

117TH CONGRESS
1ST SESSION

H. R. 5891

To improve and enhance retirement savings, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 5, 2021

Mr. SCOTT of Virginia (for himself, Ms. FOXX, Mr. DESAULNIER, and Mr. ALLEN) introduced the following bill; which was referred to the Committee on Education and Labor, 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 improve and enhance retirement 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,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Retirement Improvement and Savings Enhancement
6 Act” or the “RISE Act”.

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

- Sec. 1. Short title; table of contents.
- Sec. 2. Retirement Savings Lost and Found.

- Sec. 3. Retirement Plan Modernization Act.
- Sec. 4. Multiple employer 403(b) plans.
- Sec. 5. Small immediate financial incentives for contributing to a plan.
- Sec. 6. Performance benchmarks for asset allocation funds.
- Sec. 7. Pooled employer plans modification.
- Sec. 8. Review of pension risk transfer interpretive bulletin.
- Sec. 9. Review and report to Congress relating to reporting and disclosure requirements.
- Sec. 10. Eliminating unnecessary plan requirements related to unenrolled participants.
- Sec. 11. Recovery of retirement plan overpayments.
- Sec. 12. Improving coverage for part-time workers.

1 **SEC. 2. RETIREMENT SAVINGS LOST AND FOUND.**

2 (a) IN GENERAL.—

3 (1) ESTABLISHMENT OF RETIREMENT SAVINGS
 4 LOST AND FOUND.—Part 5 of title I of the Em-
 5 ployee Retirement Income Security Act of 1974 (29
 6 U.S.C. 1341 et seq.) is amended by adding at the
 7 end the following:

8 **“SEC. 522. RETIREMENT SAVINGS LOST AND FOUND.**

9 “(a) ESTABLISHMENT.—

10 “(1) IN GENERAL.—Not later than 2 years
 11 after the date of the enactment of this section, the
 12 Secretary of Labor, in consultation with the Sec-
 13 retary of the Treasury, shall establish an online
 14 searchable database (to be managed by the Depart-
 15 ment of Labor in accordance with this section) to be
 16 known as the ‘Retirement Savings Lost and Found’.
 17 The Retirement Savings Lost and Found shall—

18 “(A) allow an individual to search for in-
 19 formation that enables the individual to locate
 20 the administrator of any plan described in para-

1 graph (2) with respect to which the individual
2 is or was a participant or beneficiary, and pro-
3 vide contact information for the administrator
4 of any such plan;

5 “(B) allow the Department of Labor to as-
6 sist such an individual in locating any such plan
7 of the individual; and

8 “(C) allow the Department of Labor to
9 make any necessary changes to contact infor-
10 mation on record for the administrator based
11 on any changes to the plan due to merger or
12 consolidation of the plan with any other plan,
13 division of the plan into two or more plans,
14 bankruptcy, termination, change in name of the
15 plan, change in name or address of the admin-
16 istrator, or other causes.

17 The Retirement Savings Lost and Found established
18 under this paragraph shall include information re-
19 ported under this section and other relevant infor-
20 mation obtained by the Department of Labor.

21 “(2) PLANS DESCRIBED.—A plan described in
22 this paragraph is a plan to which the vesting stand-
23 ards of section 203 apply.

24 “(b) ADMINISTRATION.—The Retirement Savings
25 Lost and Found established under subsection (a) shall

1 provide individuals described in subsection (a)(1) only
2 with the ability to search for information that enables the
3 individual to locate the administrator and contact informa-
4 tion for the administrator of any plan with respect to
5 which the individual is or was a participant or beneficiary,
6 sufficient to allow the individual to locate the individual's
7 plan in order to recover any benefit owing to the individual
8 under the plan.

9 “(c) SAFEGUARDING PARTICIPANT PRIVACY AND SE-
10 CURITY.—In establishing the Retirement Savings Lost
11 and Found under subsection (a), the Department of Labor
12 shall take all necessary and proper precautions to ensure
13 that individuals' plan information maintained by the Re-
14 tirement Savings Lost and Found is protected.

15 “(d) DEFINITION OF ADMINISTRATOR.—For pur-
16 poses of this section and section 523, the term ‘adminis-
17 trator’ has the meaning given such term in section
18 3(16)(A).

19 “(e) INFORMATION COLLECTION FROM PLANS.—Ef-
20 fective with respect to plan years beginning after the sec-
21 ond December 31 occurring after the date of the enact-
22 ment of this subsection, the administrator of a plan to
23 which the vesting standards of section 203 apply shall sub-
24 mit to the Department of Labor, at such time and in such
25 form and manner as is prescribed in regulations—

1 “(1) the information described in paragraphs
2 (1) through (4) of section 6057(b) of the Internal
3 Revenue Code of 1986;

4 “(2) the information described in subpara-
5 graphs (A), (B), (E), and (F) of section 6057(a)(2)
6 of the Internal Revenue Code of 1986; and

7 “(3) such other information as the Secretary of
8 Labor may require.

9 “(f) INFORMATION COLLECTION FROM FEDERAL
10 AGENCIES.—The Secretary of Labor is authorized to ac-
11 cess and receive information collected by other Federal
12 agencies that may be necessary to perform work related
13 to the Retirement Savings Lost and Found. Such nec-
14 essary and appropriate information, which shall be fur-
15 nished to the Secretary of Labor on request, includes in-
16 formation covered by section 6103 of the Internal Revenue
17 Code of 1986 and section 205(r) of the Social Security
18 Act.

19 “(g) PROGRAM INTEGRITY AUDIT.—On an annual
20 basis for each of the first 5 years beginning one year after
21 the establishment of the database in subsection (a)(1) and
22 every 5 years thereafter, the Inspector General of the De-
23 partment of Labor shall conduct an audit of the adminis-
24 tration of the Retirement Savings Lost and Found.”.

1 (2) CONFORMING AMENDMENT.—The table of
 2 contents for the Employee Retirement Income Secu-
 3 rity Act of 1974 (29 U.S.C. 1001 et seq.) is amend-
 4 ed by inserting after the matter relating to section
 5 521 the following:

“Sec. 522. Retirement Savings Lost and Found.”.

