12 graph but taking into account the rules of
13 subparagraph (I)),

14 “(ii) after the date as of which the
15 class was closed, any plan amendment
16 which modifies the closed class or the ben-
17 efits, rights, and features provided to such
18 closed class does not discriminate signifi-
19 cantly in favor of highly compensated em-
20 ployees, and

21 “(iii) the class was closed before April
22 5, 2017, or the plan is described in sub-
23 paragraph (C).

1 “(B) AGGREGATE TESTING WITH DEFINED
2 CONTRIBUTION PLANS PERMITTED ON A BENE-
3 FITS BASIS.—

4 “(i) IN GENERAL.—For purposes of
5 determining compliance with subsection
6 (a)(4) and section 410(b), a defined benefit
7 plan described in clause (iii) may be aggre-
8 gated and tested on a benefits basis with
9 1 or more defined contribution plans, in-
10 cluding with the portion of 1 or more de-
11 fined contribution plans which—

12 “(I) provides matching contribu-
13 tions (as defined in subsection
14 (m)(4)(A)),

15 “(II) provides annuity contracts
16 described in section 403(b) which are
17 purchased with matching contribu-
18 tions or nonelective contributions, or

19 “(III) consists of an employee
20 stock ownership plan (within the
21 meaning of section 4975(e)(7)) or a
22 tax credit employee stock ownership
23 plan (within the meaning of section
24 409(a)).

1 “(ii) SPECIAL RULES FOR MATCHING
2 CONTRIBUTIONS.—For purposes of clause
3 (i), if a defined benefit plan is aggregated
4 with a portion of a defined contribution
5 plan providing matching contributions—

6 “(I) such defined benefit plan
7 must also be aggregated with any por-
8 tion of such defined contribution plan
9 which provides elective deferrals de-
10 scribed in subparagraph (A) or (C) of
11 section 402(g)(3), and

12 “(II) such matching contribu-
13 tions shall be treated in the same
14 manner as nonelective contributions,
15 including for purposes of applying the
16 rules of subsection (l).

17 “(iii) PLANS DESCRIBED.—A defined
18 benefit plan is described in this clause if—

19 “(I) the plan provides benefits to
20 a closed class of participants,

21 “(II) for the plan year as of
22 which the class closes and the 2 suc-
23 ceeding plan years, the plan satisfies
24 the requirements of section 410(b)
25 and subsection (a)(4) (without regard

1 to this subparagraph but taking into
2 account the rules of subparagraph
3 (I)),

4 “(III) after the date as of which
5 the class was closed, any plan amend-
6 ment which modifies the closed class
7 or the benefits provided to such closed
8 class does not discriminate signifi-
9 cantly in favor of highly compensated
10 employees, and

11 “(IV) the class was closed before
12 April 5, 2017, or the plan is described
13 in subparagraph (C).

14 “(C) PLANS DESCRIBED.—A plan is de-
15 scribed in this subparagraph if, taking into ac-
16 count any predecessor plan—

17 “(i) such plan has been in effect for
18 at least 5 years as of the date the class is
19 closed, and

20 “(ii) during the 5-year period pre-
21 ceding the date the class is closed, there
22 has not been a substantial increase in the
23 coverage or value of the benefits, rights, or
24 features described in subparagraph (A) or
25 in the coverage or benefits under the plan

1 described in subparagraph (B)(iii) (which-
2 ever is applicable).

3 “(D) DETERMINATION OF SUBSTANTIAL
4 INCREASE FOR BENEFITS, RIGHTS, AND FEA-
5 TURES.—In applying subparagraph (C)(ii) for
6 purposes of subparagraph (A)(iii), a plan shall
7 be treated as having had a substantial increase
8 in coverage or value of the benefits, rights, or
9 features described in subparagraph (A) during
10 the applicable 5-year period only if, during such
11 period—

12 “(i) the number of participants cov-
13 ered by such benefits, rights, or features
14 on the date such period ends is more than
15 50 percent greater than the number of
16 such participants on the first day of the
17 plan year in which such period began, or

18 “(ii) such benefits, rights, and fea-
19 tures have been modified by 1 or more
20 plan amendments in such a way that, as of
21 the date the class is closed, the value of
22 such benefits, rights, and features to the
23 closed class as a whole is substantially
24 greater than the value as of the first day

1 of such 5-year period, solely as a result of
2 such amendments.

3 “(E) DETERMINATION OF SUBSTANTIAL
4 INCREASE FOR AGGREGATE TESTING ON BENE-
5 FITS BASIS.—In applying subparagraph (C)(ii)
6 for purposes of subparagraph (B)(iii)(IV), a
7 plan shall be treated as having had a substan-
8 tial increase in coverage or benefits during the
9 applicable 5-year period only if, during such pe-
10 riod—

11 “(i) the number of participants bene-
12 fitting under the plan on the date such pe-
13 riod ends is more than 50 percent greater
14 than the number of such participants on
15 the first day of the plan year in which such
16 period began, or

17 “(ii) the average benefit provided to
18 such participants on the date such period
19 ends is more than 50 percent greater than
20 the average benefit provided on the first
21 day of the plan year in which such period
22 began.

23 “(F) CERTAIN EMPLOYEES DIS-
24 REGARDED.—For purposes of subparagraphs
25 (D) and (E), any increase in coverage or value

1 or in coverage or benefits, whichever is applica-
2 ble, which is attributable to such coverage and
3 value or coverage and benefits provided to em-
4 ployees—

5 “(i) who became participants as a re-
6 sult of a merger, acquisition, or similar
7 event which occurred during the 7-year pe-
8 riod preceding the date the class is closed,
9 or

10 “(ii) who became participants by rea-
11 son of a merger of the plan with another
12 plan which had been in effect for at least
13 5 years as of the date of the merger,
14 shall be disregarded, except that clause (ii)
15 shall apply for purposes of subparagraph (D)
16 only if, under the merger, the benefits, rights,
17 or features under 1 plan are conformed to the
18 benefits, rights, or features of the other plan
19 prospectively.

