

115TH CONGRESS
2D SESSION

H. R. 7148

To provide for USA Retirement Funds, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 16, 2018

Mr. CARTWRIGHT introduced the following bill; which was referred to the Committee on Education and the Workforce, and in addition to the Committee on Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To provide for USA Retirement Funds, and for other purposes.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “USA Retirement
5 Funds Act”.

6 **SEC. 2. AUTOMATIC USA RETIREMENT FUND ARRANGE-** 7 **MENTS.**

8 (a) REQUIREMENT TO PROVIDE ACCESS.—Each cov-
9 ered employer shall make available to each qualifying em-

1 ployee for the calendar year an automatic USA Retire-
 2 ment Fund arrangement.

3 (b) COVERED EMPLOYER.—For purposes of this
 4 title—

5 (1) IN GENERAL.—Except as otherwise pro-
 6 vided in this subsection and subsection (c)(2), the
 7 term “covered employer” means, with respect to any
 8 calendar year, an employer who does not maintain a
 9 qualifying plan or arrangement for any part of such
 10 year.

11 (2) QUALIFYING PLAN OR ARRANGEMENT.—

12 (A) IN GENERAL.—The term “qualifying
 13 plan or arrangement” means a plan or arrange-
 14 ment described in section 219(g)(5) of the In-
 15 ternal Revenue Code of 1986.

16 (B) EXCEPTIONS.—Such term shall not in-
 17 clude the following:

18 (i) FROZEN DEFINED BENEFIT
 19 PLAN.—A defined benefit plan that had no
 20 ongoing accruals as of the first day of the
 21 preceding calendar year, unless the plan
 22 failed to have accruals only because of the
 23 application of section 206 of the Employee
 24 Retirement Income Security Act (29

1 U.S.C. 1056) and section 436 of the Inter-
2 nal Revenue Code of 1986.

3 (ii) DEFINED CONTRIBUTION PLAN
4 WITHOUT LIFETIME INCOME OPTIONS.—A
5 defined contribution plan that does not
6 provide participants with a distribution op-
7 tion that provides lifetime income.

8 (iii) PLANS NOT MEETING CONTRIBU-
9 TION REQUIREMENTS.—A plan—

10 (I) which consists of a cash or
11 deferred arrangement (as defined in
12 section 401(k) of such Code) with re-
13 spect to which the employer does not
14 automatically enroll all eligible em-
15 ployees at contribution rates at or
16 above those specified in subsection
17 (d)(4); or

18 (II) for which the only contribu-
19 tions are nonelective employer con-
20 tributions and with respect to which
21 the employer's annual contribution
22 rate is not at or above the rates speci-
23 fied in subsection (d)(4).

24 (3) EXCEPTION FOR CERTAIN SMALL AND NEW
25 EMPLOYERS.—

1 (A) IN GENERAL.—The term “covered em-
2 ployer” shall not include an employer for a cal-
3 endar year if the employer—

4 (i) did not employ during the pre-
5 ceding calendar year more than 10 employ-
6 ees who each received at least \$5,000 of
7 compensation (as defined in section
8 3401(a) of the Internal Revenue Code of
9 1986) from the employer for such pre-
10 ceding calendar year;

11 (ii) did not normally employ more
12 than 10 employees on a typical business
13 day during the preceding calendar year; or

14 (iii) was not in existence at all times
15 during the calendar year and the preceding
16 calendar year.

17 (B) OPERATING RULES.—In determining
18 the number of employees for purposes of sub-
19 paragraph (A)—

20 (i) rules consistent with any rules ap-
21 plicable in determining the number of em-
22 ployees for purposes of section
23 408(p)(2)(C) and section 4980B(d) of the
24 Internal Revenue Code of 1986 shall apply;

1 (ii) all members of the same family
2 (within the meaning of section 318(a)(1)
3 of the Internal Revenue Code of 1986)
4 shall be treated as 1 individual; and

5 (iii) any reference to an employer
6 shall include a reference to any predecessor
7 employer.

8 (4) EXCEPTION FOR GOVERNMENTS AND
9 CHURCHES.—The term “covered employer” shall not
10 include—

11 (A) a government or entity described in
12 section 414(d) of the Internal Revenue Code of
13 1986; or

14 (B) a church or a convention or association
15 of churches that is exempt from tax under sec-
16 tion 501 of such Code.

17 (5) AGGREGATION RULE.—A person treated as
18 a single employer under subsection (a) or (b) of sec-
19 tion 52 of the Internal Revenue Code of 1986 or
20 subsection (m) or (o) of section 414 of such Code
21 shall be treated as a single employer.

22 (c) QUALIFYING EMPLOYEE.—For purposes of this
23 title—

1 (1) IN GENERAL.—The term “qualifying em-
2 ployee” means any employee who is not an excluded
3 employee.

4 (2) PLAN SPONSOR’S EMPLOYEES.—If—

5 (A) an employer maintains one or more
6 qualifying plans or arrangements described in
7 section 219(g)(5) of the Internal Revenue Code
8 of 1986; and

9 (B) the employees of a subsidiary, division,
10 or other business unit are generally not eligible
11 to participate in any such qualifying plan or ar-
12 rangement,

13 for purposes of this section, the employer shall be
14 treated as a covered employer with respect to such
15 employees (other than excluded employees), and
16 such employees (other than excluded employees)
17 shall be treated as qualifying employees for the cal-
18 endar year.

19 (3) EXCLUDED EMPLOYEES.—

20 (A) IN GENERAL.—The term “excluded
21 employee” means an employee who is an exclud-
22 able employee and who is in a class or category
23 that the employer excludes from treatment as
24 qualifying employees.

