

115TH CONGRESS
1ST SESSION

H. R. 4637

To amend the Internal Revenue Code of 1986 to encourage retirement savings by modifying requirements with respect to employer-established IRAs, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

DECEMBER 13, 2017

Mr. KIND (for himself and Mr. REICHERT) introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committee on Education and the Workforce, 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 amend the Internal Revenue Code of 1986 to encourage retirement savings by modifying requirements with respect to employer-established IRAs, 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 “Small businesses Add Value for Employees Act of 2017”
6 or the “SAVE Act of 2017”.

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

- Sec. 1. Short title; table of contents.
- Sec. 2. Elimination of restriction on SIMPLE IRA rollovers.
- Sec. 3. Allowing mid-year SIMPLE IRA plan termination.
- Sec. 4. Elimination of higher penalty on early SIMPLE IRA distributions.
- Sec. 5. Increase in contributions allowed for SIMPLE IRA.
- Sec. 6. SIMPLE 401(k) parity for additional nonelective employer contributions.
- Sec. 7. Automatic deferral IRAs.
- Sec. 8. Modification of automatic enrollment safe harbor.
- Sec. 9. Secure deferral arrangements.
- Sec. 10. Credit for employers with respect to modified safe harbor requirements.
- Sec. 11. Modification of regulations.
- Sec. 12. Limited transfer of unused balance in flexible spending arrangement.
- Sec. 13. Prior years compensation taken into account in determining maximum retirement savings deduction.
- Sec. 14. Expanding small employer pension plan startup cost credit.
- Sec. 15. Financial education.
- Sec. 16. Small employer plans.
- Sec. 17. Modification of ERISA rules relating to multiple employer defined contribution plans.
- Sec. 18. Clarification of treatment of individual retirement plans with payroll deduction.
- Sec. 19. Disclosure regarding lifetime income.
- Sec. 20. Lifetime income safe harbor.

3 **SEC. 2. ELIMINATION OF RESTRICTION ON SIMPLE IRA**
 4 **ROLLOVERS.**

5 (a) IN GENERAL.—Section 408(d)(3) of the Internal
 6 Revenue Code of 1986 is amended by striking subpara-
 7 graph (G).

8 (b) EFFECTIVE DATE.—The amendment made by
 9 this section shall apply to distributions in taxable years
 10 beginning after the date of the enactment of this Act.

1 **SEC. 3. ALLOWING MID-YEAR SIMPLE IRA PLAN TERMI-**
2 **NATION.**

3 (a) IN GENERAL.—Section 408(p) of the Internal
4 Revenue Code of 1986 is amended by adding at the end
5 the following new paragraph:

6 “(11) SPECIAL RULES RELATING TO MID-YEAR
7 TERMINATION.—

8 “(A) IN GENERAL.—An employer may
9 elect to terminate (in such form and manner as
10 the Secretary may provide) the qualified salary
11 reduction arrangement of the employer at any
12 time during the year.

13 “(B) PRORATION AND APPLICATION OF
14 QUALIFIED PLAN LIMITATION.—In the case of a
15 year during which an employer terminates a
16 qualified salary reduction arrangement before
17 the end of such year—

18 “(i) the applicable dollar amount de-
19 termined under paragraph (2)(E) for such
20 year and the applicable dollar amount de-
21 termined under section 414(v)(2)(B)(ii) for
22 such year shall both be prorated to the
23 date of such termination,

24 “(ii) for purposes of determining the
25 compensation of an employee for such ar-
26 rangement for such year, the year of such

1 termination shall be treated as ending on
 2 the date of such termination, and

3 “(iii) subparagraph (D) of paragraph
 4 (2) shall not apply with respect to a quali-
 5 fied plan maintained in such year only
 6 after the date of such termination.

7 “(C) MATCHING CONTRIBUTION.—Termi-
 8 nation of an arrangement under subparagraph
 9 (A) shall not be construed to modify the re-
 10 quirement of subparagraph (A)(iii) (with re-
 11 spect to any elective employer contributions) or
 12 (B) (with respect to nonelective contributions)
 13 of paragraph (2) made by the employer on be-
 14 half of an employee during the portion of such
 15 year the qualified salary reduction arrangement
 16 is in effect.”.

17 (b) EFFECTIVE DATE.—The amendments made by
 18 this section shall apply to years beginning after the date
 19 of the enactment of this Act.

20 **SEC. 4. ELIMINATION OF HIGHER PENALTY ON EARLY SIM-**
 21 **PLE IRA DISTRIBUTIONS.**

22 (a) IN GENERAL.—Section 72(t) of the Internal Rev-
 23 enue Code of 1986 is amended by striking paragraph (6).

1 (b) EFFECTIVE DATE.—The amendment made by
 2 this section shall apply to distributions in taxable years
 3 beginning after the date of the enactment of this Act.

4 **SEC. 5. INCREASE IN CONTRIBUTIONS ALLOWED FOR SIM-**
 5 **PLE IRA.**

6 (a) ADDITIONAL NONELECTIVE EMPLOYER CON-
 7 TRIBUTIONS ALLOWED.—

8 (1) IN GENERAL.—Section 408(p)(2)(A) of the
 9 Internal Revenue Code of 1986 is amended by strik-
 10 ing “and” at the end of clause (iii), by redesignating
 11 clause (iv) as clause (v), and by inserting after
 12 clause (iii) the following new clause:

13 “(iv) the employer may make, in addi-
 14 tion to any other contribution under this
 15 paragraph, nonelective contributions which
 16 meet the requirements of subparagraph
 17 (F), and”.

18 (2) REQUIREMENTS RELATING TO ADDITIONAL
 19 NONELECTIVE CONTRIBUTIONS.—Section 408(p)(2)
 20 of such Code is amended by adding at the end the
 21 following new subparagraph:

22 “(F) REQUIREMENTS RELATING TO ADDI-
 23 TIONAL NONELECTIVE CONTRIBUTIONS UNDER
 24 SUBPARAGRAPH (A)(iv).—

1 “(i) IN GENERAL.—Nonelective con-
2 tributions meet the requirements of this
3 subparagraph if—

4 “(I) such contributions do not ex-
5 ceed more than 10 percent of com-
6 pensation (subject to the limitation
7 described in subparagraph (B)(ii)) for
8 each employee who is eligible to par-
9 ticipate in the arrangement and who
10 has at least \$5,000 of compensation
11 from the employer for the year, and

12 “(II) such contributions are
13 made either as a uniform percentage
14 of compensation or a uniform dollar
15 amount for all participants.

16 “(ii) PERMITTED DISPARITY RULES
17 NOT APPLICABLE.—Section 401(l) shall
18 not apply for purposes of determining
19 whether the requirements of clause (i) are
20 met.”.

21 (3) CONFORMING AMENDMENT.—Section
22 408(p)(2)(A)(v) of such Code, as redesignated by
23 this section, is amended by striking “clause (i) or
24 (iii)” and inserting “clause (i), (iii), or (iv)”.

