H. R. 5891
[Report No. 117–250, Part I]

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.

February 25, 2022

Reported from the Committee on Education and Labor with an amendment

[Strike out all after the enacting clause and insert the part printed in italic]

February 25, 2022

Committee on Ways and Means discharged; committed to the Committee of the Whole House on the State of the Union and ordered to be printed

[For text of introduced bill, see copy of bill as introduced on November 5, 2021]
A BILL

To improve and enhance retirement savings, and for other purposes.
Be it enacted by the Senate and House of Representa-
tives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the “Ret-
irement Improvement and Savings Enhancement Act of
2021” or the “RISE Act”.

(b) TABLE OF CONTENTS.—The table of contents for
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 require-
ments.
Sec. 10. Eliminating unnecessary plan requirements related to unenrolled par-
ticipants.
Sec. 11. Recovery of retirement plan overpayments.
Sec. 12. Improving coverage for part-time workers.

SEC. 2. RETIREMENT SAVINGS LOST AND FOUND.

(a) ESTABLISHMENT OF RETIREMENT SAVINGS LOST
AND FOUND.—Part 5 of title I of the Employee Retirement
Income Security Act of 1974 (29 U.S.C. 1341 et seq.) is
amended by adding at the end the following:

“SEC. 523. RETIREMENT SAVINGS LOST AND FOUND.

“(a) ESTABLISHMENT.—

“(1) IN GENERAL.—Not later than 2 years after
the date of the enactment of this section, the Secretary
of Labor, in consultation with the Secretary of the
Treasury, shall establish an online searchable data-
base (to be managed by the Department of Labor in accordance with this section) to be known as the ‘Retirement Savings Lost and Found’. The Retirement Savings Lost and Found shall—

“(A) allow an individual to search for information that enables the individual to locate the administrator of any plan described in paragraph (2) with respect to which the individual is or was a participant or beneficiary, and provide contact information for the administrator of any such plan;

“(B) allow the Department of Labor to assist such an individual in locating any such plan of the individual; and

“(C) allow the Department of Labor to make any necessary changes to contact information on record for the administrator based on any changes to the plan due to merger or consolidation of the plan with any other plan, division of the plan into two or more plans, bankruptcy, termination, change in name of the plan, change in name or address of the administrator, or other causes.

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

“(2) **Plans Described.**—A plan described in this paragraph is a plan to which the vesting standards of section 203 apply.

“(b) **Administration.**—The Retirement Savings Lost and Found established under subsection (a) shall provide individuals described in subsection (a)(1) only with the ability to search for information that enables the individual to locate the administrator and contact information for the administrator of any plan with respect to which the individual is or was a participant or beneficiary, sufficient to allow the individual to locate the individual’s plan in order to recover any benefit owing to the individual under the plan.

“(c) **Safeguarding Participant Privacy and Security.**—In establishing the Retirement Savings Lost and Found under subsection (a), the Department of Labor shall take all necessary and proper precautions to ensure that individuals’ plan information maintained by the Retirement Savings Lost and Found is protected.

“(d) **Definition of Administrator.**—For purposes of this section and section 523, the term ‘administrator’ has the meaning given such term in section 3(16)(A).
“(e) Information Collection From Plans.—Effective with respect to plan years beginning after the second December 31 occurring after the date of the enactment of this subsection, the administrator of a plan to which the vesting standards of section 203 apply shall submit to the Department of Labor, at such time and in such form and manner as is prescribed in regulations—

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

“(2) the information described in subparagraphs (A), (B), (E), and (F) of section 6057(a)(2) of the Internal Revenue Code of 1986; and

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

“(f) Information Collection From Federal Agencies.—The Secretary of Labor is authorized to access and receive information collected by other Federal agencies that may be necessary to perform work related to the Retirement Savings Lost and Found. Such necessary and appropriate information, which shall be furnished to the Secretary of Labor on request, includes information covered by section 6103 of the Internal Revenue Code of 1986 and section 205(r) of the Social Security Act.
“(g) Program Integrity Audit.—On an annual basis for each of the first 5 years beginning one year after the establishment of the database in subsection (a)(1) and every 5 years thereafter, the Inspector General of the Department of Labor shall conduct an audit of the administration of the Retirement Savings Lost and Found.”.