6 **SEC. 3. RETIREMENT PLAN MODERNIZATION ACT.**

7 Section 203(e)(1) of the Employee Retirement In-
 8 come Security Act of 1974 and sections 401(a)(31)(B)(ii)
 9 and 411(a)(11)(A) of the Internal Revenue Code of 1986
 10 and are each amended by striking “\$5,000” and inserting
 11 “\$7,000”.

12 **SEC. 4. MULTIPLE EMPLOYER 403(b) PLANS.**

13 (a) IN GENERAL.—Section 403(b) of the Internal
 14 Revenue Code of 1986 is amended by adding at the end
 15 the following new paragraph:

16 “(15) MULTIPLE EMPLOYER PLANS.—

17 “(A) IN GENERAL.—Except in the case of
 18 a church plan, this subsection shall not be
 19 treated as failing to apply to an annuity con-
 20 tract solely by reason of such contract being
 21 purchased under a plan maintained by more
 22 than 1 employer.

23 “(B) TREATMENT OF EMPLOYERS FAILING
 24 TO MEET REQUIREMENTS OF PLAN.—

1 “(i) IN GENERAL.—In the case of a
2 plan maintained by more than 1 employer,
3 this subsection shall not be treated as fail-
4 ing to apply to an annuity contract held
5 under such plan merely because of one or
6 more employers failing to meet the require-
7 ments of this subsection if such plan satis-
8 fies rules similar to the rules of section
9 413(e)(2) with respect to any such em-
10 ployer failure.

11 “(ii) ADDITIONAL REQUIREMENTS IN
12 CASE OF NON-GOVERNMENTAL PLANS.—A
13 plan shall not be treated as meeting the re-
14 quirements of this subparagraph unless the
15 plan meets the requirements of subpara-
16 graph (A) or (B) of section 413(e)(1), ex-
17 cept in the case of a multiple employer
18 plan maintained solely by any of the fol-
19 lowing: A State, a political subdivision of a
20 State, or an agency or instrumentality of
21 any one or more of the foregoing.”.

22 (b) ANNUAL REGISTRATION FOR 403(b) MULTIPLE
23 EMPLOYER PLAN.—Section 6057 of the Internal Revenue
24 Code of 1986 is amended by redesignating subsection (g)

1 as subsection (h) and by inserting after subsection (f) the
2 following new subsection:

3 “(g) 403(b) MULTIPLE EMPLOYER PLANS TREATED
4 AS ONE PLAN.—In the case of annuity contracts to which
5 this section applies and to which section 403(b) applies
6 by reason of the plan under which such contracts are pur-
7 chased meeting the requirements of paragraph (15) there-
8 of, such plan shall be treated as a single plan for purposes
9 of this section.”.

10 (c) ANNUAL INFORMATION RETURNS FOR 403(b)
11 MULTIPLE EMPLOYER PLAN.—Section 6058 of the Inter-
12 nal Revenue Code of 1986 is amended by redesignating
13 subsection (f) as subsection (g) and by inserting after sub-
14 section (e) the following new subsection:

15 “(f) 403(b) MULTIPLE EMPLOYER PLANS TREATED
16 AS ONE PLAN.—In the case of annuity contracts to which
17 this section applies and to which section 403(b) applies
18 by reason of the plan under which such contracts are pur-
19 chased meeting the requirements of paragraph (15) there-
20 of, such plan shall be treated as a single plan for purposes
21 of this section.”.

22 (d) AMENDMENTS TO EMPLOYEE RETIREMENT IN-
23 COME SECURITY ACT OF 1974.—

24 (1) TREATED AS POOLED EMPLOYER PLAN.—

1 (A) IN GENERAL.—Section 3(43)(A) of the
2 Employee Retirement Income Security Act of
3 1974 is amended—

4 (i) in clause (ii), by striking “section
5 501(a) of such Code or” and inserting
6 “section 501(a) of such Code, a plan that
7 consists of contracts described in section
8 403(b) of such Code, or”; and

9 (ii) in the flush text at the end, by
10 striking “the plan.” and inserting “the
11 plan, but such term shall include any pro-
12 gram (other than a governmental plan)
13 maintained for the benefit of the employees
14 of more than 1 employer that consists of
15 contracts described in section 403(b) of
16 such Code and that meets the require-
17 ments of subparagraph (A) or (B) of sec-
18 tion 413(e)(1) of such Code.”.

19 (B) CONFORMING AMENDMENTS.—Sec-
20 tions 3(43)(B)(v)(II) and 3(44)(A)(i)(I) of the
21 Employee Retirement Income Security Act of
22 1974 are each amended by striking “section
23 401(a) of such Code or” and inserting “401(a)
24 of such Code, a plan that consists of contracts
25 described in section 403(b) of such Code, or”.

1 (2) FIDUCIARIES.—Section 3(43)(B)(ii) of the
2 Employee Retirement Income Security Act of 1974
3 is amended—

4 (A) by striking “trustees meeting the re-
5 quirements of section 408(a)(2) of the Internal
6 Revenue Code of 1986” and inserting “trustees
7 (or other fiduciaries in the case of a plan that
8 consists of contracts described in section 403(b)
9 of the Internal Revenue Code of 1986) meeting
10 the requirements of section 408(a)(2) of such
11 Code”; and

12 (B) by striking “holding” and inserting
13 “holding (or causing to be held under the terms
14 of a plan consisting of such contracts)”.

15 (e) REGULATIONS RELATING TO PLAN TERMI-
16 NATION.—The Secretary of the Treasury (or the Sec-
17 retary’s designee) shall prescribe such regulations as may
18 be necessary to clarify the treatment of a plan termination
19 by an employer in the case of plans to which section
20 403(b)(15) of the Internal Revenue Code of 1986 applies.