20 “(G) RULES RELATING TO AVERAGE BEN-
21 EFIT.—For purposes of subparagraph (E)—

22 “(i) the average benefit provided to
23 participants under the plan will be treated
24 as having remained the same between the
25 2 dates described in subparagraph (E)(ii)

1 if the benefit formula applicable to such
2 participants has not changed between such
3 dates, and

4 “(ii) if the benefit formula applicable
5 to 1 or more participants under the plan
6 has changed between such 2 dates, then
7 the average benefit under the plan shall be
8 considered to have increased by more than
9 50 percent only if—

10 “(I) the total amount determined
11 under section 430(b)(1)(A)(i) for all
12 participants benefitting under the
13 plan for the plan year in which the 5-
14 year period described in subparagraph
15 (E) ends, exceeds

16 “(II) the total amount deter-
17 mined under section 430(b)(1)(A)(i)
18 for all such participants for such plan
19 year, by using the benefit formula in
20 effect for each such participant for
21 the first plan year in such 5-year pe-
22 riod, by more than 50 percent.

23 In the case of a CSEC plan (as defined in
24 section 414(y)), the normal cost of the
25 plan (as determined under section

1 433(j)(1)(B)) shall be used in lieu of the
2 amount determined under section
3 430(b)(1)(A)(i).

4 “(H) TREATMENT AS SINGLE PLAN.—For
5 purposes of subparagraphs (E) and (G), a plan
6 described in section 413(c) shall be treated as
7 a single plan rather than as separate plans
8 maintained by each employer in the plan.

9 “(I) SPECIAL RULES.—For purposes of
10 subparagraphs (A)(i) and (B)(iii)(II), the fol-
11 lowing rules shall apply:

12 “(i) In applying section 410(b)(6)(C),
13 the closing of the class of participants shall
14 not be treated as a significant change in
15 coverage under section 410(b)(6)(C)(i)(II).

16 “(ii) 2 or more plans shall not fail to
17 be eligible to be aggregated and treated as
18 a single plan solely by reason of having dif-
19 ferent plan years.

20 “(iii) Changes in the employee popu-
21 lation shall be disregarded to the extent at-
22 tributable to individuals who become em-
23 ployees or cease to be employees, after the
24 date the class is closed, by reason of a

1 merger, acquisition, divestiture, or similar
2 event.

3 “(iv) Aggregation and all other testing
4 methodologies otherwise applicable under
5 subsection (a)(4) and section 410(b) may
6 be taken into account.

7 The rule of clause (ii) shall also apply for pur-
8 poses of determining whether plans to which
9 subparagraph (B)(i) applies may be aggregated
10 and treated as 1 plan for purposes of deter-
11 mining whether such plans meet the require-
12 ments of subsection (a)(4) and section 410(b).

13 “(J) SPUN-OFF PLANS.—For purposes of
14 this paragraph, if a portion of a defined benefit
15 plan described in subparagraph (A) or (B)(iii)
16 is spun off to another employer and the spun-
17 off plan continues to satisfy the requirements
18 of—

19 “(i) subparagraph (A)(i) or
20 (B)(iii)(II), whichever is applicable, if the
21 original plan was still within the 3-year pe-
22 riod described in such subparagraph at the
23 time of the spin off, and

24 “(ii) subparagraph (A)(ii) or
25 (B)(iii)(III), whichever is applicable,

1 the treatment under subparagraph (A) or (B)
2 of the spun-off plan shall continue with respect
3 to such other employer.

4 “(2) TESTING OF DEFINED CONTRIBUTION
5 PLANS.—

6 “(A) TESTING ON A BENEFITS BASIS.—A
7 defined contribution plan shall be permitted to
8 be tested on a benefits basis if—

9 “(i) such defined contribution plan
10 provides make-whole contributions to a
11 closed class of participants whose accruals
12 under a defined benefit plan have been re-
13 duced or eliminated,

14 “(ii) for the plan year of the defined
15 contribution plan as of which the class eli-
16 gible to receive such make-whole contribu-
17 tions closes and the 2 succeeding plan
18 years, such closed class of participants sat-
19 isfies the requirements of section
20 410(b)(2)(A)(i) (determined by applying
21 the rules of paragraph (1)(I)),

22 “(iii) after the date as of which the
23 class was closed, any plan amendment to
24 the defined contribution plan which modi-
25 fies the closed class or the allocations, ben-

1 efits, rights, and features provided to such
2 closed class does not discriminate signifi-
3 cantly in favor of highly compensated em-
4 ployees, and

5 “(iv) the class was closed before April
6 5, 2017, or the defined benefit plan under
7 clause (i) is described in paragraph (1)(C)
8 (as applied for purposes of paragraph
9 (1)(B)(iii)(IV)).

10 “(B) AGGREGATION WITH PLANS INCLUD-
11 ING MATCHING CONTRIBUTIONS.—

12 “(i) IN GENERAL.—With respect to 1
13 or more defined contribution plans de-
14 scribed in subparagraph (A), for purposes
15 of determining compliance with subsection
16 (a)(4) and section 410(b), the portion of
17 such plans which provides make-whole con-
18 tributions or other nonelective contribu-
19 tions may be aggregated and tested on a
20 benefits basis with the portion of 1 or
21 more other defined contribution plans
22 which—

23 “(I) provides matching contribu-
24 tions (as defined in subsection
25 (m)(4)(A)),

1 “(II) provides annuity contracts
2 described in section 403(b) which are
3 purchased with matching contribu-
4 tions or nonelective contributions, or

5 “(III) consists of an employee
6 stock ownership plan (within the
7 meaning of section 4975(e)(7)) or a
8 tax credit employee stock ownership
9 plan (within the meaning of section
10 409(a)).

11 “(ii) SPECIAL RULES FOR MATCHING
12 CONTRIBUTIONS.—Rules similar to the
13 rules of paragraph (1)(B)(ii) shall apply
14 for purposes of clause (i).