(b) Conforming Amendment.—The table of contents for the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1001 et seq.) is amended by inserting after the matter relating to section 521 the following:

“Sec. 523. Retirement Savings Lost and Found.”.

SEC. 3. RETIREMENT PLAN MODERNIZATION ACT.

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

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

(a) In General.—Section 403(b) of the Internal Revenue Code of 1986 is amended by adding at the end the following new paragraph:

“(15) Multiple Employer Plans.—

“(A) In General.—Except in the case of a church plan, this subsection shall not be treated as failing to apply to an annuity contract solely
by reason of such contract being purchased under
a plan maintained by more than 1 employer.

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

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

“(ii) ADDITIONAL REQUIREMENTS IN
CASE OF NON-GOVERNMENTAL PLANS.—A
plan shall not be treated as meeting the re-
quirements of this subparagraph unless the
plan meets the requirements of subpara-
graph (A) or (B) of section 413(e)(1), except
in the case of a multiple employer plan
maintained solely by any of the following:
A State, a political subdivision of a State,
or an agency or instrumentality of any one
or more of the foregoing.”.
(b) **Annual Registration for 403(b) Multiple Employer Plan.**—Section 6057 of the Internal Revenue Code of 1986 is amended by redesignating subsection (g) as subsection (h) and by inserting after subsection (f) the following new subsection:

“(g) **403(b) Multiple Employer Plans Treated as One Plan.**—In the case of annuity contracts to which this section applies and to which section 403(b) applies by reason of the plan under which such contracts are purchased meeting the requirements of paragraph (15) thereof, such plan shall be treated as a single plan for purposes of this section.”.

(c) **Annual Information Returns for 403(b) Multiple Employer Plan.**—Section 6058 of the Internal Revenue Code of 1986 is amended by redesignating subsection (f) as subsection (g) and by inserting after subsection (e) the following new subsection:

“(f) **403(b) Multiple Employer Plans Treated as One Plan.**—In the case of annuity contracts to which this section applies and to which section 403(b) applies by reason of the plan under which such contracts are purchased meeting the requirements of paragraph (15) thereof, such plan shall be treated as a single plan for purposes of this section.”.
(d) Amendments to Employee Retirement Income Security Act of 1974.—

(1) In general.—Section 3(43)(A) of the Employee Retirement Income Security Act of 1974 is amended—

(A) in clause (ii), by striking “section 501(a) of such Code or” and inserting “section 501(a) of such Code, a plan that consists of contracts described in section 403(b) of such Code, or”;

(B) in the flush text at the end, by striking “the plan.” and inserting “the plan, but such term shall include any program (other than a governmental plan) maintained for the benefit of the employees of more than 1 employer that consists of contracts described in section 403(b) of such Code and that meets the requirements of subparagraph (A) or (B) of section 413(e)(1) of such Code.”.

(2) Conforming Amendments.—Sections 3(43)(B)(v)(II) and 3(44)(A)(i)(I) of the Employee Retirement Income Security Act of 1974 are each amended by striking “section 401(a) of such Code or” and inserting “section 401(a) of such Code, a plan
that consists of contracts described in section 403(b) of such Code, or”.

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

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

(1) PLAN NOTIFICATIONS.—The Secretary of the Treasury (or the Secretary’s designee) shall modify the model plan language published under section 413(e)(5) of the Internal Revenue Code of 1986 to include language that notifies participating employers described in section 501(c)(3), and which are exempt from tax under section 501(a), that the plan is subject to the Employee Retirement Income Security Act of 1974 and that such employer is a plan sponsor with respect to its employees participating in the multiple employer plan and, as such, has certain fiduciary duties with respect to the plan and to its employees.

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

(3) Educational Outreach to Employers Exempt from Tax.—The Secretary of the Treasury shall provide education and outreach to increase awareness to employers described in section 501(c)(3) of the Internal Revenue Code of 1986, and which are exempt from tax under section 501(a) of such Code, that multiple employer plans are subject to the Employee Retirement Income Security Act of 1974 and that such employer is a plan sponsor with respect to its employees participating in the multiple employer plan and, as such, has certain fiduciary duties with respect to the plan and to its employees.