21 (f) MODIFICATION OF MODEL PLAN LANGUAGE,
22 ETC.—

23 (1) PLAN NOTIFICATIONS.—The Secretary of
24 the Treasury (or the Secretary’s designee) shall
25 modify the model plan language published under sec-

1 tion 413(e)(5) of the Internal Revenue Code of 1986
2 to include language that notifies participating em-
3 ployers described in section 501(c)(3), and which are
4 exempt from tax under section 501(a), that the plan
5 is subject to the Employee Retirement Income Secu-
6 rity Act of 1974 and that such employer is a plan
7 sponsor with respect to its employees participating
8 in the multiple employer plan and, as such, has cer-
9 tain fiduciary duties with respect to the plan and to
10 its employees.

11 (2) MODEL PLANS FOR MULTIPLE EMPLOYER
12 403(b) NON-GOVERNMENTAL PLANS.—For plans to
13 which section 403(b)(15)(A) of the Internal Revenue
14 Code of 1986 applies (other than a plan maintained
15 for its employees by a State, a political subdivision
16 of a State, or an agency or instrumentality of any
17 one or more of the foregoing), the Secretary of the
18 Treasury shall publish model plan language similar
19 to model plan language published under section
20 413(e)(5) of such Code.

21 (3) EDUCATIONAL OUTREACH TO EMPLOYERS
22 EXEMPT FROM TAX.—The Secretary of the Treasury
23 shall provide education and outreach to increase
24 awareness to employers described in section
25 501(c)(3) of the Internal Revenue Code of 1986,

1 and which are exempt from tax under section 501(a)
2 of such Code, that multiple employer plans are sub-
3 ject to the Employee Retirement Income Security
4 Act of 1974 and that such employer is a plan spon-
5 sor with respect to its employees participating in the
6 multiple employer plan and, as such, has certain fi-
7 duciary duties with respect to the plan and to its
8 employees.

9 (g) NO INFERENCE WITH RESPECT TO CHURCH
10 PLANS.—Regarding any application of section 403(b) of
11 the Internal Revenue Code of 1986 to an annuity contract
12 purchased under a church plan (as defined in section
13 414(e) of such Code) maintained by more than 1 em-
14 ployer, or to any application of rules similar to section
15 413(e) of such Code to such a plan, no inference shall
16 be made from section 403(b)(15)(A) of such Code (as
17 added by this Act) not applying to such plans.

18 (h) EFFECTIVE DATE.—

19 (1) IN GENERAL.—The amendments made by
20 this section shall apply to plan years beginning after
21 December 31, 2021.

22 (2) RULE OF CONSTRUCTION.—Nothing in the
23 amendments made by subsection (a) shall be con-
24 strued as limiting the authority of the Secretary of
25 the Treasury or the Secretary's delegate (determined

1 without regard to such amendment) to provide for
 2 the proper treatment of a failure to meet any re-
 3 quirement applicable under the Internal Revenue
 4 Code of 1986 with respect to one employer (and its
 5 employees) in the case of a plan to which section
 6 403(b)(15) of the Internal Revenue Code of 1986
 7 applies.

8 **SEC. 5. SMALL IMMEDIATE FINANCIAL INCENTIVES FOR**
 9 **CONTRIBUTING TO A PLAN.**

10 (a) IN GENERAL.—Subparagraph (A) of section
 11 401(k)(4) of the Internal Revenue Code of 1986 is amend-
 12 ed by inserting “(other than a de minimis financial incen-
 13 tive)” after “any other benefit”.

14 (b) SECTION 403(b) PLANS.—Subparagraph (A) of
 15 section 403(b)(12) of the Internal Revenue Code of 1986,
 16 is further amended by adding at the end the following:
 17 “A plan shall not fail to satisfy clause (ii) solely by reason
 18 of offering a de minimis financial incentive to employees
 19 to elect to have the employer make contributions pursuant
 20 to a salary reduction agreement.”.

21 (c) EXEMPTION FROM PROHIBITED TRANSACTION
 22 RULES.—Subsection (d) of section 4975 of the Internal
 23 Revenue Code of 1986 is amended by striking “or” at the
 24 end of paragraph (22), by striking the period at the end

1 of paragraph (23) and inserting “, or”, and by adding at
2 the end the following new paragraph:

3 “(24) the provision of a de minimis financial in-
4 centive described in section 401(k)(4)(A) or
5 403(b)(12)(A).”.

6 (d) AMENDMENT OF EMPLOYEE RETIREMENT IN-
7 COME SECURITY ACT OF 1974.—Subsection (b) of section
8 408 of the Employee Retirement Income Security Act of
9 1974 (29 U.S.C. 1108(b)) is amended by adding at the
10 end the following new paragraph:

11 “(21) The provision of a de minimis financial
12 incentive described in section 401(k)(4)(A) or sec-
13 tion 403(b)(12)(A) of the Internal Revenue Code of
14 1986.”.

15 (e) EFFECTIVE DATE.—The amendments made by
16 this section shall apply with respect to plan years begin-
17 ning after the date of enactment of this Act.

18 **SEC. 6. PERFORMANCE BENCHMARKS FOR ASSET ALLOCA-**
19 **TION FUNDS.**

20 (a) IN GENERAL.—Not later than 1 year after the
21 date of enactment of this Act, the Secretary of Labor shall
22 provide that, in the case of a designated investment alter-
23 native that contains a mix of asset classes, the adminis-
24 trator of a plan may, but is not required to, use a bench-

1 mark that is a blend of different broad-based securities
2 market indices if—

3 (1) the blend is reasonably representative of the
4 asset class holdings of the designated investment al-
5 ternative;

6 (2) for purposes of determining the blend's re-
7 turns for 1-, 5-, and 10-calendar-year periods (or for
8 the life of the alternative, if shorter), the blend is
9 modified at least once per year to reflect changes in
10 the asset class holdings of the designated investment
11 alternative;

12 (3) the blend is furnished to participants and
13 beneficiaries in a manner that is reasonably designed
14 to be understandable; and

15 (4) each securities market index that is used for
16 an associated asset class would separately satisfy the
17 requirements of such regulation for such asset class.

18 (b) STUDY.—Not later than 3 years after the date
19 of enactment of this Act, the Secretary of Labor shall de-
20 liver a report to the Committees on Finance and Health,
21 Education, Labor, and Pensions of the Senate and the
22 Committees on Ways and Means and Education and
23 Labor of the House of Representatives regarding the utili-
24 zation, effectiveness, and participants' understanding of
25 the benchmarking requirements under this section.