1 (B) EXCLUDABLE EMPLOYEE.—The term
2 “excludable employee” means—

3 (i) an employee described in section
4 410(b)(3) of the Internal Revenue Code of
5 1986;

6 (ii) an employee who has not attained
7 the age of 21 before the beginning of the
8 calendar year;

9 (iii) an employee who has not com-
10 pleted at least 3 months of service with the
11 employer;

12 (iv) in the case of an employer that
13 maintains a qualifying plan or arrange-
14 ment which excludes employees who have
15 not satisfied the minimum age and service
16 requirements for participation in the plan,
17 an employee who has not satisfied such re-
18 quirements;

19 (v) in the case of an employer that
20 maintains an annuity contract (including a
21 custodial account or retirement income ac-
22 count) under section 403(b) of the Internal
23 Revenue Code of 1986, an employee who is
24 permitted to be excluded from any salary
25 reduction arrangement under the contract

1 pursuant to paragraph (12) of such section
2 403(b);

3 (vi) in the case of an employer that
4 maintains an arrangement described in
5 section 408(p) of such Code, an employee
6 who is not required to be eligible to partici-
7 pate in the arrangement under paragraph
8 (4) of such section 408(p); and

9 (vii) in the case of an employer that
10 maintains a simplified employee pension
11 described in section 408(k) of such Code,
12 an employee who is permitted to be ex-
13 cluded from participation under paragraph
14 (2) of such section 408(k).

15 (4) GUIDANCE.—The Secretary of Labor (in
16 this title referred to as the “Secretary”) shall issue
17 regulations or other guidance to carry out this sub-
18 section, including—

19 (A) guidelines for determining the classes
20 or categories of employees to be covered by a
21 USA Retirement Fund;

22 (B) guidelines requiring employers to
23 specify the classification or categories of em-
24 ployees (if any) who are excluded from the USA
25 Retirement Fund; and

1 (C) rules to prevent avoidance of the re-
2 quirements of this section.

3 (d) AUTOMATIC USA RETIREMENT FUND ARRANGE-
4 MENT.—For purposes of this title—

5 (1) IN GENERAL.—The term “automatic USA
6 Retirement Fund arrangement” means an arrange-
7 ment of an employer (determined without regard to
8 whether the employer is required to maintain the ar-
9 rangement)—

10 (A) that covers each qualifying employee of
11 the covered employer for the calendar year;

12 (B) under which a qualifying employee—

13 (i) may elect—

14 (I) to contribute to an automatic
15 USA Retirement Fund by having the
16 employer deposit payroll deduction
17 amounts or make other periodic direct
18 deposits (including electronic pay-
19 ments) to the Fund; or

20 (II) to have such payments paid
21 to the employee directly in cash;

22 (ii) is treated as having made the elec-
23 tion under clause (i)(I) in the amount
24 specified in paragraph (4) unless the indi-
25 vidual specifically elects not to have such

1 contributions made (or specifically elects to
2 have such contributions made at a dif-
3 ferent percentage or in a different
4 amount); and

5 (iii) not more than once per calendar
6 year, may elect to modify the selection of
7 the USA Retirement Fund to which con-
8 tributions are made for such year; and

9 (C) that meets the administrative require-
10 ments of paragraph (3), including the notice re-
11 quirement of paragraph (3)(C).

12 (2) AUTOMATIC RE-ENROLLMENT.—An employ-
13 ee’s election not to contribute to a USA Retirement
14 Fund (or to have such contributions made at a dif-
15 ferent percentage or in a different amount from
16 those specified in paragraph (4)) shall expire after
17 2 years. After such 2-year period and absent a new
18 election, the employee shall be treated as having
19 made the election under paragraph (1)(B)(i)(I) in
20 the amount specified in paragraph (4).

21 (3) ADMINISTRATIVE REQUIREMENTS.—

22 (A) PAYMENTS.—An employer shall make
23 the payments elected or treated as elected
24 under paragraph (1)(B) on or before—

- 1 (i) the last day of the month following
2 the month in which the compensation oth-
3 erwise would have been payable to the em-
4 ployee in cash; or
5 (ii) such later date as the Secretary
6 may prescribe.

7 (B) TERMINATION OF EMPLOYEE PARTICI-
8 PATION.—Subject to a requirement for reason-
9 able notice, an employee may elect to terminate
10 participation in the arrangement at any time
11 during a calendar year. The arrangement may
12 provide that, if an employee so terminates par-
13 ticipation, the employee may not elect to re-
14 sume participation until the beginning of the
15 next calendar year.

16 (C) NOTICE OF ELECTION PERIOD.—The
17 employer shall notify each employee eligible to
18 participate for a year in a USA Retirement
19 Fund arrangement, within a reasonable period
20 of time before the 30th day before the begin-
21 ning of such year (and, for the first year the
22 employee is so eligible, the 30th day before the
23 first day such employee is so eligible), of—

1 (i) the payments that may be elected
2 or treated as elected under paragraph
3 (1)(B);

4 (ii) the opportunity to make the elec-
5 tion to terminate participation in the ar-
6 rangement under subparagraph (B);

7 (iii) the opportunity to make the elec-
8 tion under paragraph (1)(B)(ii) to have
9 contributions or purchases made at a dif-
10 ferent percentage or in a different amount;
11 and

12 (iv) the opportunity under paragraph
13 (1)(B)(iii) to modify the manner in which
14 such amounts are invested for such year.

15 (D) EMPLOYEES MAY CHOOSE USA RE-
16 TIREMENT FUND.—The arrangement shall pro-
17 vide that a qualified employee may elect to have
18 contributions made to any USA Retirement
19 Fund available to the employee.

20 (4) AMOUNT OF CONTRIBUTIONS AND PAY-
21 MENTS.—The amount specified in this paragraph
22 is—

23 (A) 3 percent of compensation for the cal-
24 endar year beginning on January 1, 2019;

1 (B) 4 percent of compensation for the cal-
2 endar year beginning on January 1, 2020;

3 (C) 5 percent of compensation for the cal-
4 endar year beginning on January 1, 2021; and

5 (D) 6 percent of compensation for calendar
6 years beginning after December 31, 2021.

7 (5) COORDINATION WITH WITHHOLDING.—The
8 Secretary of the Treasury shall modify the with-
9 holding exemption certificate under section 3402(f)
10 of the Internal Revenue Code of 1986 so that, in the
11 case of any qualifying employee covered by a USA
12 Retirement Fund arrangement, any notice and elec-
13 tion requirements with respect to the arrangement
14 may be met through the use of an attachment to
15 such certificate or other modifications of the with-
16 holding exemption procedures.