15 “(C) SPECIAL RULES FOR TESTING DE-
16 FINED CONTRIBUTION PLAN FEATURES PRO-
17 VIDING MATCHING CONTRIBUTIONS TO CERTAIN
18 OLDER, LONGER SERVICE PARTICIPANTS.—In
19 the case of a defined contribution plan which
20 provides benefits, rights, or features to a closed
21 class of participants whose accruals under a de-
22 fined benefit plan have been reduced or elimi-
23 nated, the plan shall not fail to satisfy the re-
24 quirements of subsection (a)(4) solely by reason
25 of the composition of the closed class or the

1 benefits, rights, or features provided to such
2 closed class if the defined contribution plan and
3 defined benefit plan otherwise meet the require-
4 ments of subparagraph (A) but for the fact that
5 the make-whole contributions under the defined
6 contribution plan are made in whole or in part
7 through matching contributions.

8 “(D) SPUN-OFF PLANS.—For purposes of
9 this paragraph, if a portion of a defined con-
10 tribution plan described in subparagraph (A) or
11 (C) is spun off to another employer, the treat-
12 ment under subparagraph (A) or (C) of the
13 spun-off plan shall continue with respect to the
14 other employer if such plan continues to comply
15 with the requirements of clauses (ii) (if the
16 original plan was still within the 3-year period
17 described in such clause at the time of the spin
18 off) and (iii) of subparagraph (A), as deter-
19 mined for purposes of subparagraph (A) or (C),
20 whichever is applicable.

21 “(3) DEFINITIONS.—For purposes of this sub-
22 section—

23 “(A) MAKE-WHOLE CONTRIBUTIONS.—Ex-
24 cept as otherwise provided in paragraph (2)(C),
25 the term ‘make-whole contributions’ means non-

1 elective allocations for each employee in the
2 class which are reasonably calculated, in a con-
3 sistent manner, to replace some or all of the re-
4 tirement benefits which the employee would
5 have received under the defined benefit plan
6 and any other plan or qualified cash or deferred
7 arrangement under subsection (k)(2) if no
8 change had been made to such defined benefit
9 plan and such other plan or arrangement. For
10 purposes of the preceding sentence, consistency
11 shall not be required with respect to employees
12 who were subject to different benefit formulas
13 under the defined benefit plan.

14 “(B) REFERENCES TO CLOSED CLASS OF
15 PARTICIPANTS.—References to a closed class of
16 participants and similar references to a closed
17 class shall include arrangements under which 1
18 or more classes of participants are closed, ex-
19 cept that 1 or more classes of participants
20 closed on different dates shall not be aggre-
21 gated for purposes of determining the date any
22 such class was closed.

23 “(C) HIGHLY COMPENSATED EMPLOYEE.—
24 The term ‘highly compensated employee’ has

1 the meaning given such term in section
2 414(q).”.

3 (b) PARTICIPATION REQUIREMENTS.—Section
4 401(a)(26) of such Code is amended by adding at the end
5 the following new subparagraph:

6 “(I) PROTECTED PARTICIPANTS.—

7 “(i) IN GENERAL.—A plan shall be
8 deemed to satisfy the requirements of sub-
9 paragraph (A) if—

10 “(I) the plan is amended—

11 “(aa) to cease all benefit ac-
12 cruals, or

13 “(bb) to provide future ben-
14 efit accruals only to a closed
15 class of participants,

16 “(II) the plan satisfies subpara-
17 graph (A) (without regard to this sub-
18 paragraph) as of the effective date of
19 the amendment, and

20 “(III) the amendment was adopt-
21 ed before April 5, 2017, or the plan is
22 described in clause (ii).

23 “(ii) PLANS DESCRIBED.—A plan is
24 described in this clause if the plan would
25 be described in subsection (o)(1)(C), as ap-

1 plied for purposes of subsection
2 (o)(1)(B)(iii)(IV) and by treating the effec-
3 tive date of the amendment as the date the
4 class was closed for purposes of subsection
5 (o)(1)(C).

6 “(iii) SPECIAL RULES.—For purposes
7 of clause (i)(II), in applying section
8 410(b)(6)(C), the amendments described in
9 clause (i) shall not be treated as a signifi-
10 cant change in coverage under section
11 410(b)(6)(C)(i)(II).

12 “(iv) SPUN-OFF PLANS.—For pur-
13 poses of this subparagraph, if a portion of
14 a plan described in clause (i) is spun off to
15 another employer, the treatment under
16 clause (i) of the spun-off plan shall con-
17 tinue with respect to the other employer.”.

18 (c) EFFECTIVE DATE.—

19 (1) IN GENERAL.—Except as provided in para-
20 graph (2), the amendments made by this section
21 shall take effect on the date of the enactment of this
22 Act, without regard to whether any plan modifica-
23 tions referred to in such amendments are adopted or
24 effective before, on, or after such date of enactment.

25 (2) SPECIAL RULES.—

1 (A) ELECTION OF EARLIER APPLICA-
2 TION.—At the election of the plan sponsor, the
3 amendments made by this section shall apply to
4 plan years beginning after December 31, 2013.

5 (B) CLOSED CLASSES OF PARTICIPANTS.—
6 For purposes of paragraphs (1)(A)(iii),
7 (1)(B)(iii)(IV), and (2)(A)(iv) of section 401(o)
8 of the Internal Revenue Code of 1986 (as added
9 by this section), a closed class of participants
10 shall be treated as being closed before April 5,
11 2017, if the plan sponsor’s intention to create
12 such closed class is reflected in formal written
13 documents and communicated to participants
14 before such date.

15 (C) CERTAIN POST-ENACTMENT PLAN
16 AMENDMENTS.—A plan shall not be treated as
17 failing to be eligible for the application of sec-
18 tion 401(o)(1)(A), 401(o)(1)(B)(iii), or
19 401(a)(26) of such Code (as added by this sec-
20 tion) to such plan solely because in the case
21 of—

22 (i) such section 401(o)(1)(A), the plan
23 was amended before the date of the enact-
24 ment of this Act to eliminate 1 or more
25 benefits, rights, or features, and is further

1 amended after such date of enactment to
2 provide such previously eliminated benefits,
3 rights, or features to a closed class of par-
4 ticipants, or

5 (ii) such section 401(o)(1)(B)(iii) or
6 section 401(a)(26), the plan was amended
7 before the date of the enactment of this
8 Act to cease all benefit accruals, and is
9 further amended after such date of enact-
10 ment to provide benefit accruals to a closed
11 class of participants. Any such section
12 shall only apply if the plan otherwise meets
13 the requirements of such section and in ap-
14 plying such section, the date the class of
15 participants is closed shall be the effective
16 date of the later amendment.