1 **SEC. 7. POOLED EMPLOYER PLANS MODIFICATION.**

2 Section 3(43)(B)(ii) of the Employee Retirement In-
3 come Security Act of 1974 (29 U.S.C. 1002(43)(B)(ii))
4 is amended to read as follows:

5 “(ii) designate a named fiduciary
6 (other than an employer in the plan) to be
7 responsible for collecting contributions to
8 the plan and require such fiduciary to im-
9 plement written contribution collection pro-
10 cedures that are reasonable, diligent, and
11 systematic;”.

12 **SEC. 8. REVIEW OF PENSION RISK TRANSFER INTERPRE-**
13 **TIVE BULLETIN.**

14 Not later than 1 year after the date of enactment
15 of this Act, the Secretary of Labor shall—

16 (1) review section 2509.95–1 of title 29, Code
17 of Federal Regulations (relating to the fiduciary
18 standards under the Employee Retirement Income
19 Security Act of 1974 when selecting an annuity pro-
20 vider for a defined benefit pension plan) to deter-
21 mine whether amendments to such section are war-
22 ranted; and

23 (2) report to Congress on the findings of such
24 review, including an assessment of any risk to par-
25 ticipants.

1 **SEC. 9. REVIEW AND REPORT TO CONGRESS RELATING TO**
2 **REPORTING AND DISCLOSURE REQUIRE-**
3 **MENTS.**

4 (a) STUDY.—As soon as practicable after the date of
5 enactment of this Act, the Secretary of Labor, the Sec-
6 retary of the Treasury, and the Director of the Pension
7 Benefit Guaranty Corporation shall review the reporting
8 and disclosure requirements as applicable to each such
9 agency head, of—

10 (1) the Employee Retirement Income Security
11 Act of 1974 applicable to pension plans (as defined
12 in section 3(2) of such Act (29 U.S.C. 1002(2)));
13 and

14 (2) the Internal Revenue Code of 1986 applica-
15 ble to qualified retirement plans (as defined in sec-
16 tion 4974(c) of such Code, without regard to para-
17 graphs (4) and (5) of such section).

18 (b) REPORT.—

19 (1) IN GENERAL.—Not later than 2 years after
20 the date of enactment of this Act, the Secretary of
21 Labor, the Secretary of the Treasury, and the Direc-
22 tor of the Pension Benefit Guaranty Corporation,
23 jointly, and after consultation with a balanced group
24 of participant and employer representatives, shall
25 with respect to plans referenced in subsection (a) re-
26 port on the effectiveness of the applicable reporting

1 and disclosure requirements and make such rec-
2 ommendations as may be appropriate to the Com-
3 mittee on Education and Labor and the Committee
4 on Ways and Means of the House of Representatives
5 and the Committee on Health, Education, Labor,
6 and Pensions and the Committee on Finance of the
7 Senate to consolidate, simplify, standardize, and im-
8 prove such requirements so as to simplify reporting
9 for such plans and ensure that plans can furnish
10 and participants and beneficiaries timely receive and
11 better understand the information they need to mon-
12 itor their plans, plan for retirement, and obtain the
13 benefits they have earned.

14 (2) ANALYSIS OF EFFECTIVENESS.—To assess
15 the effectiveness of the applicable reporting and dis-
16 closure requirements, the report shall include an
17 analysis, based on plan data, of how participants
18 and beneficiaries are providing preferred contact in-
19 formation, the methods by which plan sponsors and
20 plans are furnishing disclosures, and the rate at
21 which participants and beneficiaries (grouped by key
22 demographics) are receiving, accessing, under-
23 standing, and retaining disclosures.

1 (3) COLLECTION OF INFORMATION.—The agen-
2 cies shall conduct appropriate surveys and data col-
3 lection to obtain any needed information.

4 **SEC. 10. ELIMINATING UNNECESSARY PLAN REQUIRE-**
5 **MENTS RELATED TO UNENROLLED PARTICI-**
6 **PANTS.**

7 (a) AMENDMENT OF EMPLOYEE RETIREMENT IN-
8 COME SECURITY ACT OF 1974.—

9 (1) IN GENERAL.—Part 1 of subtitle B of sub-
10 chapter I of the Employee Retirement Income Secu-
11 rity Act of 1974 is amended by redesignating section
12 111 as section 112 and by inserting after section
13 110 the following new section:

14 **“SEC. 111. ELIMINATING UNNECESSARY PLAN REQUIRE-**
15 **MENTS RELATED TO UNENROLLED PARTICI-**
16 **PANTS.**

17 “(a) IN GENERAL.—Notwithstanding any other pro-
18 vision of this title, with respect to any individual account
19 plan, no disclosure, notice, or other plan document (other
20 than the notices and documents described in paragraphs
21 (1) and (2)) shall be required to be furnished under this
22 title to any unenrolled participant if the unenrolled partici-
23 pant receives—

1 “(1) an annual reminder notice of such partici-
2 pant’s eligibility to participate in such plan and any
3 applicable election deadlines under the plan; and

4 “(2) any document requested by such partici-
5 pant that the participant would be entitled to receive
6 notwithstanding this section.

7 “(b) UNENROLLED PARTICIPANT.—For purposes of
8 this section, the term ‘unenrolled participant’ means an
9 employee who—

10 “(1) is eligible to participate in an individual
11 account plan;

12 “(2) has received the summary plan description
13 pursuant to section 104(b) and any other eligibility
14 notices required to be furnished under this title in
15 connection with such participant’s initial eligibility
16 to participate in such plan;

17 “(3) is not participating in such plan;

18 “(4) does not have a balance in the plan; and

19 “(5) satisfies such other criteria as the Sec-
20 retary of Labor may determine appropriate, as pre-
21 scribed in guidance issued in consultation with the
22 Secretary of the Treasury.

23 For purposes of this section, any eligibility to participate
24 in the plan following any period for which such employee

1 was not eligible to participate shall be treated as initial
2 eligibility.