1 (b) INCREASE IN ELECTIVE CONTRIBUTION LIMITA-
2 TION.—Section 408(p)(2)(E) is amended to read as fol-
3 lows:

4 “(E) APPLICABLE DOLLAR AMOUNT.—For
5 purposes of subparagraph (A)(ii), the applicable
6 dollar amount shall be the applicable dollar
7 amount in effect under section 402(g)(1).”.

8 (c) SIMPLE IRA SUBJECT TO DEFINED CONTRIBU-
9 TION PLAN LIMITATION.—Section 408(p) of such Code,
10 as amended by section 3, is amended by adding at the
11 end the following new paragraph:

12 “(12) SUBJECT TO DEFINED CONTRIBUTION
13 PLAN LIMITATION.—An arrangement shall not be
14 treated as a qualified salary reduction arrangement
15 for any year if contributions with respect to any em-
16 ployee for the year exceed the limitation of para-
17 graph (1) of section 415(c) (relating to limitation for
18 defined contribution plans).”.

19 (d) EFFECTIVE DATE.—The amendments made by
20 this section shall apply to contributions for taxable years
21 beginning after December 31, 2017.

1 **SEC. 6. SIMPLE 401(k) PARITY FOR ADDITIONAL NONELEC-**
 2 **TIVE EMPLOYER CONTRIBUTIONS.**

3 (a) IN GENERAL.—Section 401(k)(11)(B) of such
 4 Code is amended by adding at the end the following new
 5 clause:

6 “(iv) SPECIAL RULE FOR ADDITIONAL
 7 NONELECTIVE EMPLOYER CONTRIBU-
 8 TIONS.—An arrangement shall not be
 9 treated as failing to meet the requirements
 10 of this subparagraph merely because under
 11 such arrangement the employer makes, in
 12 addition to any other contribution under
 13 this subparagraph, nonelective contribu-
 14 tions of not more than 10 percent of com-
 15 pensation for each employee who is eligible
 16 to participate in the arrangement and who
 17 has at least \$5,000 of compensation from
 18 the employer for the year.”.

19 (b) EFFECTIVE DATE.—The amendment made by
 20 this section shall apply to plan years beginning after De-
 21 cember 31, 2017.

22 **SEC. 7. AUTOMATIC DEFERRAL IRAS.**

23 (a) IN GENERAL.—Subpart A of part I of subchapter
 24 D of chapter 1 of the Internal Revenue Code of 1986 is
 25 amended by inserting after section 408A the following new
 26 section:

1 **“SEC. 408B. AUTOMATIC DEFERRAL IRAS.**

2 “(a) IN GENERAL.—An automatic deferral IRA shall
3 be treated for purposes of this title in the same manner
4 as an individual retirement plan. An automatic deferral
5 IRA may also be treated as a Roth IRA for purposes of
6 this title if it meets the requirements of section 408A.

7 “(b) AUTOMATIC DEFERRAL IRA.—For purposes of
8 this section, the term ‘automatic deferral IRA’ means an
9 individual retirement plan (as defined in section
10 7701(a)(37)) with respect to which contributions are made
11 under an arrangement which satisfies the requirements of
12 paragraphs (1) through (4) of subsection (c).

13 “(c) AUTOMATIC DEFERRAL IRA ARRANGEMENTS.—

14 “(1) ENROLLMENT.—

15 “(A) IN GENERAL.—The requirements of
16 this paragraph are met if each employee eligible
17 to participate in the arrangement is treated as
18 having elected to have the employer make pay-
19 ments as elective contributions to an automatic
20 deferral IRA on behalf of such employee (which
21 would have otherwise been made to the em-
22 ployee directly in cash) in an amount equal to
23 so much of a qualified percentage of compensa-
24 tion of such employee as does not exceed the
25 deductible amount for such year (within the
26 meaning of section 219(b)).

1 “(B) ELIGIBILITY.—For purposes of sub-
2 paragraph (A), an employee is eligible to par-
3 ticipate if such employee has at least \$5,000 of
4 compensation from the employer for the pre-
5 ceding year.

6 “(C) ELECTION OUT.—The election treat-
7 ed as having been made under subparagraph
8 (A) shall cease to apply with respect to any em-
9 ployee who makes an affirmative election—

10 “(i) to not have such elective contribu-
11 tions made, or

12 “(ii) not later than the close of the
13 30-day period beginning on the date of the
14 first contribution with respect to such em-
15 ployee, to make elective contributions at a
16 level specified in such affirmative election.

17 “(D) QUALIFIED PERCENTAGE.—For pur-
18 poses of this paragraph, the term ‘qualified per-
19 centage’ means, with respect to any employee,
20 any percentage determined under the arrange-
21 ment if such percentage is applied uniformly,
22 does not exceed 15 percent, and is at least—

23 “(i) 3 percent during the period end-
24 ing on the last day of the first plan year
25 which begins after the date on which the

1 first elective contribution described in sub-
2 paragraph (A) is made with respect to
3 such employee, and

4 “(ii) during any subsequent plan year,
5 a percentage equal to—

6 “(I) 3 percent, plus

7 “(II) 1 percent multiplied by the
8 number of plan years (but not more
9 than 12) beginning after the plan year
10 described in clause (i).

11 “(2) NOTICE.—

12 “(A) IN GENERAL.—The requirements of
13 this paragraph are met if, within a reasonable
14 period before the first day an employee is eligi-
15 ble to participate in the arrangement, the em-
16 ployee receives written notice of the employee’s
17 rights and obligations under the arrangement
18 which—

19 “(i) is sufficiently accurate and com-
20 prehensive to apprise the employee of such
21 rights, and

22 “(ii) is written in a manner calculated
23 to be understood by the average employee
24 to whom the arrangement applies.

1 “(B) TIMING AND CONTENT.—A notice
2 shall not be treated as meeting the require-
3 ments of subparagraph (A) with respect to an
4 employee unless—

5 “(i) the notice explains the employee’s
6 right to elect not to have elective contribu-
7 tions made on the employee’s behalf (or to
8 elect to have such contributions made at a
9 different percentage),

10 “(ii) the notice explains how contribu-
11 tions made under the arrangement will be
12 invested in the absence of any investment
13 election by the employee, and

14 “(iii) the employee has a reasonable
15 period of time after receipt of the notice
16 described in clauses (i) and (ii) and before
17 the first elective contribution is made to
18 make either such election.

19 “(3) DEFAULT INVESTMENT ARRANGEMENT.—
20 The requirements of this paragraph are met if—

21 “(A) in the absence of an investment elec-
22 tion by the employee with respect to the em-
23 ployee’s interest in the trust, such interest is in-
24 vested as provided in regulations prescribed
25 pursuant to subparagraph (A) of section

1 404(c)(5) of the Employee Retirement Income
2 Security Act of 1974, and

3 “(B) the employer provides each employee
4 who has an interest in the trust, notice which
5 meets the requirements of subparagraph (B) of
6 such section.