17 **SEC. 203. FIDUCIARY SAFE HARBOR FOR SELECTION OF**
18 **LIFETIME INCOME PROVIDER.**

19 Section 404 of the Employee Retirement Income Se-
20 curity Act of 1974 (29 U.S.C. 1104) is amended by adding
21 at the end the following:

22 “(e) SAFE HARBOR FOR ANNUITY SELECTION.—

23 “(1) IN GENERAL.—With respect to the selec-
24 tion of an insurer for a guaranteed retirement in-
25 come contract, the requirements of subsection

1 (a)(1)(B) will be deemed to be satisfied if a fidu-
2 ciary—

3 “(A) engages in an objective, thorough,
4 and analytical search for the purpose of identi-
5 fying insurers from which to purchase such con-
6 tracts;

7 “(B) with respect to each insurer identified
8 under subparagraph (A)—

9 “(i) considers the financial capability
10 of such insurer to satisfy its obligations
11 under the guaranteed retirement income
12 contract; and

13 “(ii) considers the cost (including fees
14 and commissions) of the guaranteed retire-
15 ment income contract offered by the in-
16 surer in relation to the benefits and prod-
17 uct features of the contract and adminis-
18 trative services to be provided under such
19 contract; and

20 “(C) on the basis of such consideration,
21 concludes that—

22 “(i) at the time of the selection, the
23 insurer is financially capable of satisfying
24 its obligations under the guaranteed retire-
25 ment income contract; and

1 “(ii) the relative cost of the selected
2 guaranteed retirement income contract as
3 described in subparagraph (B)(ii) is rea-
4 sonable.

5 “(2) FINANCIAL CAPABILITY OF THE IN-
6 SURER.—A fiduciary will be deemed to satisfy the
7 requirements of paragraphs (1)(B)(i) and (1)(C)(i)
8 if—

9 “(A) the fiduciary obtains written rep-
10 resentations from the insurer that—

11 “(i) the insurer is licensed to offer
12 guaranteed retirement income contracts;

13 “(ii) the insurer, at the time of selec-
14 tion and for each of the immediately pre-
15 ceding 7 plan years—

16 “(I) operates under a certificate
17 of authority from the insurance com-
18 missioner of its domiciliary State
19 which has not been revoked or sus-
20 pended;

21 “(II) has filed audited financial
22 statements in accordance with the
23 laws of its domiciliary State under ap-
24 plicable statutory accounting prin-
25 ciples;

1 “(III) maintains (and has main-
2 tained) reserves which satisfies all the
3 statutory requirements of all States
4 where the insurer does business; and

5 “(IV) is not operating under an
6 order of supervision, rehabilitation, or
7 liquidation;

8 “(iii) the insurer undergoes, at least
9 every 5 years, a financial examination
10 (within the meaning of the law of its domi-
11 ciliary State) by the insurance commis-
12 sioner of the domiciliary State (or rep-
13 resentative, designee, or other party ap-
14 proved by such commissioner); and

15 “(iv) the insurer will notify the fidu-
16 ciary of any change in circumstances oc-
17 curring after the provision of the represen-
18 tations in clauses (i), (ii), and (iii) which
19 would preclude the insurer from making
20 such representations at the time of
21 issuance of the guaranteed retirement in-
22 come contract; and

23 “(B) after receiving such representations
24 and as of the time of selection, the fiduciary
25 has not received any notice described in sub-

1 paragraph (A)(iv) and is in possession of no
2 other information which would cause the fidu-
3 ciary to question the representations provided.

4 “(3) NO REQUIREMENT TO SELECT LOWEST
5 COST.—Nothing in this subsection shall be construed
6 to require a fiduciary to select the lowest cost con-
7 tract. A fiduciary may consider the value of a con-
8 tract, including features and benefits of the contract
9 and attributes of the insurer (including, without lim-
10 itation, the insurer’s financial strength) in conjunc-
11 tion with the cost of the contract.

12 “(4) TIME OF SELECTION.—

13 “(A) IN GENERAL.—For purposes of this
14 subsection, the time of selection is—

15 “(i) the time that the insurer and the
16 contract are selected for distribution of
17 benefits to a specific participant or bene-
18 ficiary; or

19 “(ii) if the fiduciary periodically re-
20 views the continuing appropriateness of the
21 conclusion described in paragraph (1)(C)
22 with respect to a selected insurer, taking
23 into account the considerations described
24 in such paragraph, the time that the in-
25 surer and the contract are selected to pro-

1 vide benefits at future dates to participants
2 or beneficiaries under the plan.

3 Nothing in the preceding sentence shall be con-
4 strued to require the fiduciary to review the ap-
5 propriateness of a selection after the purchase
6 of a contract for a participant or beneficiary.

7 “(B) PERIODIC REVIEW.—A fiduciary will
8 be deemed to have conducted the periodic re-
9 view described in subparagraph (A)(ii) if the fi-
10 diciary obtains the written representations de-
11 scribed in clauses (i), (ii), and (iii) of paragraph
12 (2)(A) from the insurer on an annual basis, un-
13 less the fiduciary receives any notice described
14 in paragraph (2)(A)(iv) or otherwise becomes
15 aware of facts that would cause the fiduciary to
16 question such representations.

17 “(5) LIMITED LIABILITY.—A fiduciary which
18 satisfies the requirements of this subsection shall not
19 be liable following the distribution of any benefit, or
20 the investment by or on behalf of a participant or
21 beneficiary pursuant to the selected guaranteed re-
22 tirement income contract, for any losses that may
23 result to the participant or beneficiary due to an in-
24 surer’s inability to satisfy its financial obligations
25 under the terms of such contract.

1 “(6) DEFINITIONS.—For purposes of this sub-
2 section—

3 “(A) INSURER.—The term ‘insurer’ means
4 an insurance company, insurance service, or in-
5 surance organization, including affiliates of
6 such companies.