17 (e) DEPOSITS TO USA RETIREMENT FUNDS.—

18 (1) IN GENERAL.—Except as provided in para-
19 graph (2), an employer shall make all contributions
20 on behalf of employees to the USA Retirement Fund
21 specified by the employee.

22 (2) USA RETIREMENT FUNDS OTHER THAN
23 THOSE SELECTED BY EMPLOYEE.—In the absence of
24 an affirmative selection of a USA Retirement Fund
25 by the employee, contributions on behalf of the em-

1 ployee shall be made to the USA Retirement Fund
2 designated by the employer.

3 (3) REGULATIONS.—The Secretary may issue
4 such regulations as are necessary to carry out this
5 subsection.

6 (f) PREEMPTION OF CONFLICTING STATE LAWS.—
7 The requirements under this section preempt any law of
8 a State that directly or indirectly prohibits or restricts the
9 establishment or operation of an automatic USA Retirement
10 Fund arrangement. Nothing in this section shall be
11 construed to impair or preempt any State law to the extent
12 such State law provides a remedy for the failure to make
13 payroll deposit payments under any such automatic USA
14 Retirement Fund arrangement within the period required.

15 **SEC. 3. ESTABLISHMENT OF USA RETIREMENT FUNDS.**

16 (a) QUALIFICATION AS A USA RETIREMENT
17 FUND.—For purposes of this title—

18 (1) IN GENERAL.—The term “USA Retirement
19 Fund” means a fund for which the Secretary has de-
20 termined the requirements under this title are met.

21 (2) REQUEST FOR DETERMINATION.—The
22 board of trustees of a program established for pur-
23 poses of being treated as a USA Retirement Fund
24 under this section shall, prior to beginning oper-
25 ations, submit to the Secretary (at such time and in

1 such manner as the Secretary may prescribe) a re-
2 quest for the Secretary to make a determination as
3 to whether the plan meets the requirements of this
4 title for such treatment. Such request shall include
5 copies of the written documents establishing the plan
6 and such other materials as the Secretary may re-
7 quest. The Secretary shall make such determination
8 within 180 days of receiving such request.

9 (3) PERIODIC REVIEW.—The Secretary shall es-
10 tablish a process to periodically review each plan de-
11 termined to be a USA Retirement Fund under para-
12 graph (1) to ensure that the plan continues to meet
13 the requirements of this title.

14 (4) PUBLIC LIST OF PLANS.—The Secretary
15 shall maintain a public list of plans determined by
16 the Secretary to qualify as USA Retirement Funds.
17 Such list shall be posted to a publicly available
18 Internet website.

19 (b) PARTICIPATION.—

20 (1) ELIGIBILITY.—An individual may partici-
21 pate in any USA Retirement Fund for which such
22 individual meets the eligibility requirements, individ-
23 ually or through an arrangement established by an
24 employer.

1 (2) PARTICIPATION IN OTHER PLANS.—An indi-
 2 vidual who participates in a USA Retirement Fund
 3 shall not be precluded from participating in a plan
 4 or arrangement described in section 219(g)(5) of the
 5 Internal Revenue Code of 1986.

6 (c) GOVERNANCE.—

7 (1) ASSETS HELD IN TRUST; BOARD OF TRUST-
 8 EES.—For purposes of this title—

9 (A) the assets of each USA Retirement
 10 Fund shall be held in trust; and

11 (B) the Fund shall be governed by a board
 12 of trustees which shall consist of at least 3 indi-
 13 viduals who—

14 (i) are independent of service pro-
 15 viders to the Fund;

16 (ii) meet the qualification require-
 17 ments established under this section; and

18 (iii) are collectively able to adequately
 19 represent the interests of active partici-
 20 pants, retirees, and contributing employ-
 21 ers.

22 (2) INDEPENDENCE REQUIREMENT.—An indi-
 23 vidual is not independent of Fund service providers
 24 for purposes of paragraph (1)(B)(i) if such indi-
 25 vidual—

1 (A) is an employee of any Fund service
2 provider;

3 (B) is a current or former officer or direc-
4 tor of a significant Fund service provider, or is
5 otherwise affiliated with such a provider;

6 (C) is a member of the immediate family
7 of any person who is affiliated with a signifi-
8 cant Fund service provider;

9 (D) derives more than 1 percent of the in-
10 dividual's annual income from a significant
11 Fund service provider;

12 (E) derives more than 5 percent of the in-
13 dividual's annual income from any Fund service
14 provider; or

15 (F) fails to meet such other criteria as are
16 specified by the Secretary to ensure the inde-
17 pendence of the board of directors.

18 (3) MULTIPLE TRUSTEESHIPS.—No individual
19 may serve on the board of trustees of more than 1
20 USA Retirement Fund unless the Secretary receives
21 attestation from the board of trustees of each appli-
22 cable USA Retirement Fund and the individual that,
23 at the time of appointment, there is no reasonably
24 foreseeable conflict between the duties of such indi-
25 vidual to the participants in each applicable USA

1 Retirement Fund. In no case may an individual
2 serve on the boards of trustees of more than 3 USA
3 Retirement Funds.

4 (4) TRUSTEE QUALIFICATIONS.—Each trustee
5 of a USA Retirement Fund shall attest that the
6 trustee is knowledgeable of the trustee’s duties and
7 responsibilities as a fiduciary of a USA Retirement
8 Fund. The Secretary may require by regulation such
9 other qualifications and documentation as may be
10 necessary to ensure that trustees are suitable and
11 qualified. Such requirements may include those re-
12 lated to education, training, and minimum com-
13 petency standards.

14 (5) TRUSTEE SELECTION AND REMOVAL.—

15 (A) IN GENERAL.—Each board of trustees
16 of a USA Retirement Fund shall establish writ-
17 ten procedures regarding the appointment, re-
18 moval, and replacement of trustees on the
19 board. Such procedures shall—

20 (i) take effect after adoption by the
21 majority of the board of trustees;

22 (ii) be readily available to partici-
23 pants;

24 (iii) provide participants with a rea-
25 sonable opportunity to comment on, or

1 participate in, the trustee selection process;

2 and

3 (iv) provide for periodic election of
4 trustees.