7 “(4) ADMINISTRATIVE REQUIREMENTS.—The
8 requirements of this paragraph are met if—

9 “(A) an employer must make—

10 “(i) the elective contributions under
11 paragraph (1)(A) not later than the close
12 of the 30-day period following the last day
13 of the month with respect to which the
14 contributions are to be made, and

15 “(ii) a payment of interest at the
16 overpayment rate (as determined under
17 section 6621(a)) on any such elective con-
18 tribution made after the end of the period
19 specified in clause (i),

20 “(B) an employee may elect to terminate
21 participation in the arrangement at any time
22 during the year, except that if the employee so
23 terminates, the arrangement may provide that
24 the employee may not elect to resume participa-
25 tion until the beginning of the next year, and

1 “(C) each employee eligible to participate
 2 may elect, during the 30-day period before the
 3 beginning of any year, or to modify the amount
 4 subject to such arrangement, for such year.”.

5 (b) FAILURE TO MAKE TIMELY CONTRIBUTIONS.—
 6 Chapter 43 of such Code is amended by adding at the
 7 end the following:

8 **“SEC. 4980J. FAILURE TO MAKE TIMELY CONTRIBUTIONS**
 9 **UNDER AUTOMATIC DEFERRAL IRAS.**

10 “(a) INITIAL TAX.—If at any time during any taxable
 11 year an employer maintains an automatic deferral IRA
 12 which is part of a plan to which section 408B applies,
 13 there is hereby imposed on the employer for the taxable
 14 year a tax equal to 10 percent of the aggregate required
 15 contributions to such automatic deferral IRA for all plan
 16 years that are not paid by the date specified in section
 17 408B(c)(4)(A)(i) and that remain unpaid as of the end
 18 of any plan year ending with or within the taxable year.

19 “(b) ADDITIONAL TAX.—If a tax is imposed under
 20 subsection (a) on any unpaid required contribution and
 21 such amount remains unpaid as of the close of the taxable
 22 period, there is hereby imposed a tax equal to 100 percent
 23 of the unpaid required contribution to the extent not so
 24 paid or corrected.

25 “(c) LIMITATIONS ON AMOUNT OF TAX.—

1 “(1) TAX NOT TO APPLY WHERE FAILURE NOT
2 DISCOVERED EXERCISING REASONABLE DILI-
3 GENCE.—No tax shall be imposed by subsection (a)
4 on any failure during any period for which it is es-
5 tablished to the satisfaction of the Secretary that the
6 employer did not know, and exercising reasonable
7 diligence would not have known, that such failure
8 existed.

9 “(2) TAX NOT TO APPLY TO FAILURES COR-
10 RECTED WITHIN 30 DAYS.—No tax shall be imposed
11 by subsection (a) on any failure if—

12 “(A) such failure was due to reasonable
13 cause and not to willful neglect, and

14 “(B) such failure is corrected during the
15 30-day period beginning on the 1st date the
16 employer knew, or exercising reasonable dili-
17 gence would have known, that such failure ex-
18 isted.

19 “(3) WAIVER BY SECRETARY.—In the case of a
20 failure which is due to reasonable cause and not to
21 willful neglect, the Secretary may waive part or all
22 of the tax imposed by subsection (a) to the extent
23 that the payment of such tax would be excessive rel-
24 ative to the failure involved.”.

1 (c) PREEMPTION OF CONFLICTING STATE LAWS.—

2 Any law of a State shall be superseded if it would directly
3 or indirectly prohibit or restrict an employer from creating
4 or maintaining an automatic deferral IRA (as defined in
5 section 408B of the Internal Revenue Code of 1986).

6 (d) CLERICAL AMENDMENT.—

7 (1) The table of sections for subpart A of part
8 I of subchapter D of chapter 1 of the Internal Rev-
9 enue Code of 1986 is amended by inserting after the
10 item relating to 408A the following new item:

“Sec. 408B. Automatic deferral IRAs.”.

11 (2) The table of sections for chapter 43 of such
12 Code is amended by adding at the end the following
13 new item:

“Sec. 4980J. Failure to make timely contributions under automatic deferral
IRAs.”.

14 (e) EFFECTIVE DATE.—The amendments made by
15 this section shall apply to taxable years beginning after
16 December 31, 2017.

17 **SEC. 8. MODIFICATION OF AUTOMATIC ENROLLMENT SAFE**
18 **HARBOR.**

19 (a) IN GENERAL.—

20 (1) REMOVAL OF 10 PERCENT CAP.—Section
21 401(k)(13)(C)(iii) of the Internal Revenue Code of
22 1986 is amended by striking “, does not exceed 10
23 percent, and is at least” and inserting “and is”.

1 (2) CONFORMING AMENDMENTS.—

2 (A) Section 401(k)(13)(C)(iii)(I) of such
3 Code is amended by striking “3 percent” and
4 inserting “at least 3 percent, but not greater
5 than 10 percent,”.

6 (B) Section 401(k)(13)(C)(iii)(II) of such
7 Code is amended by striking “4 percent” and
8 inserting “at least 4 percent, but not greater
9 than 15 percent,”.

10 (C) Section 401(k)(13)(C)(iii)(III) of such
11 Code is amended by striking “5 percent” and
12 inserting “at least 5 percent”.

13 (D) Section 401(k)(13)(C)(iii)(IV) of such
14 Code is amended by striking “6 percent” and
15 inserting “at least 6 percent”.

16 (b) EFFECTIVE DATE.—The amendments made by
17 this section shall apply to plan years beginning after the
18 date of enactment of this Act.

19 **SEC. 9. SECURE DEFERRAL ARRANGEMENTS.**

20 (a) IN GENERAL.—Section 401(k) of the Internal
21 Revenue Code of 1986 is amended by adding at the end
22 the following new paragraph:

23 “(14) ALTERNATIVE METHOD FOR SECURE DE-
24 FERRAL ARRANGEMENTS TO MEET NONDISCRIMINA-
25 TION REQUIREMENTS.—

1 “(A) IN GENERAL.—A secure deferral ar-
2 rangement shall be treated as meeting the re-
3 quirements of paragraph (3)(A)(ii).

4 “(B) SECURE DEFERRAL ARRANGE-
5 MENT.—For purposes of this paragraph, the
6 term ‘secure deferral arrangement’ means any
7 cash or deferred arrangement which meets the
8 requirements of subparagraphs (C), (D), and
9 (E) of paragraph (13), except as modified by
10 this paragraph.

11 “(C) QUALIFIED PERCENTAGE.—For pur-
12 poses of this paragraph, with respect to any
13 employee, the term ‘qualified percentage’
14 means, in lieu of the meaning given such term
15 in paragraph (13)(C)(iii), any percentage deter-
16 mined under the arrangement if such percent-
17 age is applied uniformly and is—

18 “(i) at least 6 percent, but not greater
19 than 10 percent, during the period ending
20 on the last day of the first plan year which
21 begins after the date on which the first
22 elective contribution described in para-
23 graph (13)(C)(i) is made with respect to
24 such employee,

1 “(ii) at least 8 percent during the
2 first plan year following the plan year de-
3 scribed in clause (i), and

4 “(iii) at least 10 percent during any
5 subsequent plan year.