7 “(B) GUARANTEED RETIREMENT INCOME
8 CONTRACT.—The term ‘guaranteed retirement
9 income contract’ means an annuity contract for
10 a fixed term or a contract (or provision or fea-
11 ture thereof) which provides guaranteed bene-
12 fits annually (or more frequently) for at least
13 the remainder of the life of the participant or
14 the joint lives of the participant and the partici-
15 pant’s designated beneficiary as part of an indi-
16 vidual account plan.”.

17 **TITLE III—OTHER SAVINGS**
18 **PROVISIONS**

19 **SEC. 301. UNIVERSAL SAVINGS ACCOUNTS.**

20 (a) IN GENERAL.—Subchapter F of chapter 1 of the
21 Internal Revenue Code of 1986 is amended by adding at
22 the end the following new part:

23 **“PART IX—UNIVERSAL SAVINGS ACCOUNTS**

“Sec. 530U. Universal Savings Accounts.

1 **“SEC. 530U. UNIVERSAL SAVINGS ACCOUNTS.**

2 “(a) GENERAL RULE.—A Universal Savings Account
3 shall be exempt from taxation under this subtitle. Not-
4 withstanding the preceding sentence, such account shall
5 be subject to the taxes imposed by section 511 (relating
6 to imposition of tax on unrelated business income of chari-
7 table organizations).

8 “(b) UNIVERSAL SAVINGS ACCOUNT.—For purposes
9 of this section, the term ‘Universal Savings Account’
10 means a trust created or organized in the United States
11 by an individual for the exclusive benefit of such individual
12 and which is designated (in such manner as the Secretary
13 may prescribe) at the time of the establishment of the
14 trust as a Universal Savings Account, but only if the writ-
15 ten governing instrument creating the trust meets the fol-
16 lowing requirements:

17 “(1) Except in the case of a qualified rollover
18 contribution described in subsection (d)—

19 “(A) no contribution will be accepted un-
20 less it is in cash, and

21 “(B) contributions will not be accepted for
22 the taxable year in excess of the contribution
23 limit specified in subsection (c)(2).

24 “(2) No distribution will be made unless it is—

25 “(A) cash, or

26 “(B) property that—

1 “(i) has a readily ascertainable fair
2 market value, and

3 “(ii) is identified by the Secretary in
4 regulations or other guidance as property
5 to which this subparagraph applies.

6 “(3) The trustee is a bank (as defined in sec-
7 tion 408(n)) or another person who demonstrates to
8 the satisfaction of the Secretary that the manner in
9 which that person will administer the trust will be
10 consistent with the requirements of this section.

11 “(4) No part of the trust assets will be invested
12 in life insurance contracts or collectibles (as defined
13 in section 408(m)).

14 “(5) The interest of an individual in the bal-
15 ance of his account is nonforfeitable.

16 “(6) The assets of the trust shall not be com-
17 mingled with other property except in a common
18 trust fund or common investment fund.

19 “(c) TREATMENT OF DISTRIBUTIONS AND CON-
20 TRIBUTIONS.—

21 “(1) DISTRIBUTIONS.—

22 “(A) IN GENERAL.—Except as provided in
23 subparagraph (B), any distribution from a Uni-
24 versal Savings Account shall not be includible in
25 gross income.

1 “(B) NET INCOME ATTRIBUTABLE TO EX-
2 CESS CONTRIBUTIONS.—Any distribution of net
3 income described in section 4973(i)(2) shall be
4 includible in the gross income of the account
5 holder in the taxable year in which the con-
6 tribution to which such net income relates was
7 made.

8 “(2) CONTRIBUTION LIMIT.—

9 “(A) IN GENERAL.—The aggregate
10 amount of contributions (other than qualified
11 rollover contributions described in subsection
12 (d)) for any taxable year to all Universal Sav-
13 ings Accounts maintained for the benefit of an
14 individual shall not exceed the lesser of—

15 “(i) \$2,500, or

16 “(ii) an amount equal to the com-
17 pensation (within the meaning of section
18 219) includible in such individual’s gross
19 income for such taxable year.

20 “(B) NO CONTRIBUTIONS FOR DEPEND-
21 ENTS.—In the case of an individual who is a
22 dependent of another taxpayer for a taxable
23 year beginning in the calendar year in which
24 such individual’s taxable year begins, the dollar

1 amount under subparagraph (A) for such indi-
2 vidual's taxable year shall be zero.

3 “(C) SPECIAL RULE IN CASE OF JOINT RE-
4 TURN.—

5 “(i) IN GENERAL.—In the case of an
6 individual to whom this clause applies, the
7 amount determined under subparagraph
8 (A)(ii) with respect to such individual for
9 the taxable year shall not be less than an
10 amount equal to the sum of—

11 “(I) the compensation of such in-
12 dividual includible in gross income for
13 the taxable year, plus

14 “(II) the compensation of such
15 individual's spouse includible in gross
16 income for the taxable year reduced
17 (but not below zero) by the amount
18 contributed for the taxable year to all
19 Universal Savings Accounts main-
20 tained for the benefit of such spouse.

21 “(ii) INDIVIDUAL TO WHOM CLAUSE
22 (i) APPLIES.—Clause (i) shall apply to any
23 individual—

24 “(I) who files a joint return for
25 the taxable year, and

1 “(II) whose compensation includ-
2 ible in gross income for the taxable
3 year is less than the compensation of
4 such individual’s spouse includible in
5 gross income for the taxable year.

6 “(D) COST-OF-LIVING ADJUSTMENT.—In
7 the case of any taxable year beginning in a cal-
8 endar year after 2019, the \$2,500 amount
9 under subparagraph (A)(i) shall be increased by
10 an amount equal to—

11 “(i) such dollar amount, multiplied by

12 “(ii) the cost-of-living adjustment de-
13 termined under section 1(f)(3) for the cal-
14 endar year, determined by substituting
15 ‘calendar year 2018’ for ‘calendar year
16 2016’ in subparagraph (A)(ii) thereof.

17 If any amount after adjustment under the pre-
18 ceding sentence is not a multiple of \$100, such
19 amount shall be rounded to the next lower mul-
20 tiple of \$100.