3 “(c) ANNUAL REMINDER NOTICE.—For purposes of
4 this section, the term ‘annual reminder notice’ means a
5 notice provided in accordance with section 2520.104b–1
6 of title 29, Code of Federal Regulations (or any successor
7 regulation), which—

8 “(1) is furnished in connection with the annual
9 open season election period with respect to the plan
10 or, if there is no such period, is furnished within a
11 reasonable period prior to the beginning of each plan
12 year;

13 “(2) notifies the unenrolled participant of—

14 “(A) the unenrolled participant’s eligibility
15 to participate in the plan; and

16 “(B) the key benefits and rights under the
17 plan, with a focus on employer contributions
18 and vesting provisions; and

19 “(3) provides such information in a prominent
20 manner calculated to be understood by the average
21 participant.”.

22 (2) CLERICAL AMENDMENT.—The table of con-
23 tents in section 1 of the Employee Retirement In-
24 come Security Act of 1974 is amended by striking
25 the item relating to section 111 and by inserting

1 after the item relating to section 110 the following
 2 new items:

“Sec. 111. Eliminating unnecessary plan requirements related to unenrolled participants.

“Sec. 112. Repeal and effective date.”.

3 (b) AMENDMENT OF INTERNAL REVENUE CODE OF
 4 1986.—Section 414 of the Internal Revenue Code of 1986
 5 is amended by adding at the end the following new sub-
 6 section:

7 “(aa) ELIMINATING UNNECESSARY PLAN REQUIRE-
 8 MENTS RELATED TO UNENROLLED PARTICIPANTS.—

9 “(1) IN GENERAL.—Notwithstanding any other
 10 provision of this title, with respect to any defined
 11 contribution plan, no disclosure, notice, or other plan
 12 document (other than the notices and documents de-
 13 scribed in subparagraphs (A) and (B)) shall be re-
 14 quired to be furnished under this title to any
 15 unenrolled participant if the unenrolled participant
 16 receives—

17 “(A) an annual reminder notice of such
 18 participant’s eligibility to participate in such
 19 plan and any applicable election deadlines under
 20 the plan, and

21 “(B) any document requested by such par-
 22 ticipant that the participant would be entitled
 23 to receive notwithstanding this subsection.

1 “(2) UNENROLLED PARTICIPANT.—For pur-
2 poses of this subsection, the term ‘unenrolled partici-
3 pant’ means an employee who—

4 “(A) is eligible to participate in a defined
5 contribution plan,

6 “(B) has received the summary plan de-
7 scription pursuant to section 104(b) of the Em-
8 ployee Retirement Income Security Act of 1974
9 and any other eligibility notices in connection
10 with such participant’s initial eligibility to par-
11 ticipate in such plan,

12 “(C) is not participating in such plan,

13 “(D) does not have a balance in the plan,
14 and

15 “(E) satisfies such other criteria as the
16 Secretary of the Treasury may determine ap-
17 propriate, as prescribed in guidance issued in
18 consultation with the Secretary of Labor.

19 For purposes of this subsection, any eligibility to
20 participate in the plan following any period for
21 which such employee was not eligible to participate
22 shall be treated as initial eligibility.

23 “(3) ANNUAL REMINDER NOTICE.—For pur-
24 poses of this subsection, the term ‘annual reminder
25 notice’ means the notice described in section 111(c)

1 of the Employee Retirement Income Security Act of
2 1974.”.

3 (c) EFFECTIVE DATE.—The amendments made by
4 this section shall apply to plan years beginning after De-
5 cember 31, 2021.

6 **SEC. 11. RECOVERY OF RETIREMENT PLAN OVERPAY-**
7 **MENTS.**

8 (a) OVERPAYMENTS UNDER ERISA.—Section 206 of
9 the Employee Retirement Income Security Act of 1974
10 (29 U.S.C. 1056) is amended by adding at the end the
11 following new subsection:

12 “(h) SPECIAL RULES APPLICABLE TO BENEFIT
13 OVERPAYMENTS.—

14 “(1) GENERAL RULE.—In the case of an inad-
15 vertent benefit overpayment by any pension plan, the
16 responsible plan fiduciary shall not be considered to
17 have failed to comply with the requirements of this
18 title merely because such fiduciary determines, in
19 the exercise of its fiduciary discretion, not to seek
20 recovery of all or part of such overpayment from—

21 “(A) any participant or beneficiary,

22 “(B) any plan sponsor of, or contributing
23 employer to—

24 “(i) an individual account plan, pro-
25 vided that the amount needed to prevent or

1 restore any impermissible forfeiture from
2 any participant's or beneficiary's account
3 arising in connection with the overpayment
4 is, separately from and independently of
5 the overpayment, allocated to such account
6 pursuant to the nonforfeitability require-
7 ments of section 203 (for example, out of
8 the plan's forfeiture account, additional
9 employer contributions, or recoveries from
10 those responsible for the overpayment), or

11 “(ii) a defined benefit pension plan
12 subject to the funding rules in part 3 of
13 this subtitle B, unless the responsible plan
14 fiduciary determines, in the exercise of its
15 fiduciary discretion, that failure to recover
16 all or part of the overpayment faster than
17 required under such funding rules would
18 materially affect the plan's ability to pay
19 benefits due to other participants and
20 beneficiaries, or

21 “(C) any fiduciary of the plan, other than
22 a fiduciary (including a plan sponsor or contrib-
23 uting employer acting in a fiduciary capacity)
24 whose breach of its fiduciary duties resulted in
25 such overpayment, provided that if the plan has

1 established prudent procedures to prevent and
2 minimize overpayment of benefits and the rel-
3 evant plan fiduciaries have followed such proce-
4 dures, an inadvertent benefit overpayment will
5 not give rise to a breach of fiduciary duty.