6 “(D) MATCHING CONTRIBUTIONS.—

7 “(i) IN GENERAL.—For purposes of
8 this paragraph, an arrangement shall be
9 treated as having met the requirements of
10 paragraph (13)(D)(i) if and only if the em-
11 ployer makes matching contributions on
12 behalf of each employee who is not a highly
13 compensated employee in an amount equal
14 to the sum of—

15 “(I) 100 percent of the elective
16 contributions of the employee to the
17 extent that such contributions do not
18 exceed 1 percent of compensation,

19 “(II) 50 percent of so much of
20 such contributions as exceed 1 percent
21 but do not exceed 6 percent of com-
22 pensation, plus

23 “(III) 25 percent of so much of
24 such contributions as exceed 6 percent

1 but do not exceed 10 percent of com-
2 pensation.

3 “(ii) APPLICATION OF RULES FOR
4 MATCHING CONTRIBUTIONS.—The rules of
5 clause (ii) of paragraph (12)(B) and
6 clauses (iii) and (iv) of paragraph (13)(D)
7 shall apply for purposes of clause (i) but
8 the rule of clause (iii) of paragraph
9 (12)(B) shall not apply for such purposes.
10 The rate of matching contribution for each
11 incremental deferral must be at least as
12 high as the rate specified in clause (i), and
13 may be higher, so long as such rate does
14 not increase as an employee’s rate of elec-
15 tive contributions increases.”.

16 (b) MATCHING CONTRIBUTIONS AND EMPLOYEE
17 CONTRIBUTIONS.—Section 401(m) of the Internal Rev-
18 enue Code of 1986 is amended by redesignating paragraph
19 (13) as paragraph (14) and by inserting after paragraph
20 (12) the following new paragraph:

21 “(13) ALTERNATIVE METHOD FOR SECURE DE-
22 FERRAL ARRANGEMENTS.—A defined contribution
23 plan shall be treated as meeting the requirements of
24 paragraph (2) with respect to matching contribu-
25 tions and employee contributions if the plan—

1 “(A) is a secure deferral arrangement (as
2 defined in subsection (k)(14)),

3 “(B) meets the requirements of clauses (ii)
4 and (iii) of paragraph (11)(B), and

5 “(C) provides that matching contributions
6 on behalf of any employee may not be made
7 with respect to an employee’s contributions or
8 elective deferrals in excess of 10 percent of the
9 employee’s compensation.”.

10 (c) EFFECTIVE DATE.—The amendments made by
11 this section shall apply to plan years beginning after De-
12 cember 31, 2017.

13 **SEC. 10. CREDIT FOR EMPLOYERS WITH RESPECT TO MODI-**
14 **FIED SAFE HARBOR REQUIREMENTS.**

15 (a) IN GENERAL.—Subpart D of part IV of sub-
16 chapter A of chapter 1 of the Internal Revenue Code of
17 1986 is amended by adding at the end the following new
18 section:

19 **“SEC. 45S. CREDIT FOR SMALL EMPLOYERS WITH RESPECT**
20 **TO MODIFIED SAFE HARBOR REQUIREMENTS**
21 **FOR AUTOMATIC CONTRIBUTION ARRANGE-**
22 **MENTS.**

23 “(a) GENERAL RULE.—For purposes of section 38,
24 in the case of a small employer, the safe harbor adoption
25 credit determined under this section for any taxable year

1 is the amount equal to the total of the employer's match-
2 ing contributions under section 401(k)(14)(D) during the
3 taxable year on behalf of employees who are not highly
4 compensated employees, subject to the limitations of sub-
5 section (b).

6 “(b) LIMITATIONS.—

7 “(1) LIMITATION WITH RESPECT TO COM-
8 PENSATION.—The credit determined under sub-
9 section (a) with respect to contributions made on be-
10 half of an employee who is not a highly compensated
11 employee shall not exceed 2 percent of the com-
12 pensation of such employee for the taxable year.

13 “(2) LIMITATION WITH RESPECT TO YEARS OF
14 PARTICIPATION.—Credit shall be determined under
15 subsection (a) with respect to contributions made on
16 behalf of an employee who is not a highly com-
17 pensated employee only during the first 5 years such
18 employee participates in the qualified automatic con-
19 tribution arrangement.

20 “(c) DEFINITIONS.—

21 “(1) IN GENERAL.—Any term used in this sec-
22 tion which is also used in section 401(k)(14) shall
23 have the same meaning as when used in such sec-
24 tion.

1 “(2) SMALL EMPLOYER.—The term ‘small em-
 2 ployer’ means an eligible employer (as defined in
 3 section 408(p)(2)(C)(i)).

4 “(d) DENIAL OF DOUBLE BENEFIT.—No deduction
 5 shall be allowable under this title for any contribution with
 6 respect to which a credit is allowed under this section.”.

7 (b) CREDIT TO BE PART OF GENERAL BUSINESS
 8 CREDIT.—Section 38(b) of the Internal Revenue Code of
 9 1986 is amended—

10 (1) by striking “plus” at the end of paragraph
 11 (35);

12 (2) by striking the period at the end of para-
 13 graph (36) and inserting “, plus”; and

14 (3) by adding at the end the following new
 15 paragraph:

16 “(37) the safe harbor adoption credit deter-
 17 mined under section 45S.”.

18 (c) CLERICAL AMENDMENT.—The table of sections
 19 for subpart D of part IV of subchapter A of chapter 1
 20 of the Internal Revenue Code of 1986 is amended by add-
 21 ing after the item relating to section 45R the following
 22 new item:

“Sec. 45S. Credit for small employers with respect to modified safe harbor re-
 quirements for automatic contribution arrangements.”.

1 (d) EFFECTIVE DATE.—The amendments made by
2 this section shall apply to taxable years that include any
3 portion of a plan year beginning after December 31, 2017.

4 **SEC. 11. MODIFICATION OF REGULATIONS.**

5 The Secretary of the Treasury shall promulgate regu-
6 lations or other guidance that—

7 (1) simplify and clarify the rules regarding the
8 timing of participant notices required under section
9 401(k)(13)(E) of the Internal Revenue Code of
10 1986, with specific application to—

11 (A) plans that allow employees to be eligi-
12 ble for participation immediately upon begin-
13 ning employment; and

14 (B) employers with multiple payroll and
15 administrative systems; and

16 (2) simplify and clarify the automatic escalation
17 rules under sections 401(k)(13)(C)(iii) and
18 401(k)(14)(C) of the Internal Revenue Code of 1986
19 in the context of employers with multiple payroll and
20 administrative systems.

21 Such regulations or guidance shall address the particular
22 case of employees within the same plan who are subject
23 to different notice timing and different percentage require-
24 ments, and provide assistance for plan sponsors in man-
25 aging such cases.

1 **SEC. 12. LIMITED TRANSFER OF UNUSED BALANCE IN**
2 **FLEXIBLE SPENDING ARRANGEMENT.**

3 (a) IN GENERAL.—Section 125 of the Internal Rev-
4 enue Code of 1986 is amended by redesignating sub-
5 sections (k) and (l) as subsections (l) and (m), respec-
6 tively, and by inserting after subsection (h) the following
7 new subsection:

8 “(k) SPECIAL RULE FOR UNUSED BENEFITS IN
9 FLEXIBLE SPENDING ARRANGEMENTS.—

10 “(1) IN GENERAL.—For purposes of this title,
11 a plan or other arrangement shall not fail to be
12 treated as a cafeteria plan or flexible spending ar-
13 rangement merely because such arrangement pro-
14 vides for qualified retirement distributions.