(g) No Inference With Respect to Church Plans.—Regarding any application of section 403(b) of the Internal Revenue Code of 1986 to an annuity contract purchased under a church plan (as defined in section 414(e) of such Code) maintained by more than 1 employer, or to any application of rules similar to section 413(e) of such Code.
Code to such a plan, no inference shall be made from section 403(b)(15)(A) of such Code (as added by this Act) not applying to such plans.

(h) **Effective Date.**

(1) **In General.**—The amendments made by this section shall apply to plan years beginning after December 31, 2021.

(2) **Rule of Construction.**—Nothing in the amendments made by subsection (a) shall be construed as limiting the authority of the Secretary of the Treasury or the Secretary’s delegate (determined without regard to such amendment) to provide for the proper treatment of a failure to meet any requirement applicable under the Internal Revenue Code of 1986 with respect to one employer (and its employees) in the case of a plan to which section 403(b)(15) of the Internal Revenue Code of 1986 applies.

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

(a) **In General.**—Subparagraph (A) of section 401(k)(4) of the Internal Revenue Code of 1986 is amended by inserting “(other than a de minimis financial incentive)” after “any other benefit”.

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

(c) Exemption From Prohibited Transaction Rules.—Subsection (d) of section 4975 of the Internal Revenue Code of 1986 is amended by striking “or” at the end of paragraph (22), by striking the period at the end of paragraph (23) and inserting “, or”, and by adding at the end the following new paragraph:

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

(d) Amendment of Employee Retirement Income Security Act of 1974.—Subsection (b) of section 408 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1108(b)) is amended by adding at the end the following new paragraph:

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

(e) Effective Date.—The amendments made by this section shall apply with respect to plan years beginning after the date of enactment of this Act.
SEC. 6. PERFORMANCE BENCHMARKS FOR ASSET ALLOCATION FUNDS.

(a) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Secretary of Labor shall provide that, in the case of a designated investment alternative that contains a mix of asset classes, the administrator of a plan may, but is not required to, use a benchmark that is a blend of different broad-based securities market indices if—

(1) the blend is reasonably representative of the asset class holdings of the designated investment alternative;

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

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

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

(b) STUDY.—Not later than 3 years after the date of enactment of this Act, the Secretary of Labor shall deliver
a report to the Committees on Finance and Health, Education, Labor, and Pensions of the Senate and the Committees on Ways and Means and Education and Labor of the House of Representatives regarding the utilization, effectiveness, and participants’ understanding of the benchmarking requirements under this section.

SEC. 7. POOLED EMPLOYER PLANS MODIFICATION.

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

“(ii) designate a named fiduciary (other than an employer in the plan) to be responsible for collecting contributions to the plan and require such fiduciary to implement written contribution collection procedures that are reasonable, diligent, and systematic;”.

SEC. 8. REVIEW OF PENSION RISK TRANSFER INTERPRETIVE BULLETIN.

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

(1) review section 2509.95–1 of title 29, Code of Federal Regulations (relating to the fiduciary standards under the Employee Retirement Income Security Act of 1974 when selecting an annuity provider for
a defined benefit pension plan) to determine whether
amendments to such section are warranted; and

(2) report to Congress on the findings of such re-
view, including an assessment of any risk to partici-
pants.

SEC. 9. REVIEW AND REPORT TO CONGRESS RELATING TO
REPORTING AND DISCLOSURE REQUIRE-
MENTS.

(a) STUDY.—As soon as practicable after the date of
enactment of this Act, the Secretary of Labor, the Secretary
of the Treasury, and the Director of the Pension Benefit
Guaranty Corporation shall review the reporting and dis-
closure requirements as applicable to each such agency
head, of—

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

(2) the Internal Revenue Code of 1986 applicable
to qualified retirement plans (as defined in section
4974(c) of such Code, without regard to paragraphs
(4) and (5) of such section).