21 “(d) QUALIFIED ROLLOVER CONTRIBUTION.—For
22 purposes of this section, the term ‘qualified rollover con-
23 tribution’ means a contribution to a Universal Savings Ac-
24 count from another such account of the same individual,

1 but only if such amount is contributed not later than the
2 60th day after the distribution from such other account.

3 “(e) TREATMENT OF ACCOUNT UPON DEATH.—

4 Upon death of any account holder of a Universal Savings
5 Account—

6 “(1) SPOUSE.—In the case of the account hold-
7 er’s surviving spouse acquiring such account holder’s
8 interest in such account by reason of the death of
9 the account holder, such account shall be treated as
10 if the spouse were the account holder.

11 “(2) OTHER CASES.—In any other case—

12 “(A) all amounts in such account shall be
13 treated as distributed on the date of such indi-
14 vidual’s death, and

15 “(B) such account shall cease to be treated
16 as a Universal Savings Account.

17 “(f) OTHER SPECIAL RULES.—

18 “(1) COMMUNITY PROPERTY LAWS.—This sec-
19 tion shall be applied without regard to any commu-
20 nity property laws.

21 “(2) LOSS OF TAXATION EXEMPTION OF AC-
22 COUNT WHERE INDIVIDUAL ENGAGES IN PROHIB-
23 ITED TRANSACTION; EFFECT OF PLEDGING ACCOUNT
24 AS SECURITY.—Rules similar to the rules of para-

1 graphs (2) and (4) of section 408(e) shall apply to
2 any Universal Savings Account.

3 “(g) REPORTS.—The trustee of a Universal Savings
4 Account shall make such reports regarding such account
5 to the Secretary and to the account holder with respect
6 to contributions, distributions, and such other matters as
7 the Secretary may require. Such reports shall be—

8 “(1) filed at such time and in such manner as
9 the Secretary provides, and

10 “(2) furnished to account holders—

11 “(A) not later than January 31 of the cal-
12 endar year following the calendar year to which
13 such reports relate, and

14 “(B) in such manner as the Secretary pro-
15 vides.”.

16 (b) TAX ON EXCESS CONTRIBUTIONS.—

17 (1) IN GENERAL.—Section 4973(a) of such
18 Code is amended by striking “or” at the end of
19 paragraph (5), by inserting “or” at the end of para-
20 graph (6), and by inserting after paragraph (6) the
21 following new paragraph:

22 “(7) a Universal Savings Account (as defined in
23 section 530U),”.

1 (2) EXCESS CONTRIBUTION.—Section 4973 of
2 such Code is amended by adding at the end the fol-
3 lowing new subsection:

4 “(i) EXCESS CONTRIBUTIONS TO UNIVERSAL SAV-
5 INGS ACCOUNTS.—For purposes of this section—

6 “(1) IN GENERAL.—In the case of Universal
7 Savings Accounts (within the meaning of section
8 530U), the term ‘excess contributions’ means the
9 sum of—

10 “(A) the amount (if any) by which the
11 amount contributed for the taxable year to such
12 accounts (other than qualified rollover contribu-
13 tions (as defined in section 530U(d))) exceeds
14 the contribution limit under section 530U(c)(2)
15 for such taxable year, and

16 “(B) the amount determined under this
17 subsection for the preceding taxable year, re-
18 duced by the sum of—

19 “(i) the distributions out of the ac-
20 count for the taxable year, and

21 “(ii) the amount (if any) by which the
22 maximum amount allowable as a contribu-
23 tion under section 530U(c)(2) for the tax-
24 able year exceeds the amount contributed
25 to the accounts for the taxable year.

1 “(2) SPECIAL RULE.—A contribution shall not
2 be taken into account under paragraph (1) if such
3 contribution (together with the amount of net in-
4 come attributable to such contribution) is distributed
5 to the account holder on or before the due date of
6 the account holder’s return of tax for such taxable
7 year.”.

8 (c) TAX ON PROHIBITED TRANSACTIONS.—Section
9 4975(e)(1) of such Code is amended by striking “or” at
10 the end of subparagraph (F), by striking the period at
11 the end of subparagraph (G) and inserting “, or”, and
12 by adding at the end the following new subparagraph:

13 “(H) a Universal Savings Account (as de-
14 fined in section 530U).”.

15 (d) FAILURE TO PROVIDE REPORTS ON UNIVERSAL
16 SAVINGS ACCOUNTS.—Section 6693(a)(2) of such Code is
17 amended by striking “and” at the end of subparagraph
18 (E), by striking the period at the end of subparagraph
19 (F) and inserting “, and”, and by inserting after subpara-
20 graph (F) the following new subparagraph:

21 “(G) section 530U(g) (relating to Uni-
22 versal Savings Accounts).”.

23 (e) CONFORMING AMENDMENT.—The table of parts
24 for subchapter F of chapter 1 of such Code is amended
25 by adding at the end the following new item:

 “PART IX. UNIVERSAL SAVINGS ACCOUNTS”.

1 (f) EFFECTIVE DATE.—The amendments made by
2 this section shall apply to taxable years beginning after
3 December 31, 2018.

4 **SEC. 302. EXPANSION OF SECTION 529 PLANS.**

5 (a) DISTRIBUTIONS FOR CERTAIN EXPENSES ASSO-
6 CIATED WITH REGISTERED APPRENTICESHIP PRO-
7 GRAMS.—Section 529(c) of the Internal Revenue Code of
8 1986 is amended by adding at the end the following new
9 paragraph:

10 “(8) TREATMENT OF CERTAIN EXPENSES ASSO-
11 CIATED WITH REGISTERED APPRENTICESHIP PRO-
12 GRAMS.—Any reference in this subsection to the
13 term ‘qualified higher education expense’ shall in-
14 clude a reference to expenses for fees, books, sup-
15 plies, and equipment required for the participation
16 of a designated beneficiary in an apprenticeship pro-
17 gram registered and certified with the Secretary of
18 Labor under section 1 of the National Apprentice-
19 ship Act (29 U.S.C. 50).”.