15 “(2) QUALIFIED RETIREMENT DISTRIBUTION.—

16 “(A) IN GENERAL.—For purposes of this
17 section, the term ‘qualified retirement distribu-
18 tion’ means any distribution to an individual of
19 all or a portion of the employee’s account under
20 such arrangement, but only to the extent—

21 “(i) the amount does not exceed the
22 lesser of—

23 “(I) \$250, or

24 “(II) the unused benefits with re-
25 spect to the arrangement, and

1 “(ii) the amount received is paid in
2 the form of a direct trustee-to-trustee
3 transfer to a qualified retirement plan (as
4 defined in section 4974(c)), or an eligible
5 deferred compensation plan (as defined in
6 section 457(b)) of an eligible employer de-
7 scribed in section 457(e)(1)(A), maintained
8 by the same employer as the employer
9 maintaining the cafeteria plan or flexible
10 spending arrangement of the individual.

11 “(B) UNUSED BENEFITS.—For purposes
12 of this paragraph, the term ‘unused benefits’
13 means, with respect to an employee, the excess
14 of—

15 “(i) the maximum amount of reim-
16 bursement allowable to the employee dur-
17 ing a plan year under a flexible spending
18 arrangement, over

19 “(ii) the actual amount of reimburse-
20 ment during such year under such ar-
21 rangement.

22 “(C) SPECIAL RULES FOR TREATMENT OF
23 CONTRIBUTIONS TO RETIREMENT PLANS.—For
24 purposes of this title, qualified retirement dis-
25 tributions—

1 “(i) shall be treated as elective defer-
2 rals (as defined in section 402(g)(3))
3 under an annuity contract described in sec-
4 tion 403(b),

5 “(ii) shall be treated as elective defer-
6 rals (as so defined) in the case of contribu-
7 tions to a qualified cash or deferred ar-
8 rangement (as defined in section 401(k))
9 under a plan which is described in section
10 401(a) which includes a trust which is ex-
11 empt from tax under section 501(a),

12 “(iii) shall be treated as deferred com-
13 pensation in the case of contributions to an
14 eligible deferred compensation plan (as de-
15 fined in section 457(b)) maintained by an
16 employer described in section 457(e)(1)(A),
17 and

18 “(iv) shall be treated in the manner
19 designated for purposes of section 408 or
20 408A in the case of contributions to an in-
21 dividual retirement plan.”.

22 (b) EFFECTIVE DATE.—The amendments made by
23 this section shall apply to plan years ending after the date
24 of the enactment of this Act.

1 **SEC. 13. PRIOR YEARS COMPENSATION TAKEN INTO AC-**
 2 **COUNT IN DETERMINING MAXIMUM RETIRE-**
 3 **MENT SAVINGS DEDUCTION.**

4 (a) IN GENERAL.—Section 219(b)(1)(B) of the Inter-
 5 nal Revenue Code of 1986 is amended by inserting “or
 6 the preceding taxable year” after “such taxable year”.

7 (b) EFFECTIVE DATE.—The amendment made by
 8 this section shall apply to taxable years beginning after
 9 the date of the enactment of this Act.

10 **SEC. 14. EXPANDING SMALL EMPLOYER PENSION PLAN**
 11 **STARTUP COST CREDIT.**

12 (a) IN GENERAL.—

13 (1) INCLUDING STARTUP COSTS FOR EM-
 14 PLOYER-ESTABLISHED IRAS.—Section 45E(d)(2) of
 15 the Internal Revenue Code of 1986 is amended by
 16 striking “means a qualified employer plan” and all
 17 that follows and inserting: “means—

18 “(A) a qualified employer plan within the
 19 meaning of section 4972(d), and

20 “(B) a plan of which an automatic deferral
 21 IRA described in section 408B is a part.”.

22 (2) ADDITIONAL CREDIT AMOUNT.—

23 (A) IN GENERAL.—Section 45E(a) of such
 24 Code is amended by striking “50 percent of”
 25 and all that follows and inserting “the sum of—

1 “(1) the applicable percentage of the qualified
2 startup costs paid or incurred by the taxpayer dur-
3 ing the taxable year, plus

4 “(2) \$25 multiplied by the number of employees
5 of the employer who participate in any eligible em-
6 ployer plan of the employer for the first time in such
7 taxable year.”.

8 (B) APPLICABLE PERCENTAGE.—Section
9 45E(d) of such Code is amended by adding at
10 the end the following new paragraph:

11 “(4) APPLICABLE PERCENTAGE.—The applica-
12 ble percentage is—

13 “(A) in the case of a plan described in sub-
14 section (d)(2)(A), 75 percent, or

15 “(B) in the case of a plan described in
16 subsection (d)(2)(B), 50 percent.”.

17 (C) CONFORMING AMENDMENT.—Section
18 45E(c)(2) of such Code is amended—

19 (i) by striking “qualified employer
20 plan” in each place it appears and insert-
21 ing “eligible employer plan”; and

22 (ii) by striking “QUALIFIED” in the
23 heading thereof and inserting “ELIGIBLE”.

24 (3) INCREASED LIMITATION.—Section
25 45E(b)(1) of such Code is amended by striking

1 “\$500” and inserting “\$750 (\$2,000 in the case of
2 qualified startup costs attributable to a plan de-
3 scribed in subsection (d)(2)(A))”.

4 (b) EFFECTIVE DATE.—The amendment made by
5 this section shall apply to costs paid or incurred in taxable
6 years beginning after the date of the enactment of this
7 Act.

8 **SEC. 15. FINANCIAL EDUCATION.**

9 (a) RETIREMENT PLAN EDUCATION FOR SMALL
10 BUSINESSES.—Not later than 6 months after the date of
11 the enactment of this Act—

12 (1) the Department of the Treasury Office of
13 Financial Education, in consultation with the De-
14 partment of Labor, shall develop and implement an
15 outreach plan to educate small businesses on the
16 types of retirement plans available and the benefits
17 and requirements of such plans; and

18 (2) the Secretary of the Treasury and the Sec-
19 retary of Labor shall develop recommendations for
20 small businesses in order to improve retirement out-
21 comes. Such recommendations shall take into ac-
22 count established behavioral trends of employee in-
23 vestment and the effect of default design features
24 such as auto escalation, expansion of auto rollovers,

1 auto diversification for near retirees, and automatic
2 forms of distribution.

3 (b) FINANCIAL LITERACY.—

4 (1) IN GENERAL.—Not later than 1 year after
5 the date of the enactment of this Act, the Secretary
6 of the Treasury, in consultation with the Secretary
7 of Education, shall develop sample age-appropriate
8 curricula to be made available for financial literacy
9 education in elementary and secondary schools.

10 (2) CONTENT OF CURRICULA.—Such curricula
11 shall include the following:

12 (A) How to balance a checkbook, read a
13 credit card statement, and calculate interest
14 rates.

15 (B) What a pay stub is and why Federal
16 and State income taxes and Social Security and
17 Medicare taxes are withheld from wages.