(b) REPORT.—

(1) IN GENERAL.—Not later than 2 years after
the date of enactment of this Act, the Secretary of
Labor, the Secretary of the Treasury, and the Direc-
tor of the Pension Benefit Guaranty Corporation, jointly, and after consultation with a balanced group of participant and employer representatives, shall with respect to plans referenced in subsection (a) report on the effectiveness of the applicable reporting and disclosure requirements and make such recommendations as may be appropriate to the Committee on Education and Labor and the Committee on Ways and Means of the House of Representatives and the Committee on Health, Education, Labor, and Pensions and the Committee on Finance of the Senate to consolidate, simplify, standardize, and improve such requirements so as to simplify reporting for such plans and ensure that plans can furnish and participants and beneficiaries timely receive and better understand the information they need to monitor their plans, plan for retirement, and obtain the benefits they have earned.

(2) Analysis of effectiveness.—To assess the effectiveness of the applicable reporting and disclosure requirements, the report shall include an analysis, based on plan data, of how participants and beneficiaries are providing preferred contact information, the methods by which plan sponsors and plans are furnishing disclosures, and the rate at which partici-
pants and beneficiaries (grouped by key demographics) are receiving, accessing, understanding, and retaining disclosures.

(3) **Collection of Information.**—The agencies shall conduct appropriate surveys and data collection to obtain any needed information.

**SEC. 10. ELIMINATING UNNECESSARY PLAN REQUIREMENTS RELATED TO UNENROLLED PARTICIPANTS.**

(a) **Amendment of Employee Retirement Income Security Act of 1974.**—

(1) **In General.**—Part 1 of subtitle B of subchapter I of the Employee Retirement Income Security Act of 1974 is amended by redesignating section 111 as section 112 and by inserting after section 110 the following new section:

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"SEC. 111. ELIMINATING UNNECESSARY PLAN REQUIREMENTS RELATED TO UNENROLLED PARTICIPANTS.

"(a) **In General.**—Notwithstanding any other provision of this title, with respect to any individual account plan, no disclosure, notice, or other plan document (other than the notices and documents described in paragraphs (1) and (2)) shall be required to be furnished under this title

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to any unenrolled participant if the unenrolled participant receives—

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

“(2) any document requested by such participant that the participant would be entitled to receive notwithstanding this section.

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

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

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

“(3) is not participating in such plan;

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

“(5) satisfies such other criteria as the Secretary of Labor may determine appropriate, as prescribed in guidance issued in consultation with the Secretary of Treasury.
For purposes of this section, any eligibility to participate in the plan following any period for which such employee was not eligible to participate shall be treated as initial eligibility.

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

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

“(2) notifies the unenrolled participant of—

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

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

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

(2) CLERICAL AMENDMENT.—The table of contents in section 1 of the Employee Retirement Income
Security Act of 1974 is amended by striking the item relating to section 111 and by inserting after the item relating to section 110 the following new items:

"Sec. 111. Eliminating unnecessary plan requirements related to unenrolled participants.
"Sec. 112. Repeal and effective date."

(b) Amendment of Internal Revenue Code of 1986.—Section 414 of the Internal Revenue Code of 1986 is amended by adding at the end the following new subsection:

"(aa) Eliminating unnecessary plan requirements related to unenrolled participants.—

"(1) In general.—Notwithstanding any other provision of this title, with respect to any defined contribution plan, no disclosure, notice, or other plan document (other than the notices and documents described in subparagraphs (A) and (B)) shall be required to be furnished under this title to any unenrolled participant if the unenrolled participant receives—

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

"(B) any document requested by such participant that the participant would be entitled to receive notwithstanding this subsection."
“(2) **UNENROLLED PARTICIPANT.**—For purposes of this subsection, the term ‘unenrolled participant’ means an employee who—

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

“(B) has received the summary plan description pursuant to section 104(b) of the Employee Retirement Income Security Act of 1974 and any other eligibility notices in connection with such participant’s initial eligibility to participate in such plan,

“(C) is not participating in such plan,

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

“(E) satisfies such other criteria as the Secretary of the Treasury may determine appropriate, as prescribed in guidance issued in consultation with the Secretary of Labor.