20 (b) DISTRIBUTIONS FOR CERTAIN HOMESCHOOLING
21 EXPENSES.—Section 529(c)(7) of such Code is amended
22 by striking “include a reference to” and all that follows
23 and inserting “include a reference to—

24 “(A) expenses for tuition in connection
25 with enrollment or attendance of a designated

1 beneficiary at an elementary or secondary pub-
2 lic, private, or religious school, and

3 “(B) expenses, with respect to a des-
4 ignated beneficiary, for—

5 “(i) curriculum and curricular mate-
6 rials,

7 “(ii) books or other instructional ma-
8 terials,

9 “(iii) online educational materials,

10 “(iv) tuition for tutoring or edu-
11 cational classes outside of the home (but
12 only if the tutor or class instructor is not
13 related (within the meaning of section
14 152(d)(2)) to the student),

15 “(v) dual enrollment in an institution
16 of higher education, and

17 “(vi) educational therapies for stu-
18 dents with disabilities,

19 in connection with a homeschool (whether treat-
20 ed as a homeschool or a private school for pur-
21 poses of applicable State law).”.

22 (c) DISTRIBUTIONS FOR QUALIFIED EDUCATION
23 LOAN REPAYMENTS.—

1 (1) IN GENERAL.—Section 529(e) of such Code,
2 as amended by subsection (a), is amended by adding
3 at the end the following new paragraph:

4 “(9) TREATMENT OF QUALIFIED EDUCATION
5 LOAN REPAYMENTS.—

6 “(A) IN GENERAL.—Any reference in this
7 subsection to the term ‘qualified higher edu-
8 cation expense’ shall include a reference to
9 amounts paid as principal or interest on any
10 qualified education loan (as defined in section
11 221(d)) of the designated beneficiary or a sib-
12 ling of the designated beneficiary.

13 “(B) LIMITATION.—The amount of dis-
14 tributions treated as a qualified higher edu-
15 cation expense under this paragraph with re-
16 spect to the loans of any individual shall not ex-
17 ceed \$10,000 (reduced by the amount of dis-
18 tributions so treated for all prior taxable years).

19 “(C) SPECIAL RULES FOR SIBLINGS OF
20 THE DESIGNATED BENEFICIARY.—

21 “(i) SEPARATE ACCOUNTING.—For
22 purposes of subparagraph (B) and sub-
23 section (d), amounts treated as a qualified
24 higher education expense with respect to
25 the loans of a sibling of the designated

1 beneficiary shall be taken into account
2 with respect to such sibling and not with
3 respect to such designated beneficiary.

4 “(ii) SIBLING DEFINED.—For pur-
5 poses of this paragraph, the term ‘sibling’
6 means an individual who bears a relation-
7 ship to the designated beneficiary which is
8 described in section 152(d)(2)(B).”.

9 (2) COORDINATION WITH DEDUCTION FOR STU-
10 DENT LOAN INTEREST.—Section 221(e)(1) of such
11 Code is amended by adding at the end the following:
12 “The deduction otherwise allowable under subsection
13 (a) (prior to the application of subsection (b)) to the
14 taxpayer for any taxable year shall be reduced (but
15 not below zero) by so much of the distributions
16 treated as a qualified higher education expense
17 under section 529(c)(9) with respect to loans of the
18 taxpayer as would be includible in gross income
19 under section 529(c)(3)(A) for such taxable year but
20 for such treatment.”.

21 (d) DISTRIBUTIONS FOR CERTAIN ELEMENTARY AND
22 SECONDARY SCHOOL EXPENSES IN ADDITION TO TUI-
23 TION.—Section 529(c)(7)(A), as amended by subsection
24 (b), is amended to read as follows:

1 “(A) expenses described in section
2 530(b)(3)(A)(i) in connection with enrollment
3 or attendance of a designated beneficiary at an
4 elementary or secondary public, private, or reli-
5 gious school, and”.

6 (e) UNBORN CHILDREN ALLOWED AS ACCOUNT
7 BENEFICIARIES.—Section 529(e) is amended by adding at
8 the end the following new paragraph:

9 “(6) TREATMENT OF UNBORN CHILDREN.—

10 “(A) IN GENERAL.—Nothing shall prevent
11 an unborn child from being treated as a des-
12 ignated beneficiary or an individual under this
13 section.

14 “(B) UNBORN CHILD.—For purposes of
15 this paragraph—

16 “(i) IN GENERAL.—The term ‘unborn
17 child’ means a child in utero.

18 “(ii) CHILD IN UTERO.—The term
19 ‘child in utero’ means a member of the
20 species homo sapiens, at any stage of de-
21 velopment, who is carried in the womb.”.

22 (f) EFFECTIVE DATES.—

23 (1) IN GENERAL.—Except as otherwise pro-
24 vided in this subsection, the amendments made by

1 this section shall apply to distributions made after
2 December 31, 2018.

3 (2) UNBORN CHILDREN ALLOWED AS ACCOUNT
4 BENEFICIARIES.—The amendment made by sub-
5 section (e) shall apply to contributions made after
6 December 31, 2018.

7 **SEC. 303. PENALTY-FREE WITHDRAWALS FROM RETIRE-**
8 **MENT PLANS FOR INDIVIDUALS IN CASE OF**
9 **BIRTH OF CHILD OR ADOPTION.**

10 (a) IN GENERAL.—Section 72(t)(2) of the Internal
11 Revenue Code of 1986 is amended by adding at the end
12 the following new subparagraph:

13 “(H) DISTRIBUTIONS FROM RETIREMENT
14 PLANS IN CASE OF BIRTH OF CHILD OR ADOP-
15 TION.—

16 “(i) IN GENERAL.—Any qualified
17 birth or adoption distribution.

18 “(ii) LIMITATION.—The aggregate
19 amount which may be treated as qualified
20 birth or adoption distributions by any indi-
21 vidual with respect to any birth or adop-
22 tion shall not exceed \$7,500.

23 “(iii) QUALIFIED BIRTH OR ADOPTION
24 DISTRIBUTION.—For purposes of this sub-
25 paragraph—

1 “(I) IN GENERAL.—The term
2 ‘qualified birth or adoption distribu-
3 tion’ means any distribution from an
4 applicable eligible retirement plan to
5 an individual if made during the 1-
6 year period beginning on the date on
7 which a child of the individual is born
8 or on which the legal adoption by the
9 individual of an eligible child is final-
10 ized.