18 (C) The differences between various types
19 of bank accounts.

20 (D) The significance of a credit score and
21 how to read credit reports.

22 (E) The marketing techniques frequently
23 used by individuals and businesses to attract
24 patrons.

1 (F) The importance of saving for college
 2 and retirement, including the various methods
 3 for saving such as traditional pensions, 401(k)s,
 4 and IRAs.

5 **SEC. 16. SMALL EMPLOYER PLANS.**

6 (a) IN GENERAL.—Section 401(k)(11) of the Inter-
 7 nal Revenue Code of 1986 is amended by adding at the
 8 end the following new subparagraph:

9 “(E) DEFERRAL ONLY SMALL EMPLOYER
 10 PLAN.—

11 “(i) IN GENERAL.—In the case of a
 12 plan described in clause (ii)—

13 “(I) the amount described in sub-
 14 paragraph (B)(i)(I) shall be \$10,000,
 15 in lieu of the amount in effect under
 16 section 408(p)(2)(A)(ii),

17 “(II) such \$10,000 amount shall,
 18 in the case years beginning after De-
 19 cember 31, 2018, be adjusted as de-
 20 scribed in section 408(p)(2)(E)(ii) ex-
 21 cept that the base period taken into
 22 account shall be the calendar quarter
 23 beginning July 1, 2017,

1 “(III) subclause (II) of subpara-
2 graph (B)(i) and clause (ii) of sub-
3 paragraph (B) shall not apply, and

4 “(IV) section 414(v) shall not
5 apply.

6 “(ii) PLAN DESCRIBED.—A plan is de-
7 scribed in this clause if the plan satisfies
8 the following requirements:

9 “(I) Such plan satisfies the re-
10 quirements of this paragraph, as
11 modified by clause (i).

12 “(II) The plan includes a quali-
13 fied automatic contribution arrange-
14 ment, as defined in paragraph (13),
15 except that subparagraph (D) of para-
16 graph (13) shall not apply and the
17 qualified percentage shall be deter-
18 mined by reference to subclauses (I),
19 (II), (III), and (IV) of paragraph
20 (13)(C)(iii).

21 “(III) The plan does not permit
22 any participant or beneficiary to re-
23 ceive or maintain a loan from the
24 plan.

1 “(IV) The plan does not permit
2 hardship distributions described in
3 paragraph (2)(B)(i)(IV) except to the
4 extent any such distribution is
5 deemed, under regulations prescribed
6 by the Secretary, to be on account of
7 an immediate and heavy financial
8 need of the employee and necessary to
9 satisfy an immediate and heavy finan-
10 cial need of the employee.

11 “(V) The plan is maintained pur-
12 suant to a model plan document pub-
13 lished by the Secretary.”.

14 (b) SIMPLIFICATION.—

15 (1) MODEL PLAN.—Within one year after the
16 date of the enactment of this Act, the Secretary of
17 the Treasury shall publish a model plan that may be
18 used to satisfy the requirement of section
19 401(k)(11)(E)(ii)(V) of the Internal Revenue Code
20 of 1986.

21 (2) PROTECTION AGAINST LOSS.—Within 120
22 days after the date of the enactment of this Act, the
23 Secretary of Labor shall amend Department of
24 Labor Regulation section 2550.404c-5(e)(4)(iv)(B)
25 so that, in the case of a plan described in section

1 401(k)(11)(E) of such Code, “four years” shall be
2 substituted for “120 days”.

3 (3) CLARIFYING DUTIES AND REDUCING BUR-
4 DENS FOR MULTIPLE EMPLOYER PLANS.—Within
5 one year after the date of the enactment of this Act,
6 the Secretary of Labor shall—

7 (A) publish rules clarifying the extent to
8 which the fiduciary duties, if any, of a partici-
9 pating employer fiduciary with respect to a plan
10 that consists of individual retirement accounts
11 described in section 413(c) of employees covered
12 by the plan fail to take such Code are limited
13 to—

14 (i) the selection and monitoring of
15 such employers for the named fiduciary;
16 and

17 (ii) the investment and management
18 of the portion of employers failing to take
19 the plan’s assets of the plan attributable to
20 employees of the employer will be trans-
21 ferred to a plan maintained only by the ex-
22 tent not otherwise delegated to another fi-
23 duciary; and

24 (B) prescribe interim final regulations pro-
25 viding simplified means by which plans de-

1 scribed in section 413(c) of such Code may sat-
2 isfy the requirements of sections 102, 103, and
3 105 of the Employee Retirement Income Secu-
4 rity Act of 1974.

5 For purposes of this paragraph, the term “partici-
6 pating employer fiduciary” means the participating
7 employer, any employee of such participating em-
8 ployer that serves as fiduciary, any committee of
9 such employees, and any other person whose fidu-
10 ciaries duties with respect to the plan relate solely
11 to the participating employer and not to the oper-
12 ation of the plan with respect to all participating
13 employers.

14 (4) ELIMINATION OF DISINCENTIVE TO POOL-
15 ING.—Not later than one year after the date of the
16 enactment of this Act, the Secretary of the Treasury
17 shall prescribe final regulations under which a plan
18 or to allow a plan to meet requirements described in
19 section 413(c) of such Code may be treated as satis-
20 fying the qualification requirements of section
21 401(a) of such Code despite the violation of such re-
22 quirements with respect to one or more participating
23 employers without regard to whether such violation
24 continues. Solely for this purpose, a plan shall be
25 treated as violating the qualification requirements of

1 section 401(a) of such Code with respect to a par-
 2 ticipating employer if such employer has failed to
 3 provide the plan sponsor with the information need-
 4 ed to comply with such requirements and such fail-
 5 ure has continued over a period of time that clearly
 6 demonstrates a lack of commitment to compliance.
 7 Such rules may require that the portion of the plan
 8 attributable to such participating employers be spun
 9 off to plans maintained by such employers.

10 (c) EFFECTIVE DATE.—

11 (1) IN GENERAL.—Except as provided in para-
 12 graph (2), the amendments made by this section
 13 shall apply to years beginning after December 31,
 14 2017.

15 (2) EXCEPTION.—Subsection (b) shall apply as
 16 of the date of the enactment of this Act.

17 **SEC. 17. MODIFICATION OF ERISA RULES RELATING TO**
 18 **MULTIPLE EMPLOYER DEFINED CONTRIBU-**
 19 **TION PLANS.**

20 (a) IN GENERAL.—

21 (1) REQUIREMENT OF COMMON INTEREST.—
 22 Section 3(2) of the Employee Retirement Income Se-
 23 curity Act of 1974 (29 U.S.C. 1002(2)) is amended
 24 by adding at the end the following:

1 “(C)(i) A qualified multiple employer plan shall
2 not fail to be treated as an employee pension benefit
3 plan or pension plan solely because the employers
4 maintaining the plan share no common interest.

5 “(ii) For purposes of this subparagraph, the
6 term ‘qualified multiple employer plan’ means a plan
7 described in section 413(c) of the Internal Revenue
8 Code of 1986 which—

9 “(I) is an individual account plan with re-
10 spect to which the requirements of clauses (iii),
11 (iv), and (v) are met, and

12 “(II) includes in its annual report required
13 to be filed under section 104(a) the name and
14 identifying information of each employer main-
15 taining the plan.