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

“(3) **ANNUAL REMINDER NOTICE.**—For purposes of this subsection, the term ‘annual reminder notice’
means the notice described in section 111(c) of the
Employee Retirement Income Security Act of 1974.”.

(c) EFFECTIVE DATE.—The amendments made by this
section shall apply to plan years beginning after December
31, 2021.

SEC. 11. RECOVERY OF RETIREMENT PLAN OVERPAYMENTS.

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

“(h) SPECIAL RULES APPLICABLE TO BENEFIT OVER-
PAYMENTS.—

“(1) GENERAL RULE.—In the case of an inadvertent benefit overpayment by any pension plan, the
responsible plan fiduciary shall not be considered to
have failed to comply with the requirements of this
title merely because such fiduciary determines, in the
exercise of its fiduciary discretion, not to seek recov-
er of all or part of such overpayment from—

“(A) any participant or beneficiary,

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

“(i) an individual account plan, pro-
vided that the amount needed to prevent or
restore any impermissible forfeiture from
any participant’s or beneficiary’s account arising in connection with the overpayment is, separately from and independently of the overpayment, allocated to such account pursuant to the nonforfeitability requirements of section 203 (for example, out of the plan’s forfeiture account, additional employer contributions, or recoveries from those responsible for the overpayment), or

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

“(C) any fiduciary of the plan, other than a fiduciary (including a plan sponsor or contributing employer acting in a fiduciary capacity) whose breach of its fiduciary duties resulted in such overpayment, provided that if the plan has established prudent procedures to prevent and
minimize overpayment of benefits and the relevant plan fiduciaries have followed such procedures, an inadvertent benefit overpayment will not give rise to a breach of fiduciary duty.

“(2) Reduction in Future Benefit Payments and Recovery from Responsible Party.—Paragraph (1) shall not fail to apply with respect to any inadvertent benefit overpayment merely because, after discovering such overpayment, the responsible plan fiduciary—

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

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

“(3) Employer Funding Obligations.—Nothing in this subsection shall relieve an employer of any obligation imposed on it to make contributions to a plan to meet the minimum funding standards under part 3 of this subtitle B or to prevent or restore an impermissible forfeiture in accordance with section 203.

“(4) Recoupment from Participants and Beneficiaries.—If the responsible plan fiduciary, in the exercise of its fiduciary discretion, decides to seek
recoupment from a participant or beneficiary of all
or part of an inadvertent benefit overpayment made
by the plan to such participant or beneficiary, it may
do so, subject to the following conditions:

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

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

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

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

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

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

“(C) If the plan seeks to recoup past overpayments of a benefit other than a non-decreasing periodic benefit, the plan satisfies requirements developed by the Secretary for purposes of this subparagraph.

“(D) Efforts to recoup overpayments are—

“(i) not accompanied by threats of litigation, unless the responsible plan fiduciary reasonably believes it could prevail in a civil action brought in Federal or State court to recoup the overpayments, and

“(ii) not made through a collection agency or similar third party, unless the participant or beneficiary ignores or rejects efforts to recoup the overpayment following either a final judgment in Federal or State court or a settlement between the participant or beneficiary and the plan, in either case authorizing such recoupment.

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

“(F) Recoupment may not be sought if the first overpayment occurred more than 3 years before the participant or beneficiary is first notified in writing of the error.

“(G) A participant or beneficiary from whom recoupment is sought is entitled to contest all or part of the recoupment pursuant to the plan’s claims procedures.

“(H) In determining the amount of recoupment to seek, the responsible plan fiduciary may take into account the hardship that recoupment likely would impose on the participant or beneficiary.

“(5) Effect of Culpability.—Subparagraphs (A) through (F) of paragraph (4) shall not apply to protect a participant or beneficiary who is culpable. For purposes of this paragraph, a participant or beneficiary is culpable if the individual bears responsibility for the overpayment (such as through misrepresentations or omissions that led to the overpayment), or if the individual knew, or had good reason to know under the circumstances, that the benefit payment or payments were materially in excess of the correct
amount. Notwithstanding the preceding sentence, an individual is not culpable merely because the individual believed the benefit payment or payments were or might be in excess of the correct amount, if the individual raised that question with an authorized plan representative and was told the payment or payments were not in excess of the correct amount. With respect to a culpable participant or beneficiary, efforts to recoup overpayments shall not be made through threats of litigation, unless a lawyer for the plan could make the representations required under Rule 11 of the Federal Rules of Civil Procedure if the litigation were brought in Federal court.”.