11 “(II) ELIGIBLE CHILD.—The
12 term ‘eligible child’ means any indi-
13 vidual (other than a child of the tax-
14 payer’s spouse) who has not attained
15 age 18 or is physically or mentally in-
16 capable of self-support.

17 “(iv) TREATMENT OF PLAN DISTRIBUTIONS.—
18

19 “(I) IN GENERAL.—If a distribu-
20 tion to an individual would (without
21 regard to clause (ii)) be a qualified
22 birth or adoption distribution, a plan
23 shall not be treated as failing to meet
24 any requirement of this title merely
25 because the plan treats the distribu-

1 tion as a qualified birth or adoption
2 distribution, unless the aggregate
3 amount of such distributions from all
4 plans maintained by the employer
5 (and any member of any controlled
6 group which includes the employer) to
7 such individual exceeds \$7,500.

8 “(II) CONTROLLED GROUP.—For
9 purposes of subclause (I), the term
10 ‘controlled group’ means any group
11 treated as a single employer under
12 subsection (b), (c), (m), or (o) of sec-
13 tion 414.

14 “(v) AMOUNT DISTRIBUTED MAY BE
15 REPAID.—

16 “(I) IN GENERAL.—Any indi-
17 vidual who receives a qualified birth
18 or adoption distribution may make
19 one or more contributions in an ag-
20 gregate amount not to exceed the
21 amount of such distribution to an ap-
22 plicable eligible retirement plan of
23 which such individual is a beneficiary
24 and to which a rollover contribution of
25 such distribution could be made under

1 section 402(c), 403(a)(4), 403(b)(8),
2 408(d)(3), or 457(e)(16), as the case
3 may be.

4 “(II) LIMITATION ON CONTRIBU-
5 TIONS TO APPLICABLE ELIGIBLE RE-
6 TIREMENT PLANS OTHER THAN
7 IRAS.—The aggregate amount of con-
8 tributions made by an individual
9 under subclause (I) to any applicable
10 eligible retirement plan which is not
11 an individual retirement plan shall not
12 exceed the aggregate amount of quali-
13 fied birth or adoption distributions
14 which are made from such plan to
15 such individual. Subclause (I) shall
16 not apply to contributions to any ap-
17 plicable eligible retirement plan which
18 is not an individual retirement plan
19 unless the individual is eligible to
20 make contributions (other than those
21 described in subclause (I)) to such ap-
22 plicable eligible retirement plan.

23 “(III) TREATMENT OF REPAY-
24 MENTS OF DISTRIBUTIONS FROM AP-
25 PPLICABLE ELIGIBLE RETIREMENT

1 PLANS OTHER THAN IRAS.—If a con-
2 tribution is made under subclause (I)
3 with respect to a qualified birth or
4 adoption distribution from an applica-
5 ble eligible retirement plan other than
6 an individual retirement plan, then
7 the taxpayer shall, to the extent of the
8 amount of the contribution, be treated
9 as having received such distribution in
10 an eligible rollover distribution (as de-
11 fined in section 402(c)(4)) and as
12 having transferred the amount to the
13 applicable eligible retirement plan in a
14 direct trustee to trustee transfer with-
15 in 60 days of the distribution.

16 “(IV) TREATMENT OF REPAY-
17 MENTS FOR DISTRIBUTIONS FROM
18 IRAS.—If a contribution is made
19 under subclause (I) with respect to a
20 qualified birth or adoption distribution
21 from an individual retirement plan,
22 then, to the extent of the amount of
23 the contribution, such distribution
24 shall be treated as a distribution de-
25 scribed in section 408(d)(3) and as

1 having been transferred to the appli-
2 cable eligible retirement plan in a di-
3 rect trustee to trustee transfer within
4 60 days of the distribution.

5 “(vi) DEFINITION AND SPECIAL
6 RULES.—For purposes of this subpara-
7 graph—

8 “(I) APPLICABLE ELIGIBLE RE-
9 TIREMENT PLAN.—The term ‘applica-
10 ble eligible retirement plan’ means an
11 eligible retirement plan (as defined in
12 section 402(c)(8)(B)) other than a de-
13 fined benefit plan.

14 “(II) EXEMPTION OF DISTRIBU-
15 TIONS FROM TRUSTEE TO TRUSTEE
16 TRANSFER AND WITHHOLDING
17 RULES.—For purposes of sections
18 401(a)(31), 402(f), and 3405, a quali-
19 fied birth or adoption distribution
20 shall not be treated as an eligible roll-
21 over distribution.

22 “(III) TAXPAYER MUST INCLUDE
23 TIN.—A distribution shall not be
24 treated as a qualified birth or adop-
25 tion distribution with respect to any

1 child or eligible child unless the tax-
2 payer includes the name, age, and
3 TIN of such child or eligible child on
4 the taxpayer's return of tax for the
5 taxable year.

6 “(IV) DISTRIBUTIONS TREATED
7 AS MEETING PLAN DISTRIBUTION RE-
8 QUIREMENTS.—Any qualified birth or
9 adoption distribution shall be treated
10 as meeting the requirements of sec-
11 tions 401(k)(2)(B)(i),
12 403(b)(7)(A)(ii), 403(b)(11), and
13 457(d)(1)(A).”.

14 (b) EFFECTIVE DATE.—The amendments made by
15 this section shall apply to distributions made after Decem-
16 ber 31, 2018.

17 **TITLE IV—BUDGETARY EFFECTS**

18 **SEC. 401. BUDGETARY EFFECTS.**

19 (a) STATUTORY PAYGO SCORECARDS.—The budg-
20 etary effects of this Act shall not be entered on either
21 PAYGO scorecard maintained pursuant to section 4(d) of
22 the Statutory Pay-As-You-Go Act of 2010.

23 (b) SENATE PAYGO SCORECARDS.—The budgetary
24 effects of this Act shall not be entered on any PAYGO

- 1 scorecard maintained for purposes of section 4106 of H.
- 2 Con. Res. 71 (115th Congress).

Passed the House of Representatives September 27,
2018.

Attest:

KAREN L. HAAS,

Clerk.