5 (B) REMOVAL BY THE SECRETARY.—The
6 Secretary may require removal or suspension of
7 a trustee if the conduct of the trustee is fraudu-
8 lent or is causing, or can be reasonably ex-
9 pected to cause, significant, imminent, and ir-
10 reparable harm to the participants or bene-
11 ficiaries of a USA Retirement Fund.

12 (C) FUNDS WITHOUT QUALIFIED TRUST-
13 EES.—If a board of trustees of a USA Retire-
14 ment Fund has no members meeting the cri-
15 teria under this subsection, the Secretary shall
16 appoint replacement trustees.

17 (6) TRUSTEE COMPENSATION.—Trustees of the
18 Fund may be compensated at reasonable rates from
19 the Fund, but only if such compensation is paid in
20 accordance with the written board compensation pol-
21 icy adopted under paragraph (7)(A)(iv).

22 (7) TRANSPARENCY AND PARTICIPANT DEMOC-
23 RACY.—

24 (A) PUBLICLY AVAILABLE POLICIES.—The
25 board of trustees of a USA Retirement Fund

1 shall adopt and make available to participants
2 and beneficiaries of, and employers contributing
3 to, the USA Retirement Fund—

4 (i) a written investment policy state-
5 ment;

6 (ii) a written lifetime income policy
7 statement;

8 (iii) an annual performance assess-
9 ment of the board of trustees, including an
10 evaluation of weaknesses of the board and
11 a plan to address such weaknesses;

12 (iv) a written board compensation pol-
13 icy that includes current compensation lev-
14 els and provides a reasonable opportunity
15 for comment from participants, bene-
16 ficiaries, and employers; and

17 (v) a written policy addressing con-
18 flicts of interests with respect to trustees.

19 (B) PARTICIPANT INPUT REGARDING
20 BOARD OF TRUSTEES.—

21 (i) IN GENERAL.—The board of trust-
22 ees of a USA Retirement Fund shall estab-
23 lish procedures whereby a participant or
24 beneficiary of such USA Retirement Fund
25 may—

1 (I) petition the board of trustees
2 to remove a trustee or service pro-
3 vider;

4 (II) comment on the management
5 and administration of the USA Re-
6 tirement Fund; and

7 (III) with respect to a USA Re-
8 tirement Fund with more than
9 \$250,000,000 of assets, vote to ap-
10 prove or disapprove the compensation
11 of the trustees at least once every 3
12 years.

13 (ii) EFFECT OF VOTE.—If partici-
14 pants and beneficiaries of a USA Retire-
15 ment Fund vote to disapprove the com-
16 pensation of trustees under clause
17 (i)(III)—

18 (I) the results of such vote shall
19 not be binding on the board of trust-
20 ees; and

21 (II) the board of trustees shall
22 notify the Secretary of the results of
23 such vote and provide an explanation
24 of why the compensation is reasonable

1 or anticipated changes to the com-
2 pensation.

3 (8) LIABILITY INSURANCE FOR TRUSTEES.—

4 The trustees of each USA Retirement Fund shall
5 have fiduciary liability insurance with a per-claim
6 limit equal to no less than the greater of—

7 (A) 5 percent of plan assets; or

8 (B) \$1,000,000.

9 (9) TRUSTEE DUTIES.—

10 (A) IN GENERAL.—The trustees of a USA
11 Retirement Fund shall manage the Fund with
12 the intention of providing each participant with
13 a cost-effective stream of income in retirement
14 and reducing benefit level volatility (particularly
15 for those approaching retirement).

16 (B) APPLICABILITY OF OTHER REQUIRE-
17 MENTS.—Each trustee of a USA Retirement
18 Fund shall be a fiduciary subject to sections
19 404(a), 404(b), 405, 406, and 408 through 413
20 of the Employee Retirement Income Security
21 Act of 1974 with respect to the Fund and par-
22 ticipants and beneficiaries of the Fund. Each
23 such trustee shall be subject to the standards
24 and remedies of such sections and section 502

1 of such Act, as if the Fund were an employee
2 benefit plan.

3 (d) CONTRIBUTION LIMITATIONS.—

4 (1) EMPLOYER.—Subject to paragraph (3), em-
5 ployers may, in addition to contributions an em-
6 ployee elects (or is treated as having elected) to have
7 made, make a contribution of up to \$5,000 per year
8 to a USA Retirement Fund on behalf of each em-
9 ployee eligible to participate in a USA Retirement
10 Fund, provided such contributions are made in a
11 uniform manner (as the same dollar amount for
12 each such employee or the same percentage of pay
13 for each such employee) and are not intended to
14 benefit solely highly compensated employees.

15 (2) EMPLOYEE.—An employee may not elect
16 (or shall not be treated as having as elected) to con-
17 tribute more than \$15,000 per year to a USA Re-
18 tirement Fund.

19 (3) ANNUAL INDEXING OF AMOUNT.—The dol-
20 lar amounts under paragraphs (1) and (2) shall be
21 indexed annually for inflation.

22 (e) BENEFITS IN THE FORM OF AN ANNUITY.—

23 (1) IN GENERAL.—A USA Retirement Fund
24 shall pay benefits in the form of an annuity in ac-
25 cordance with paragraph (2). The amount of such

1 benefits shall be dependent on the amount of con-
2 tributions made by the participant, the experience of
3 the Fund, and the form of distribution elected by
4 the participant. The amount of an annuity may be
5 adjusted to reflect the experience of the Fund as
6 necessary to protect the financial integrity of the
7 Fund, except that annuity payments for those in pay
8 status shall not be reduced more than 5 percent per
9 year unless the Fund is faced with a significant fi-
10 nancial hardship and the Secretary has approved the
11 reduction.

12 (2) ANNUITY.—A USA Retirement Fund shall
13 pay benefits in accordance with one of the following:

14 (A) In the case of a participant who does
15 not die before the annuity starting date, the
16 benefit payable to such participant shall be pro-
17 vided in the form of a qualified joint and sur-
18 vivor annuity (as defined in section 205(d)(1)
19 of the Employee Retirement Income Security
20 Act of 1974 (29 U.S.C. 1055(d)(1))).