6 “(2) REDUCTION IN FUTURE BENEFIT PAY-
7 MENTS AND RECOVERY FROM RESPONSIBLE
8 PARTY.—Paragraph (1) shall not fail to apply with
9 respect to any inadvertent benefit overpayment
10 merely because, after discovering such overpayment,
11 the responsible plan fiduciary—

12 “(A) reduces future benefit payments to
13 the correct amount provided for under the
14 terms of the plan, or

15 “(B) seeks recovery from the person or
16 persons responsible for the overpayment.

17 “(3) EMPLOYER FUNDING OBLIGATIONS.—
18 Nothing in this subsection shall relieve an employer
19 of any obligation imposed on it to make contribu-
20 tions to a plan to meet the minimum funding stand-
21 ards under part 3 of this subtitle B or to prevent
22 or restore an impermissible forfeiture in accordance
23 with section 203.

24 “(4) RECOUPMENT FROM PARTICIPANTS AND
25 BENEFICIARIES.—If the responsible plan fiduciary,

1 in the exercise of its fiduciary discretion, decides to
2 seek recoupment from a participant or beneficiary of
3 all or part of an inadvertent benefit overpayment
4 made by the plan to such participant or beneficiary,
5 it may do so, subject to the following conditions:

6 “(A) No interest or other additional
7 amounts (such as collection costs or fees) are
8 sought on overpaid amounts for any period be-
9 fore or after the date of correction of such over-
10 payment.

11 “(B) If the plan seeks to recoup past over-
12 payments of a non-decreasing periodic benefit
13 by reducing future benefit payments—

14 “(i) the reduction ceases after the
15 plan has recovered the full dollar amount
16 of the overpayment,

17 “(ii) the amount recouped each cal-
18 endar year does not exceed 10 percent of
19 the full dollar amount of the overpayment,
20 and

21 “(iii) future benefit payments are not
22 reduced to below 90 percent of the periodic
23 amount otherwise payable under the terms
24 of the plan.

1 Alternatively, if the plan seeks to recoup past
2 overpayments of a non-decreasing periodic ben-
3 efit through one or more installment payments,
4 the sum of such installment payments in any
5 calendar year does not exceed the sum of the
6 reductions that would be permitted in such year
7 under the preceding sentence.

8 “(C) If the plan seeks to recoup past over-
9 payments of a benefit other than a non-decreas-
10 ing periodic benefit, the plan satisfies require-
11 ments developed by the Secretary for purposes
12 of this subparagraph.

13 “(D) Efforts to recoup overpayments are—

14 “(i) not accompanied by threats of
15 litigation, unless the responsible plan fidu-
16 ciary reasonably believes it could prevail in
17 a civil action brought in Federal or State
18 court to recoup the overpayments, and

19 “(ii) not made through a collection
20 agency or similar third party, unless the
21 participant or beneficiary ignores or rejects
22 efforts to recoup the overpayment following
23 either a final judgment in Federal or State
24 court or a settlement between the partici-

1 pant or beneficiary and the plan, in either
2 case authorizing such recoupment.

3 “(E) Recoupment of past overpayments to
4 a participant is not sought from any beneficiary
5 of the participant, including a spouse, surviving
6 spouse, former spouse, or other beneficiary.

7 “(F) Recoupment may not be sought if the
8 first overpayment occurred more than 3 years
9 before the participant or beneficiary is first no-
10 tified in writing of the error.

11 “(G) A participant or beneficiary from
12 whom recoupment is sought is entitled to con-
13 test all or part of the recoupment pursuant to
14 the plan’s claims procedures.

15 “(H) In determining the amount of
16 recoupment to seek, the responsible plan fidu-
17 ciary may take into account the hardship that
18 recoupment likely would impose on the partici-
19 pant or beneficiary.

20 “(5) EFFECT OF CULPABILITY.—Subpara-
21 graphs (A) through (F) of paragraph (4) shall not
22 apply to protect a participant or beneficiary who is
23 culpable. For purposes of this paragraph, a partici-
24 pant or beneficiary is culpable if the individual bears
25 responsibility for the overpayment (such as through

1 misrepresentations or omissions that led to the over-
2 payment), or if the individual knew, or had good
3 reason to know under the circumstances, that the
4 benefit payment or payments were materially in ex-
5 cess of the correct amount. Notwithstanding the pre-
6 ceding sentence, an individual is not culpable merely
7 because the individual believed the benefit payment
8 or payments were or might be in excess of the cor-
9 rect amount, if the individual raised that question
10 with an authorized plan representative and was told
11 the payment or payments were not in excess of the
12 correct amount. With respect to a culpable partici-
13 pant or beneficiary, efforts to recoup overpayments
14 shall not be made through threats of litigation, un-
15 less a lawyer for the plan could make the representa-
16 tions required under Rule 11 of the Federal Rules
17 of Civil Procedure if the litigation were brought in
18 Federal court.”.

19 (b) OVERPAYMENTS UNDER INTERNAL REVENUE
20 CODE OF 1986.—

21 (1) QUALIFICATION REQUIREMENTS.—Section
22 414 of the Internal Revenue Code of 1986, is fur-
23 ther amended by adding at the end the following
24 new subsection:

1 “(bb) SPECIAL RULES APPLICABLE TO BENEFIT
2 OVERPAYMENTS.—

3 “(1) IN GENERAL.—A plan shall not fail to be
4 treated as described in clause (i), (ii), (iii), or (iv)
5 of section 219(g)(5)(A) (and shall not fail to be
6 treated as satisfying the requirements of section
7 401(a) or 403) merely because—

8 “(A) the plan fails to obtain payment from
9 any participant, beneficiary, employer, plan
10 sponsor, fiduciary, or other party on account of
11 any inadvertent benefit overpayment made by
12 the plan, or

13 “(B) the plan sponsor amends the plan to
14 reduce past or future benefit payments to af-
15 fected participants and beneficiaries in order to
16 adjust for prior inadvertent benefit overpay-
17 ments.

18 “(2) REDUCTION IN FUTURE BENEFIT PAY-
19 MENTS AND RECOVERY FROM RESPONSIBLE
20 PARTY.—Paragraph (1) shall not fail to apply to a
21 plan merely because, after discovering a benefit over-
22 payment, such plan—

23 “(A) reduces future benefit payments to
24 the correct amount provided for under the
25 terms of the plan, or

1 “(B) seeks recovery from the person or
2 persons responsible for such overpayment.