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

(1) QUALIFICATION REQUIREMENTS.—Section 414 of the Internal Revenue Code of 1986, is further amended by adding at the end the following new subsection:

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

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

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

“(B) the plan sponsor amends the plan to reduce past or future benefit payments to affected participants and beneficiaries in order to adjust for prior inadvertent benefit overpayments.

“(2) REDUCTION IN FUTURE BENEFIT PAYMENTS AND RECOVERY FROM RESPONSIBLE PARTY.—Paragraph (1) shall not fail to apply to a plan merely because, after discovering a benefit overpayment, such plan—

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

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

“(3) EMPLOYER FUNDING OBLIGATIONS.—Nothing in this subsection shall relieve an employer of any obligation imposed on it to make contributions to a plan to meet the minimum funding standards under
sections 412 and 430 or to prevent or restore an im-
permissible forfeiture in accordance with section 411.

“(4) OBSERVANCE OF BENEFIT LIMITATIONS.—
Notwithstanding paragraph (1), a plan to which
paragraph (1) applies shall observe any limitations
imposed on it by section 401(a)(17) or 415. The plan
may enforce such limitations using any method ap-
proved by the Secretary of the Treasury for recouping
benefits previously paid or allocations previously
made in excess of such limitations.

“(5) COORDINATION WITH OTHER QUALIFICATION
REQUIREMENTS.—The Secretary of the Treasury may
issue regulations or other guidance of general applica-
ability specifying how benefit overpayments and their
recoupment or non-recoupment from a participant or
beneficiary shall be taken into account for purposes of
satisfying any requirement applicable to a plan to
which paragraph (1) applies.”.

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

“(12) In the case of an inadvertent benefit over-
payment from a plan to which section 414(bb)(1) ap-
plies that is transferred to an eligible retirement plan
by or on behalf of a participant or beneficiary—
“(A) the portion of such overpayment with respect to which recoupment is not sought on behalf of the plan shall be treated as having been paid in an eligible rollover distribution if the payment would have been an eligible rollover distribution but for being an overpayment, and

“(B) the portion of such overpayment with respect to which recoupment is sought on behalf of the plan shall be permitted to be returned to such plan and in such case shall be treated as an eligible rollover distribution transferred to such plan by the participant or beneficiary who received such overpayment (and the plans making and receiving such transfer shall be treated as permitting such transfer).

In any case in which recoupment is sought on behalf of the plan but is disputed by the participant or beneficiary who received such overpayment, such dispute shall be subject to the claims procedures of the plan that made such overpayment, such plan shall notify the plan receiving the rollover of such dispute, and the plan receiving the rollover shall retain such overpayment on behalf of the participant or beneficiary (and shall be entitled to treat such overpayment as plan assets) pending the outcome of such procedures.”.
(c) **Effective Date.**—The amendments made by this section shall apply as of the date of the enactment of this Act.

(d) **Certain Actions Before Date of Enactment.**—Plans, fiduciaries, employers, and plan sponsors are entitled to rely on—

1. a good faith interpretation of then existing administrative guidance for inadvertent benefit overpayment recoupments and recoveries that commenced before the date of enactment of this Act, and

2. determinations made before the date of enactment of this Act by the responsible plan fiduciary, in the exercise of its fiduciary discretion, not to seek recoupment or recovery of all or part of an inadvertent benefit overpayment.

In the case of a benefit overpayment that occurred prior to the date of enactment of this Act, any installment payments by the participant or beneficiary to the plan or any reduction in periodic benefit payments to the participant or beneficiary, which were made in recoupment of such overpayment and which commenced prior to such date, may continue after such date. Nothing in this subsection shall relieve a fiduciary from responsibility for an overpayment that resulted from a breach of its fiduciary duties.
SEC. 12. IMPROVING COVERAGE FOR PART-TIME WORKERS.