21 (B) In the case of a participant who dies
22 before the annuity starting date and who has a
23 surviving spouse, a qualified preretirement sur-
24 vivor annuity (as defined in section 205(d)(2)
25 of the Employee Retirement Income Security

1 Act of 1974 (29 U.S.C. 1055(d)(2))) shall be
2 provided to the surviving spouse of such partici-
3 pant.

4 (C) In lieu of a qualified joint and survivor
5 annuity form of benefit or the qualified pre-
6 retirement survivor annuity form of benefit (or
7 both), a participant may elect to receive a dis-
8 tribution described in subsection (f)(2) if one of
9 the following conditions are met:

10 (i)(I) The spouse of the participant
11 consents in writing to the election.

12 (II) Such election designates a bene-
13 ficiary (or form of benefits) which may not
14 be changed without spousal consent (or the
15 consent of the spouse expressly permits
16 designations by the participant without
17 any requirement of further consent by the
18 spouse).

19 (III) The spouse's consent acknowl-
20 edges the effect of such election and is wit-
21 nessed by a plan representative or a notary
22 public.

23 (ii) It is established to the satisfaction
24 of a Fund representative that the consent
25 required under subclause (I) cannot be ob-

1 tained because there is no spouse, because
2 the spouse cannot be located, or because of
3 such other circumstances as the Secretary
4 may by regulations prescribe.

5 The consent of a spouse (or establishment that
6 the consent of a spouse cannot be obtained)
7 under this subparagraph shall be effective only
8 with respect to such spouse.

9 (3) COMMENCEMENT OF BENEFIT PAY-
10 MENTS.—A participant may elect the time to start
11 receiving benefit payments from the USA Retirement Fund, except that a participant—

12 (A) except as provided in subsection
13 (f)(2)(B), may not elect to receive benefit pay-
14 ments before reaching the age of 60; and
15 (B) must begin receiving benefit payments

16 before the age of 72.

17 (4) NOTICE.—Each Fund shall provide to each
18 participant, within a reasonable period of time be-
19 fore the annuity starting date, a written explanation
20 substantially similar to that required by section
21 205(c)(3) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1055(c)(3)).

22 (5) ASSIGNMENT OR ALIENATION OF FUND
23 BENEFITS.—Benefits under a USA Retirement
24 25

1 Fund shall be subject to section 206(d) of the Em-
2 ployee Retirement Income Security Act of 1974 (29
3 U.S.C. 1056(d)).

4 (f) LIMITS ON WITHDRAWALS AND TRANSFERS.—

5 (1) TRANSFERS.—A participant may, not more
6 frequently than once per year, transfer such partici-
7 pant's benefit to another USA Retirement Fund.

8 (2) LIMITS ON DISTRIBUTIONS.—

9 (A) IN GENERAL.—Except as provided in
10 subparagraphs (B) and (C), a participant may
11 not take a distribution other than one described
12 in subsection (e)(2).

13 (B) PARTICIPANTS AGED 59 AND YOUNG-
14 ER.—A participant may before age 60 take a
15 distribution of a portion of the participant's
16 benefit if such distribution does not to exceed
17 \$5,500 and is rolled over to a qualifying plan
18 or arrangement described in section 219(g)(5)
19 of the Internal Revenue Code of 1986 or an in-
20 dividual retirement plan.

21 (C) PARTICIPANTS AGED 60 AND OLDER.—

22 A participant who is 60 or older but who has
23 not entered pay status may elect one time to
24 take a distribution of the greater of \$10,000 or
25 50 percent of the participant's benefit if the

1 participant demonstrates to the satisfaction of
2 the trustees of the Fund that the participant
3 has sufficient retirement income apart from the
4 Fund or is facing a substantial hardship.

5 (g) METHODS FOR PROVIDING ANNUITIZED BEN-
6 EFIT PAYMENTS.—

7 (1) IN GENERAL.—A USA Retirement Fund
8 shall establish and maintain mechanisms for ade-
9 quately securing the payment of annuity benefits
10 from the Fund. The Fund shall include a written de-
11 scription of such mechanisms in the investment and
12 lifetime income policy statements required to be dis-
13 closed to participants.

14 (2) SPECIFIC GOALS.—The mechanisms de-
15 scribed in paragraph (1) shall ensure that—

16 (A) each participant receives a stream of
17 income for life;

18 (B) each participant and beneficiary has
19 an opportunity to be protected against longevity
20 risk; and

21 (C) volatility in benefit levels is minimized
22 for participants and beneficiaries in pay status
23 and those approaching pay status.

24 (3) SELF-ANNUITIZATION.—

1 (A) IN GENERAL.—Notwithstanding any
2 other provision of law, a USA Retirement Fund
3 may self-annuitize if the Fund meets such re-
4 quirements as the Secretary establishes as nec-
5 essary to protect participants and beneficiaries
6 in consideration of the recommendations of the
7 Commission under section 103.

8 (B) DUTY TO ADDRESS EMERGING
9 ISSUES.—The Secretary shall, periodically and
10 in accordance with established procedures, up-
11 date the funding requirements promulgated
12 under this paragraph in response to changing
13 economic and business conditions to the extent
14 necessary to carry out the purposes of this Act,
15 taking into consideration the recommendations
16 of the Commission.

17 (h) REPORTING AND DISCLOSURE.—

18 (1) ANNUAL STATEMENT.—The trustees of a
19 USA Retirement Fund shall provide each participant
20 in the Fund an annual statement of—

21 (A) the estimated amount of the monthly
22 benefit which the participant or beneficiary is
23 projected to receive from the USA Retirement
24 Fund, in the form of the default benefit de-

1 scribed in the plan in accordance with sub-
2 section (e)(2);

3 (B) an explanation, written in a manner
4 calculated to be understood by the average plan
5 participant, that includes interest and mortality
6 assumptions used in calculating the estimate
7 and a statement that actual benefits may be
8 materially different from such estimate;

9 (C) a disclosure of Fund fees and perform-
10 ance that is substantially similar to the disclo-
11 sures required of individual account plans under
12 the Employee Retirement Income Security Act
13 of 1974;

14 (D) any other disclosures, including pro-
15 jected benefit estimates, that the board of trust-
16 ees of the USA Retirement Fund determines
17 appropriate; and

18 (E) such other disclosures as may be re-
19 quired by the Secretary.