16 “(iii) The requirements of this clause are met
17 if, under the plan, each employer maintaining the
18 plan retains fiduciary responsibility for—

19 “(I) the selection and monitoring of the
20 named fiduciary, and

21 “(II) the investment and management of
22 the portion of the plan’s assets attributable to
23 the employees of the employer to the extent not
24 otherwise delegated to another fiduciary.

1 “(iv) The requirements of this clause are met if,
 2 under the plan, an employer maintaining the plan is
 3 not subject to unreasonable restrictions, fees, or pen-
 4 alties by reason of ceasing to maintain, or otherwise
 5 transferring assets from, the plan.

6 “(v) The requirements of this clause are met if
 7 each employer maintaining the plan is an eligible
 8 employer as defined in section 408(p)(2)(C)(i) of the
 9 Internal Revenue Code of 1986, applied—

10 “(I) by substituting ‘500’ for ‘100’ in sub-
 11 clause (I) thereof,

12 “(II) by substituting ‘5’ for ‘2’ each place
 13 it appears in subclause (II) thereof, and

14 “(III) without regard to the last sentence
 15 of subclause (II) thereof.”.

16 (2) SIMPLIFIED REPORTING FOR SMALL MUL-
 17 TIPLE EMPLOYER PLANS.—Section 104(a) of such
 18 Act (29 U.S.C. 1024(a)) is amended by adding at
 19 the end the following:

20 “(7)(A) In the case of any eligible small multiple em-
 21 ployer plan, the Secretary may by regulation waive the re-
 22 quirement under section 103(a)(3) to engage an inde-
 23 pendent qualified public accountant in cases where the
 24 Secretary determines it appropriate.

1 “(B) For purposes of this paragraph, the term ‘eligi-
 2 ble small multiple employer plan’ means, with respect to
 3 any plan year—

4 “(i) a qualified multiple employer plan, as de-
 5 fined in section 3(2)(C)(ii), or

6 “(ii) any other plan described in section 413(c)
 7 of the Internal Revenue Code of 1986 that satisfies
 8 the requirements of clause (v) of section 3(2)(C).”.

9 (b) CONFORMING AMENDMENT.—Section 3(2)(A) of
 10 such Act (29 U.S.C. 1002(2)(A)) is amended by striking
 11 “Except as provided in subparagraph (B)” and inserting
 12 “Except as provided in subparagraphs (B) and (C)”.

13 (c) EFFECTIVE DATE.—The amendments made by
 14 this section shall apply to years beginning after December
 15 31, 2017.

16 **SEC. 18. CLARIFICATION OF TREATMENT OF INDIVIDUAL**
 17 **RETIREMENT PLANS WITH PAYROLL DEDUC-**
 18 **TION.**

19 (a) IN GENERAL.—Section 3(2) of the Employee Re-
 20 tirement Income Security Act of 1974 (29 U.S.C.
 21 1002(2)), as amended by this Act, is amended by adding
 22 at the end the following new subparagraph:

23 “(E) Neither an individual retirement plan (as de-
 24 fined in section 7701(a)(37) of the Internal Revenue Code
 25 of 1986) nor an automatic deferral IRA arrangement (as

1 described in section 408B of such Code) maintained in
 2 connection with any such individual retirement plan shall
 3 be considered a single employee pension benefit plan mere-
 4 ly because an employer establishes a payroll deduction pro-
 5 gram for the purpose of enabling employees to make vol-
 6 untary contributions to such account or annuity.”.

7 (b) EFFECTIVE DATE.—The amendments made by
 8 this section shall take effect on the date of the enactment
 9 of this Act.

10 **SEC. 19. DISCLOSURE REGARDING LIFETIME INCOME.**

11 (a) IN GENERAL.—Section 105(a)(2)(B) of the Em-
 12 ployee Retirement Income Security Act of 1974 (29
 13 U.S.C. 1025(a)(2)) is amended—

14 (1) in clause (i), by striking “and” at the end;

15 (2) in clause (ii), by striking “diversification.”

16 and inserting “diversification, and”; and

17 (3) by inserting at the end the following:

18 “(iii) the lifetime income disclosure

19 described in subparagraph (D)(i).

20 In the case of pension benefit statements de-
 21 scribed in clause (i) of paragraph (1)(A), a life-
 22 time income disclosure under clause (iii) of this
 23 subparagraph shall only be required to be in-
 24 cluded in one pension benefit statement during
 25 any one 12-month period.”.

1 (b) LIFETIME INCOME.—Section 105(a)(2) of such
2 Act (29 U.S.C. 1025(a)) is amended by adding at the end
3 the following new subparagraph:

4 “(D) LIFETIME INCOME DISCLOSURE.—

5 “(i) IN GENERAL.—

6 “(I) DISCLOSURE.—A lifetime in-
7 come disclosure shall set forth the life-
8 time income stream equivalent of the
9 total benefits accrued with respect to
10 the participant or beneficiary.

11 “(II) LIFETIME INCOME STREAM
12 EQUIVALENT OF THE TOTAL BENE-
13 FITS ACCRUED.—For purposes of this
14 subparagraph, the term ‘lifetime in-
15 come stream equivalent of the total
16 benefits accrued’ means the amount of
17 monthly payments the participant or
18 beneficiary would receive if the total
19 accrued benefits of such participant or
20 beneficiary were used to provide life-
21 time income streams described in sub-
22 clause (III), based on assumptions
23 specified in rules prescribed by the
24 Secretary.

1 “(III) LIFETIME INCOME
2 STREAMS.—The lifetime income
3 streams described in this subclause
4 are a qualified joint and survivor an-
5 nuity (as defined in section 205(d)),
6 based on assumptions specified in
7 rules prescribed by the Secretary, in-
8 cluding the assumption that the par-
9 ticipant or beneficiary has a spouse of
10 equal age, and a single life annuity.
11 Such lifetime income streams may
12 have a term certain or other features
13 to the extent permitted under rules
14 prescribed by the Secretary.

15 “(ii) MODEL DISCLOSURE.—Not later
16 than 1 year after the date of the enact-
17 ment of the Lifetime Income Disclosure
18 Act, the Secretary shall issue a model life-
19 time income disclosure, written in a man-
20 ner so as to be understood by the average
21 plan participant, that—

22 “(I) explains that the lifetime in-
23 come stream equivalent is only pro-
24 vided as an illustration;

1 “(II) explains that the actual
2 payments under the lifetime income
3 stream described in clause (i)(III)
4 that may be purchased with the total
5 benefits accrued will depend on nu-
6 merous factors and may vary substan-
7 tially from the lifetime income stream
8 equivalent in the disclosures;

9 “(III) explains the assumptions
10 upon which the lifetime income stream
11 equivalent was determined; and

12 “(IV) provides such other similar
13 explanations as the Secretary con-
14 siders appropriate.