(a) AMENDMENT OF EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974.—

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

“(c) SPECIAL RULE FOR CERTAIN PART-TIME EMPLOYEES.—

“(1) IN GENERAL.—A pension plan that includes either a qualified cash or deferred arrangement (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 arrangement or agreement solely by reason of paragraph (1)(B):

“(i) Exclusions.—An employer may elect to exclude such employees from the application of subsections (a)(4), (k)(3), (k)(12), (k)(13), (k)(15)(B)(i)(I), and (m)(2) of section 401 of the Internal Revenue Code of 1986 and section 410(b) of such Code.

“(ii) Time of Participation.—The rules of subsection (a)(4) shall apply to such employees.

“(B) Top-heavy Rules.—An employer may elect to exclude all employees who are eligible to participate in a plan maintained by the employer solely by reason of paragraph (1)(B) from the application of the vesting and benefit
requirements under subsections (b) and (c) of section 416 of the Internal Revenue Code of 1986.

“(4) 12-MONTH PERIOD.—For purposes of this subsection, 12-month periods shall be determined in the same manner as under the last sentence of subsection (a)(3)(A), except that 12-month periods beginning before January 1, 2021, shall not be taken into account.”

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

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

“(A) except as provided in subparagraph (B), each 12-month period for which the employee has at least 500 hours of service shall be treated as a year of service;
“(B) paragraph (3) shall be applied by substituting ‘at least 500 hours of service’ for ‘more than 500 hours of service’ in subparagraph (A) thereof; and

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

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

(3) Pre-2021 Service.—Section 112(b) of the Setting Every Community Up for Retirement Enhancement Act of 2019 (26 U.S.C. 401 note) is amended by striking “section 401(k)(2)(D)(ii)” and inserting “paragraphs (2)(D)(ii) and (15)(B)(iii) of section 401(k)”.

(b) Conforming Amendments to Internal Revenue Code of 1986.—

(1) In General.—Section 410(a) of the Internal Revenue Code of 1986 is amended by adding at the end the following new paragraph:
“(6) Special rule for certain part-time employees.—

“(A) In general.—In the case of a plan that includes either a qualified cash or deferred arrangement (as defined in section 401(k)), a trust of which such plan is a part shall not constitute a qualified trust under section 401(a) if the plan requires, as a condition of participation in the plan or arrangement, that an employee complete a period of service with the employer (or employers) maintaining the plan extending beyond the close of the earlier of—

“(i) the period permitted under paragraph (1) (determined without regard to subparagraph (B)(i) thereof), or

“(ii) 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.

“(B) Exception.—Subparagraph (A)(ii) shall not apply to any employee described in section 410(b)(3).
“(C) COORDINATION WITH OTHER RULES.—

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

“(I) EXCLUSIONS.—An employer
may elect to exclude such employees
from the application of subsection (b)
and of subsections (a)(4), (k)(3),
(k)(12), (k)(13), (k)(15)(B)(i)(I), and
(m)(2) of section 401.

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

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

“(D) 12-MONTH PERIOD.—For purposes of
this paragraph, 12-month periods shall be deter-
mined in the same manner as under the last sen-
ence of paragraph (3)(A), except that 12-month periods beginning before January 1, 2021, shall not be taken into account.”.

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

“(7) PART-TIME EMPLOYEES.—For purposes of determining whether an employee who is eligible to participate in a qualified cash or deferred arrangement or a salary reduction agreement under a plan solely by reason of paragraph (6)(A)(ii) has a non-forfeitable right to employer contributions—

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

“(B) section 411(a)(6) shall be applied by substituting ‘at least 500 hours of service’ for ‘more than 500 hours of service’ in subparagraph (A) thereof, and

“(C) 12-month periods occurring before the 24-month period described in paragraph (6)(A)(ii) shall not be treated as years of service.
For purposes of this paragraph, 12-month periods shall be determined in the same manner as under paragraph (6)(D).”.
To improve and enhance retirement savings, and
for other purposes.

A BILL

[Report No. 117-250, Part I]

H. R. 5891

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