20 (2) SUMMARY PLAN DESCRIPTION.—The trust-
21 ees of a USA Retirement Fund shall provide partici-
22 pants a summary plan description (as described in
23 section 102 of the Employee Retirement Income Se-
24 curity Act (29 U.S.C. 1022)) as required by section

1 104(b) of the Employee Retirement Income Security
2 Act (29 U.S.C. 1024(b)).

3 (3) ANNUAL REPORTS.—The trustees of a USA
4 Retirement Fund shall file with the Secretary of
5 Labor periodic reports in accordance with regula-
6 tions promulgated by the Secretary.

7 (4) ADDITIONAL REQUIREMENTS.—Each USA
8 Retirement Fund shall be subject to sections 106
9 and 107 of the Employee Retirement Income Secu-
10 rity Act of 1974 (29 U.S.C. 1026, 1027).

11 (i) TAX TREATMENT.—

12 (1) USA RETIREMENT FUND.—A USA Retire-
13 ment Fund is exempt from taxation under subtitle
14 A of the Internal Revenue Code of 1986. Notwith-
15 standing the preceding sentence, a USA Retirement
16 Fund is subject to the taxes imposed by section 511
17 of such Code (relating to imposition of tax on unre-
18 lated business income of charitable, etc. organiza-
19 tions).

20 (2) CONTRIBUTIONS.—In the case of an indi-
21 vidual, there shall be allowed as a deduction for the
22 taxable year an amount equal to the amount of con-
23 tributions to a USA Retirement Fund made by or on
24 behalf of the individual under an automatic USA
25 Retirement Fund arrangement under section 2(d).

1 (3) ROLLOVER CONTRIBUTIONS.—For purposes
2 of this Act, rules similar to the rules of subpara-
3 graphs (A) and (D) of section 408(d)(3) of the In-
4 ternal Revenue Code of 1986 shall apply.

5 (4) DISTRIBUTIONS.—Any distribution from a
6 USA Retirement Fund shall be includible in the
7 gross income of the distributee in the manner as
8 provided in section 72 of the Internal Revenue Code
9 of 1986.

10 (5) PROHIBITED TRANSACTIONS, ETC.—For
11 purposes of this Act, rules similar to the rules of
12 paragraphs (2), (3), and (4) of section 408(e)(2) of
13 the Internal Revenue Code of 1986 shall apply.

14 (6) REPORTS.—The trustees of a USA Retire-
15 ment Fund shall make such reports regarding such
16 Fund to the Secretary of the Treasury and to des-
17 ignated beneficiaries with respect to contributions,
18 distributions, and such other matters as the Sec-
19 retary of the Treasury may require. The reports re-
20 quired by this paragraph shall be filed at such time
21 and in such manner and furnished to such individ-
22 uals at such time and in such manner as may be re-
23 quired by the Secretary of the Treasury.

1 **SEC. 4. COMMISSION ON USA RETIREMENT FUNDS.**

2 (a) RECOGNITION OF PRIVATE COMMISSION.—The
3 Secretary shall—

4 (1) recognize an independent, private commis-
5 sion, to be known as the “Commission for USA Re-
6 tirement Funds Funding” (referred to in this title
7 as the “Commission”); and

8 (2) in carrying out the Secretary’s duties under
9 this title, consider the recommendations of such
10 Commission.

11 (b) COMMISSION.—The Commission recognized under
12 subsection (a) shall meet the following requirements:

13 (1) MEMBERSHIP.—

14 (A) COMPOSITION.—The Commission shall
15 be composed of 9 members selected by the Sec-
16 retary, in consultation with the Secretary of the
17 Treasury, of whom no more than 5 may be
18 from one political party. The Secretary shall
19 designate one member of the Commission as the
20 Chairman. No person may be appointed to the
21 Commission if, during the 2-year period pre-
22 ceding the date of appointment, such person
23 was a trustee of a USA Retirement Fund.

24 (B) DATE.—The appointments of the
25 members of the Commission shall be made not

1 later than 90 days after the date of enactment
2 of this Act.

3 (C) PERIOD OF APPOINTMENT; VACAN-
4 CIES.—Members shall be appointed for terms of
5 2 years and may be appointed for consecutive
6 terms. Any vacancy in the Commission shall not
7 affect its powers, and shall be filled in the same
8 manner as the original appointment.

9 (2) MAJORITY VOTE.—The Commission may
10 act by majority vote of its members, provided that
11 at least 7 members are present.

12 (3) COMMISSION PERSONNEL MATTERS.—

13 (A) COMPENSATION OF MEMBERS.—Each
14 member of the Commission who is not an offi-
15 cer or employee of the Federal Government
16 shall be compensated at a rate equal to the
17 daily equivalent of the annual rate of basic pay
18 prescribed for level IV of the Executive Sched-
19 ule under section 5315 of title 5, United States
20 Code, for each day (including travel time) dur-
21 ing which such member is engaged in the per-
22 formance of the duties of the Commission. All
23 members of the Commission who are officers or
24 employees of the United States shall serve with-
25 out compensation in addition to that received

1 for their services as officers or employees of the
2 United States.

3 (B) TRAVEL EXPENSES.—The members of
4 the Commission shall be allowed travel ex-
5 penses, including per diem in lieu of subsist-
6 ence, at rates authorized for employees of agen-
7 cies under subchapter I of chapter 57 of title 5,
8 United States Code, while away from their
9 homes or regular places of business in the per-
10 formance of services for the Commission.

11 (C) STAFF.—

12 (i) IN GENERAL.—The Chairman of
13 the Commission may, without regard to
14 the civil service laws and regulations, ap-
15 point and terminate an executive director
16 and such other additional personnel as
17 may be necessary to enable the Commis-
18 sion to perform its duties. The employment
19 of an executive director shall be subject to
20 confirmation by the Commission.