15 “(iii) ASSUMPTIONS AND RULES.—
16 Not later than 1 year after the date of the
17 enactment of the Lifetime Income Disclo-
18 sure Act, the Secretary shall—

19 “(I) prescribe assumptions that
20 administrators of individual account
21 plans may use in converting total ac-
22 crued benefits into lifetime income
23 stream equivalents for purposes of
24 this subparagraph; and

1 “(II) issue interim final rules
2 under clause (i).

3 In prescribing assumptions under sub-
4 clause (I), the Secretary may prescribe a
5 single set of specific assumptions (in which
6 case the Secretary may issue tables or fac-
7 tors that facilitate such conversions), or
8 ranges of permissible assumptions. To the
9 extent that an accrued benefit is or may be
10 invested in a lifetime income stream de-
11 scribed in clause (i)(III), the assumptions
12 prescribed under subclause (I) shall, to the
13 extent appropriate, permit administrators
14 of individual account plans to use the
15 amounts payable under such lifetime in-
16 come stream as a lifetime income stream
17 equivalent.

18 “(iv) LIMITATION ON LIABILITY.—No
19 plan fiduciary, plan sponsor, or other per-
20 son shall have any liability under this title
21 solely by reason of the provision of lifetime
22 income stream equivalents which are de-
23 rived in accordance with the assumptions
24 and rules described in clause (iii) and
25 which include the explanations contained in

the model lifetime income disclosure described in clause (ii). This clause shall apply without regard to whether the provision of such lifetime income stream equivalent is required by subparagraph (B)(iii).

“(v) EFFECTIVE DATE.—The requirement in subparagraph (B)(iii) shall apply to pension benefit statements furnished more than 12 months after the latest of the issuance by the Secretary of—

“(I) interim final rules under clause (i);

“(II) the model disclosure under clause (ii); or

“(III) the assumptions under clause (iii).”.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

SEC. 20. LIFETIME INCOME SAFE HARBOR.

Section 404 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1104) is amended by adding at the end the following:

“(e) SAFE HARBOR FOR ANNUITY SELECTION.—

1 “(1) IN GENERAL.—With respect to the selec-
2 tion of an insurer and a guaranteed retirement in-
3 come contract, the requirements of subsection
4 (a)(1)(B) will be deemed to be satisfied if a fidu-
5 ciary—

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

10 “(B) with respect to each insurer identified
11 under subparagraph (A)—

12 “(i) considers the financial capability
13 of such insurer to satisfy its obligations
14 under the guaranteed retirement income
15 contract; and

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

23 “(C) on the basis of such consideration,
24 concludes that—

1 “(i) at the time of the selection, the
2 insurer is financially capable of satisfying
3 its obligations under the guaranteed retire-
4 ment income contract; and

5 “(ii) the relative cost of the selected
6 guaranteed retirement income contract as
7 described in subparagraph (B)(ii) is rea-
8 sonable.

9 “(2) FINANCIAL CAPABILITY OF THE IN-
10 SURER.—A fiduciary will be deemed to satisfy the
11 requirements of paragraphs (1)(B)(i) and (1)(C)(i)
12 if—

13 “(A) the fiduciary obtains written rep-
14 resentations from the insurer that—

15 “(i) the insurer is licensed to offer
16 guaranteed retirement income contracts;

17 “(ii) the insurer, at the time of selec-
18 tion and for each of the immediately pre-
19 ceding 7 plan years—

20 “(I) operates under a certificate
21 of authority from the insurance com-
22 missioner of its domiciliary State
23 which has not been revoked or sus-
24 pended;

1 “(II) has filed audited financial
2 statements in accordance with the
3 laws of its domiciliary State under ap-
4 plicable statutory accounting prin-
5 ciples;

6 “(III) maintains (and has main-
7 tained) reserves which satisfies all the
8 statutory requirements of all States
9 where the insurer does business; and

10 “(IV) is not operating under an
11 order of supervision, rehabilitation, or
12 liquidation;

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

20 “(iv) the insurer will notify the fidu-
21 ciary of any change in circumstances oc-
22 ccurring after the provision of the represen-
23 tations in clauses (i), (ii), and (iii) which
24 would preclude the insurer from making
25 such representations at the time of

1 issuance of the guaranteed retirement in-
2 come contract, the insurer shall notify the
3 fiduciary, in advance of the issuance of any
4 guaranteed retirement income contract;
5 and

6 “(B) after receiving such representations
7 and as of the time of selection, the fiduciary
8 has not received any notice described in sub-
9 paragraph (A)(iv) and is in possession of no
10 other information which would cause the fidu-
11 ciary to question the representations provided.

12 “(3) NO REQUIREMENT TO SELECT LOWEST
13 COST.—Nothing in this subsection shall be construed
14 to require a fiduciary to select the lowest cost con-
15 tract. A fiduciary may consider the value of a con-
16 tract, including features and benefits of the contract
17 and attributes of the insurer (including, without lim-
18 itation, the issuer’s financial strength) in conjunc-
19 tion with the cost of the contract.

20 “(4) TIME OF SELECTION.—

21 “(A) IN GENERAL.—For purposes of this
22 subsection, the ‘time of selection’ is—

23 “(i) the time that the insurer and the
24 contract are selected for distribution of

benefits to a specific participant or beneficiary; or

“(ii) if the fiduciary periodically reviews the continuing appropriateness of the conclusion described in paragraph (1)(C) with respect to a selected insurer, taking into account the considerations described in such paragraph, the time that the insurer and the contract are selected to provide benefits at future dates to participants or beneficiaries under the plan.

Nothing in the preceding sentence shall be construed to require the fiduciary to review the appropriateness of a selection after the purchase of a contract for a participant or beneficiary.

“(B) PERIODIC REVIEW.—A fiduciary will be deemed to have conducted the periodic review described in subparagraph (A)(ii) if the fiduciary obtains the written representations described in clauses (i), (ii), and (iii) of paragraph (2)(A) from the insurer on an annual basis, unless the fiduciary receives any notice described in paragraph (2)(A)(iv) or otherwise becomes aware of facts that would cause the fiduciary to question such representations.

1 “(5) LIMITED LIABILITY.—A fiduciary which
2 satisfies the requirements of this subsection shall not
3 be liable following the distribution of any benefit or
4 the investment by or on behalf of a participant or
5 beneficiary pursuant to the selected guaranteed re-
6 tirement income contract for any losses that may re-
7 sult to the participant or beneficiary due to an in-
8 surer’s inability to satisfy its financial obligations
9 under the terms of such contract.

10 “(6) DEFINITIONS.—For purposes of this sub-
11 section—

12 “(A) INSURER.—The term ‘insurer’ means
13 an insurance company, insurance service, or in-
14 surance organization, including affiliates of
15 such companies.

16 “(B) GUARANTEED RETIREMENT INCOME
17 CONTRACT.—The term ‘guaranteed retirement
18 income contract’ means an annuity contract for
19 a fixed term or a contract (or provision or fea-
20 ture thereof) which provides guaranteed bene-
21 fits annually (or more frequently) for at least
22 the remainder of the life of the participant or
23 the joint lives of the participant and the partici-

- 1 pant's designated beneficiary as part of an indi-
- 2 vidual account plan.”.