3 “(3) EMPLOYER FUNDING OBLIGATIONS.—
4 Nothing in this subsection shall relieve an employer
5 of any obligation imposed on it to make contribu-
6 tions to a plan to meet the minimum funding stand-
7 ards under sections 412 and 430 or to prevent or re-
8 store an impermissible forfeiture in accordance with
9 section 411.

10 “(4) OBSERVANCE OF BENEFIT LIMITATIONS.—
11 Notwithstanding paragraph (1), a plan to which
12 paragraph (1) applies shall observe any limitations
13 imposed on it by section 401(a)(17) or 415. The
14 plan may enforce such limitations using any method
15 approved by the Secretary of the Treasury for re-
16 couping benefits previously paid or allocations pre-
17 viously made in excess of such limitations.

18 “(5) COORDINATION WITH OTHER QUALIFICA-
19 TION REQUIREMENTS.—The Secretary of the Treas-
20 ury may issue regulations or other guidance of gen-
21 eral applicability specifying how benefit overpay-
22 ments and their recoupment or non-recoupment
23 from a participant or beneficiary shall be taken into
24 account for purposes of satisfying any requirement

1 applicable to a plan to which paragraph (1) ap-
2 plies.”.

3 (2) ROLLOVERS.—Section 402(c) of such Code
4 is amended by adding at the end the following new
5 paragraph:

6 “(12) In the case of an inadvertent benefit
7 overpayment from a plan to which section
8 414(bb)(1) applies that is transferred to an eligible
9 retirement plan by or on behalf of a participant or
10 beneficiary—

11 “(A) the portion of such overpayment with
12 respect to which recoupment is not sought on
13 behalf of the plan shall be treated as having
14 been paid in an eligible rollover distribution if
15 the payment would have been an eligible roll-
16 over distribution but for being an overpayment,
17 and

18 “(B) the portion of such overpayment with
19 respect to which recoupment is sought on behalf
20 of the plan shall be permitted to be returned to
21 such plan and in such case shall be treated as
22 an eligible rollover distribution transferred to
23 such plan by the participant or beneficiary who
24 received such overpayment (and the plans mak-

1 ing and receiving such transfer shall be treated
2 as permitting such transfer).

3 In any case in which recoupment is sought on behalf
4 of the plan but is disputed by the participant or ben-
5 eficiary who received such overpayment, such dispute
6 shall be subject to the claims procedures of the plan
7 that made such overpayment, such plan shall notify
8 the plan receiving the rollover of such dispute, and
9 the plan receiving the rollover shall retain such over-
10 payment on behalf of the participant or beneficiary
11 (and shall be entitled to treat such overpayment as
12 plan assets) pending the outcome of such proce-
13 dures.”.

14 (c) EFFECTIVE DATE.—The amendments made by
15 this section shall apply as of the date of the enactment
16 of this Act.

17 (d) CERTAIN ACTIONS BEFORE DATE OF ENACT-
18 MENT.—Plans, fiduciaries, employers, and plan sponsors
19 are entitled to rely on—

20 (1) a good faith interpretation of then existing
21 administrative guidance for inadvertent benefit over-
22 payment recoupments and recoveries that com-
23 menced before the date of enactment of this Act,
24 and

1 (2) determinations made before the date of en-
2 actment of this Act by the responsible plan fidu-
3 ciary, in the exercise of its fiduciary discretion, not
4 to seek recoupment or recovery of all or part of an
5 inadvertent benefit overpayment.

6 In the case of a benefit overpayment that occurred prior
7 to the date of enactment of this Act, any installment pay-
8 ments by the participant or beneficiary to the plan or any
9 reduction in periodic benefit payments to the participant
10 or beneficiary, which were made in recoupment of such
11 overpayment and which commenced prior to such date,
12 may continue after such date. Nothing in this subsection
13 shall relieve a fiduciary from responsibility for an overpay-
14 ment that resulted from a breach of its fiduciary duties.

15 **SEC. 12. IMPROVING COVERAGE FOR PART-TIME WORKERS.**

16 (a) AMENDMENT OF EMPLOYEE RETIREMENT IN-
17 COME SECURITY ACT OF 1974.—

18 (1) IN GENERAL.—Section 202 of the Employee
19 Retirement Income Security Act of 1974 (29 U.S.C.
20 1052) is amended by adding at the end the following
21 new subsection:

22 “(c) SPECIAL RULE FOR CERTAIN PART-TIME EM-
23 PLOYEES.—

24 “(1) IN GENERAL.—A pension plan that in-
25 cludes either a qualified cash or deferred arrange-

ment (as defined in section 401(k) of the Internal Revenue Code of 1986) or a salary reduction agreement (as described in section 403(b) of such Code) shall not require, as a condition of participation in the arrangement or agreement, that an employee complete a period of service with the employer (or employers) maintaining the plan extending beyond the close of the earlier of—

“(A) the period permitted under subsection (a)(1) (determined without regard to subparagraph (B)(i) thereof); or

“(B) the first 24-month period—

“(i) consisting of 2 consecutive 12-month periods during each of which the employee has at least 500 hours of service; and

“(ii) by the close of which the employee has attained the age of 21.

“(2) EXCEPTION.—Paragraph (1)(B) shall not apply to any employee described in section 410(b)(3) of the Internal Revenue Code of 1986.

“(3) COORDINATION WITH OTHER RULES.—

“(A) IN GENERAL.—In the case of employees who are eligible to participate in the ar-

1 rangement or agreement solely by reason of
2 paragraph (1)(B):

3 “(i) EXCLUSIONS.—An employer may
4 elect to exclude such employees from the
5 application of subsections (a)(4), (k)(3),
6 (k)(12), (k)(13), (k)(15)(B)(i)(I), and
7 (m)(2) of section 401 of the Internal Rev-
8 enue Code of 1986 and section 410(b) of
9 such Code.

10 “(ii) TIME OF PARTICIPATION.—The
11 rules of subsection (a)(4) shall apply to
12 such employees.