21 (ii) COMPENSATION.—The Chairman
22 of the Commission may fix the compensa-
23 tion of the executive director and other
24 personnel without regard to chapter 51
25 and subchapter III of chapter 53 of title 5,

1 United States Code, relating to classifica-
2 tion of positions and General Schedule pay
3 rates, except that the rate of pay for the
4 executive director and other personnel may
5 not exceed the rate payable for level V of
6 the Executive Schedule under section 5316
7 of such title.

8 (iii) DETAIL OF GOVERNMENT EM-
9 PLOYEES.—Any Federal Government em-
10 ployee may be detailed to the Commission
11 without reimbursement, and such detail
12 shall be without interruption or loss of civil
13 service status or privilege.

14 (iv) PROCUREMENT OF TEMPORARY
15 AND INTERMITTENT SERVICES.—The
16 Chairman of the Commission may procure
17 temporary and intermittent services under
18 section 3109(b) of title 5, United States
19 Code, at rates for individuals which do not
20 exceed the daily equivalent of the annual
21 rate of basic pay prescribed for level V of
22 the Executive Schedule under section 5316
23 of such title.

24 (4) RECOMMENDATIONS AND REGULATIONS ON
25 FUNDING AND DISTRIBUTION REQUIREMENTS.—

1 (A) IN GENERAL.—After taking into con-
2 sideration the recommendations of the Commis-
3 sion and providing the public notice and an op-
4 portunity for comment, the Secretary shall pro-
5 mulgate regulations with respect to funding and
6 distribution requirements for USA Retirement
7 Funds, as necessary or appropriate in the pub-
8 lic interest and for the protection of partici-
9 pants and beneficiaries, including regulations
10 described in subparagraphs (B) and (C).

11 (B) REQUIREMENTS RELATING TO ANNU-
12 ITY PAYMENTS MADE DIRECTLY BY A FUND.—
13 The regulations under subparagraph (A) shall
14 provide that in the case of annuity payments
15 made directly by the Fund—

16 (i) the maximum annuity payment for
17 a participant or beneficiary shall be deter-
18 mined using the mortality tables and inter-
19 est rates prescribed by the Secretary under
20 subparagraph (C) at the time benefits
21 commence; and

22 (ii) the level of benefits paid may be
23 adjusted periodically in order to reflect the
24 mortality experience and the investment
25 experience of the Fund, but only after the

1 Fund has obtained a certification from a
2 member of the American Academy of Actu-
3 aries that the adjustment is sustainable for
4 the remaining lifetime of participants then
5 receiving benefits, based on the mortality
6 tables and interest rates prescribed under
7 subparagraph (C) by the Secretary for that
8 time.

9 (C) MORTALITY TABLES AND INTEREST
10 RATES USED REQUIREMENTS.—The regulations
11 promulgated under subparagraph (A) shall in-
12 clude the following:

13 (i) MORTALITY TABLES.—

14 (I) IN GENERAL.—The Secretary
15 shall prescribe mortality tables to be
16 used in determining annuity payments
17 made directly by the Fund. Such ta-
18 bles shall be based on the actual expe-
19 rience of insurance companies that
20 issue group annuities and projected
21 trends in such experience. In pre-
22 scribing such tables, the Secretary
23 shall take into account results of
24 available independent studies of the

1 mortality of individuals receiving an-
2 nnuities under group annuity contracts.

3 (II) PERIODIC REVISIONS OF
4 MORTALITY TABLES.—The Secretary
5 shall make revisions, to become effec-
6 tive as soon as practicable, in any
7 mortality table in effect to reflect
8 more recent actual experience of in-
9 surance companies that issue group
10 annuities and projected trends in such
11 experience. In revising such tables,
12 the Secretary shall take into account
13 the results of more recent available
14 independent studies of the mortality
15 and projected trends of individuals re-
16 ceiving annuities under group annuity
17 contracts.

18 (ii) INTEREST RATES.—The Secretary
19 shall prescribe interest rates to be used in
20 determining annuity payments made di-
21 rectly by the Fund. Such rates shall be
22 based on the yields on investment grade
23 corporate bonds with varying maturities
24 and that are in the top 3 quality levels
25 available. Interest rates shall be prescribed

1 quarterly or more frequently, as deter-
2 mined by the Secretary.

3 (5) DUTY TO ADDRESS BEST PRACTICES.—The
4 Commission shall prepare, and periodically update, a
5 report that describes the best practices for the gov-
6 ernance of boards of trustees of USA Retirement
7 Funds, including board of trustee composition, ap-
8 pointment procedures, term length, term staggering,
9 trustee qualifications, delegation of duties, and per-
10 formance assessment procedures.

11 **SEC. 5. LIMITATION ON EMPLOYER LIABILITY.**

12 Section 404 of the Employee Retirement Income Se-
13 curity Act of 1974 (29 U.S.C. 1021 et seq.) is amended
14 by adding at the end the following:

15 “(e) An employer shall not be a fiduciary with respect
16 to the selection, management or administration of a USA
17 Retirement Fund solely because such employer makes
18 available such Fund through an automatic USA Retire-
19 ment Fund arrangement. Notwithstanding the preceding
20 sentence, employers participating in a USA Retirement
21 Fund shall be responsible for meeting the enrollment re-
22 quirements and transmitting contributions, as required
23 under the USA Retirement Funds Act.”.

1 **SEC. 6. ENFORCEMENT AND FRAUD PREVENTION.**

2 (a) PENALTY FOR FAILURE TO TIMELY REMIT CON-
3 TRIBUTIONS TO AUTOMATIC USA RETIREMENT FUND
4 ARRANGEMENTS.—

5 (1) IN GENERAL.—If an employer is required
6 under an automatic USA Retirement Fund arrange-
7 ment to deposit amounts withheld from an employ-
8 ee's compensation into a USA Retirement Fund but
9 fails to do so within the time prescribed under sec-
10 tion 2(d)(3), such amounts shall be treated as assets
11 of a USA Retirement Fund.

12 (2) FAILURE TO PROVIDE ACCESS TO PAYROLL
13 SAVINGS ARRANGEMENTS.—

14 (A) GENERAL RULE.—A covered employer
15 who fails to meet the requirements of section
16 2(a) for a calendar year shall be subject to a
17 civil money penalty of \$100 per calendar year
18 for each employee to whom such failure relates.

19 (B) EXCEPTIONS.—No civil money penalty
20 shall be imposed under this paragraph for a
21 failure to meet the requirements under section
22 2(a)—

23 (i) during a period for which the Sec-
24 retary determines that the employer sub-
25 ject to liability for the civil money penalty
26 did not know that the failure existed and

1 exercised reasonable diligence to meet the
2 requirements of section 2(a); or

3 (ii)(I) the employer subject to liability
4 for the civil money penalty exercised rea-
5 sonable diligence to meet the requirements
6 of section 2(a); and

7 (II) the employer provides the auto-
8 matic USA Retirement Fund arrangement
9 described to each employee eligible to par-
10 ticipate in the arrangement by the end of
11 the 90-day period beginning on the first
12 date the employer knew, or exercising rea-
13 sonable diligence should have known, that
14 such failure existed.

15 (C) WAIVER BY THE SECRETARY.—In the
16 case of a failure to meet the requirements of
17 section 2(a) that is due to reasonable cause and
18 not to willful neglect, the Secretary may, in the
19 sole discretion of the Secretary, waive part or
20 all of the civil money penalty imposed under
21 this paragraph to the extent that the payment
22 of such civil money penalty would be excessive
23 or otherwise inequitable relative to the failure
24 involved.

1 (D) PROCEDURES FOR NOTICE.—The Sec-
 2 retary may prescribe and implement procedures
 3 for obtaining confirmation that employers are
 4 in compliance with subsection (a). The Sec-
 5 retary, in the discretion of such Secretary, may
 6 prescribe that the confirmation shall be ob-
 7 tained on an annual or less frequent basis, and
 8 may use for this purpose the annual report or
 9 quarterly report for employment taxes, or such
 10 other means as the Secretary may deem advis-
 11 able.

12 (b) CIVIL ACTIONS AND ENFORCEMENT.—

13 (1) ADMINISTRATION AND ENFORCEMENT.—
 14 Part 5 of title I of the Employee Retirement Income
 15 Security Act of 1974 (29 U.S.C. 1132 et seq.) shall
 16 apply to a USA Retirement Fund as if a USA Re-
 17 tirement Fund were an employee benefit plan.

18 (2) AMENDMENT.—Section 502(a) of the Em-
 19 ployee Retirement Income Security Act of 1974 (29
 20 U.S.C. 1132 et seq.) is amended—

21 (A) in paragraph (10), by striking “; or”
 22 and inserting “;”;

23 (B) in paragraph (11), by striking the pe-
 24 riod at the end and inserting “; or”; and

25 (C) by adding at the end the following:

1 “(12) in the event that an employer fails to
2 make timely contributions or payments to a USA
3 Retirement Fund established under title I of the
4 USA Retirement Funds Act, by the Secretary, a
5 participant, a beneficiary, or a fiduciary, to compel
6 an employer to make such contributions or payments
7 as if such contributions or payments were delinquent
8 contributions or payments under section 515 or sub-
9 section (g)(2).”.

10 (3) NON-PREEMPTION OF CERTAIN STATE
11 LAW.—Nothing in this section shall preempt State
12 law insofar as State law relates to the enforcement
13 of an obligation to contribute to a USA Retirement
14 Fund.

15 (c) FALSE STATEMENTS.—

16 (1) IN GENERAL.—No person, in connection
17 with a plan or other arrangement that is or purports
18 to be a USA Retirement Fund, shall make a false
19 statement or false representation of fact, knowing it
20 to be false, in connection with the marketing or sale
21 of such plan or arrangement, to any employee, any
22 member of an employee organization, any bene-
23 ficiary, any employer, any employee organization,
24 the Secretary, or any State, or the representative or

1 agent of any such person, State, or the Secretary,
2 concerning—

3 (A) the financial condition or solvency of
4 such fund or arrangement;

5 (B) the benefits provided by such fund or
6 arrangement;

7 (C) the regulatory status of such fund or
8 other arrangement under any Federal or State
9 law governing collective bargaining, labor man-
10 agement relations, or intern union affairs; or

11 (D) the regulatory status of such fund or
12 other arrangement.

13 (2) PENALTY.—Any person who violates this
14 subsection shall, upon conviction, be imprisoned not
15 more than 10 years or fined under title 18, United
16 States Code, or both.

17 (d) CEASE AND DESIST ORDERS.—

18 (1) ISSUANCE OF ORDER.—The Secretary may
19 issue a cease and desist (ex parte) order under this
20 title if the Secretary determines that the alleged con-
21 duct of a fund purporting to be a USA Retirement
22 Fund is fraudulent, or creates an immediate danger
23 to the public safety or welfare, or is causing or can
24 be reasonably expected to cause significant, immi-
25 nent, and irreparable public injury.

1 (2) HEARINGS.—

2 (A) IN GENERAL.—A person who is ad-
3 versely affected by the issuance of a cease and
4 desist order under paragraph (1) may request a
5 hearing by the Secretary regarding such order.
6 The Secretary may require that a hearing
7 under this paragraph, including all related in-
8 formation and evidence, be conducted in a con-
9 fidential manner.

10 (B) BURDEN OF PROOF.—The burden of
11 proof in any hearing conducted under subpara-
12 graph (A) shall be on the party requesting the
13 hearing to show cause why the cease and desist
14 order should be set aside.

15 (C) DETERMINATION.—Based upon the
16 evidence presented at a hearing under subpara-
17 graph (A), the Secretary may affirm, modify, or
18 set aside the cease and desist order at issue, in
19 whole or in part.

20 (3) REGULATIONS.—The Secretary may pro-
21 mulgate such regulations or other guidance as may
22 be necessary or appropriate to carry out this sub-
23 section.

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