13 “(B) TOP-HEAVY RULES.—An employer
14 may elect to exclude all employees who are eligi-
15 ble to participate in a plan maintained by the
16 employer solely by reason of paragraph (1)(B)
17 from the application of the vesting and benefit
18 requirements under subsections (b) and (c) of
19 section 416 of the Internal Revenue Code of
20 1986.

21 “(4) 12-MONTH PERIOD.—For purposes of this
22 subsection, 12-month periods shall be determined in
23 the same manner as under the last sentence of sub-
24 section (a)(3)(A), except that 12-month periods be-

1 ginning before January 1, 2021, shall not be taken
2 into account.”.

3 (2) VESTING.—Section 203(b) of the Employee
4 Retirement Income Security Act of 1974 (29 U.S.C.
5 1053(a)) is amended by redesignating paragraph (4)
6 as paragraph (5) and by inserting after paragraph
7 (3) the following new paragraph:

8 “(4) PART-TIME EMPLOYEES.—For purposes of
9 determining whether an employee who is eligible to
10 participate in a qualified cash or deferred arrange-
11 ment or a salary reduction agreement under a plan
12 solely by reason of section 202(c)(1)(B) has a non-
13 forfeitable right to employer contributions—

14 “(A) except as provided in subparagraph
15 (B), each 12-month period for which the em-
16 ployee has at least 500 hours of service shall be
17 treated as a year of service;

18 “(B) paragraph (3) shall be applied by
19 substituting ‘at least 500 hours of service’ for
20 ‘more than 500 hours of service’ in subpara-
21 graph (A) thereof; and

22 “(C) 12-month periods occurring before
23 the 24-month period described in section
24 202(c)(1)(B) shall not be treated as years of
25 service.

1 For purposes of this paragraph, 12-month periods
 2 shall be determined in the same manner as under
 3 the last sentence of section 202(a)(3)(A), except that
 4 12-month periods beginning before January 1, 2021,
 5 shall not be taken into account.”.

6 (3) PRE-2021 SERVICE.—Section 112(b) of the
 7 Setting Every Community Up for Retirement En-
 8 hancement Act of 2019 (26 U.S.C. 401 note) is
 9 amended by striking “section 401(k)(2)(D)(ii)” and
 10 inserting “paragraphs (2)(D)(ii) and (15)(B)(iii) of
 11 section 401(k)”.

12 (b) CONFORMING AMENDMENTS TO INTERNAL REV-
 13 ENUE CODE OF 1986.—

14 (1) IN GENERAL.—Section 410(a) of the Inter-
 15 nal Revenue Code of 1986 is amended by adding at
 16 the end the following new paragraphs:

17 “(6) SPECIAL RULE FOR CERTAIN PART-TIME
 18 EMPLOYEES.—

19 “(A) IN GENERAL.—In the case of a plan
 20 that includes either a qualified cash or deferred
 21 arrangement (as defined in section 401(k)), a
 22 trust of which such plan is a part shall not con-
 23 stitute a qualified trust under section 401(a) if
 24 the plan requires, as a condition of participa-
 25 tion in the plan or arrangement, that an em-

1 employee complete a period of service with the em-
2 ployer (or employers) maintaining the plan ex-
3 tending beyond the close of the earlier of—

4 “(i) the period permitted under para-
5 graph (1) (determined without regard to
6 subparagraph (B)(i) thereof), or

7 “(ii) the first 24-month period—

8 “(I) consisting of 2 consecutive
9 12-month periods during each of
10 which the employee has at least 500
11 hours of service, and

12 “(II) by the close of which the
13 employee has attained the age of 21.

14 “(B) EXCEPTION.—Subparagraph (A)(ii)
15 shall not apply to any employee described in
16 section 410(b)(3).

17 “(C) COORDINATION WITH OTHER
18 RULES.—

19 “(i) IN GENERAL.—In the case of em-
20 ployees who are eligible to participate in
21 the arrangement or agreement solely by
22 reason of subparagraph (A)(ii)—

23 “(I) EXCLUSIONS.—An employer
24 may elect to exclude such employees
25 from the application of subsection (b)

1 and of subsections (a)(4), (k)(3),
2 (k)(12), (k)(13), (k)(15)(B)(i)(I), and
3 (m)(2) of section 401.

4 “(II) TIME OF PARTICIPATION.—
5 The rules of paragraph (4) shall apply
6 to such employees.

7 “(ii) TOP-HEAVY RULES.—An em-
8 ployer may elect to exclude all employees
9 who are eligible to participate in a plan
10 maintained by the employer solely by rea-
11 son of subparagraph (A)(ii) from the appli-
12 cation of the vesting and benefit require-
13 ments under subsections (b) and (c) of sec-
14 tion 416.

15 “(D) 12-MONTH PERIOD.—For purposes of
16 this paragraph, 12-month periods shall be de-
17 termined in the same manner as under the last
18 sentence of paragraph (3)(A), except that 12-
19 month periods beginning before January 1,
20 2021, shall not be taken into account.”.

21 (2) VESTING.—Section 410(a) of the Internal
22 Revenue Code of 1986 is amended by adding at the
23 end the following:

24 “(6) PART-TIME EMPLOYEES.—For purposes of
25 determining whether an employee who is eligible to

1 participate in a qualified cash or deferred arrange-
2 ment or a salary reduction agreement under a plan
3 solely by reason of paragraph (6)(A)(ii) has a non-
4 forfeitable right to employer contributions—

5 “(A) except as provided in subparagraph
6 (B), each 12-month period for which the em-
7 ployee has at least 500 hours of service shall be
8 treated as a year of service,

9 “(B) section 411(a)(6) shall be applied by
10 substituting ‘at least 500 hours of service’ for
11 ‘more than 500 hours of service’ in subpara-
12 graph (A) thereof, and

13 “(C) 12-month periods occurring before
14 the 24-month period described in paragraph
15 (6)(A)(ii) shall not be treated as years of serv-
16 ice.

17 For purposes of this paragraph, 12-month periods
18 shall be determined in the same manner as under
19 paragraph (6)(D).”.

○