

Union Calendar No. 180

117TH CONGRESS
2^D SESSION

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.

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 “Re-*
 5 *irement Improvement and Savings Enhancement Act of*
 6 *2021” or the “RISE Act”.*

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

Sec. 1. Short title; table of contents.

Sec. 2. Retirement savings lost and found.

Sec. 3. Retirement plan modernization act.

Sec. 4. Multiple employer 403(b) plans.

Sec. 5. Small immediate financial incentives for contributing to a plan.

Sec. 6. Performance benchmarks for asset allocation funds.

Sec. 7. Pooled employer plans modification.

Sec. 8. Review of pension risk transfer interpretive bulletin.

Sec. 9. Review and report to congress relating to reporting and disclosure 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.

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

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

14 **“SEC. 523. RETIREMENT SAVINGS LOST AND FOUND.**

15 **“(a) ESTABLISHMENT.—**

16 **“(1) IN GENERAL.—***Not later than 2 years after*
 17 *the date of the enactment of this section, the Secretary*
 18 *of Labor, in consultation with the Secretary of the*
 19 *Treasury, shall establish an online searchable data-*

1 *base (to be managed by the Department of Labor in*
2 *accordance with this section) to be known as the ‘Re-*
3 *irement Savings Lost and Found’. The Retirement*
4 *Savings Lost and Found shall—*

5 “(A) *allow an individual to search for in-*
6 *formation that enables the individual to locate*
7 *the administrator of any plan described in para-*
8 *graph (2) with respect to which the individual is*
9 *or was a participant or beneficiary, and provide*
10 *contact information for the administrator of any*
11 *such plan;*

12 “(B) *allow the Department of Labor to as-*
13 *sist such an individual in locating any such*
14 *plan of the individual; and*

15 “(C) *allow the Department of Labor to*
16 *make any necessary changes to contact informa-*
17 *tion on record for the administrator based on*
18 *any changes to the plan due to merger or con-*
19 *solidation of the plan with any other plan, divi-*
20 *sion of the plan into two or more plans, bank-*
21 *ruptcy, termination, change in name of the plan,*
22 *change in name or address of the administrator,*
23 *or other causes.*

24 *The Retirement Savings Lost and Found established*
25 *under this paragraph shall include information re-*

1 *ported under this section and other relevant informa-*
2 *tion obtained by the Department of Labor.*

3 *“(2) PLANS DESCRIBED.—A plan described in*
4 *this paragraph is a plan to which the vesting stand-*
5 *ards of section 203 apply.*

6 *“(b) ADMINISTRATION.—The Retirement Savings Lost*
7 *and Found established under subsection (a) shall provide*
8 *individuals described in subsection (a)(1) only with the*
9 *ability to search for information that enables the individual*
10 *to locate the administrator and contact information for the*
11 *administrator of any plan with respect to which the indi-*
12 *vidual is or was a participant or beneficiary, sufficient to*
13 *allow the individual to locate the individual’s plan in order*
14 *to recover any benefit owing to the individual under the*
15 *plan.*

16 *“(c) SAFEGUARDING PARTICIPANT PRIVACY AND SE-*
17 *curity.—In establishing the Retirement Savings Lost and*
18 *Found under subsection (a), the Department of Labor shall*
19 *take all necessary and proper precautions to ensure that*
20 *individuals’ plan information maintained by the Retire-*
21 *ment Savings Lost and Found is protected.*

22 *“(d) DEFINITION OF ADMINISTRATOR.—For purposes*
23 *of this section and section 523, the term ‘administrator’ has*
24 *the meaning given such term in section 3(16)(A).*

1 “(e) *INFORMATION COLLECTION FROM PLANS.*—*Effec-*
 2 *tive with respect to plan years beginning after the second*
 3 *December 31 occurring after the date of the enactment of*
 4 *this subsection, the administrator of a plan to which the*
 5 *vesting standards of section 203 apply shall submit to the*
 6 *Department of Labor, at such time and in such form and*
 7 *manner as is prescribed in regulations—*

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

11 “(2) *the information described in subparagraphs*
 12 *(A), (B), (E), and (F) of section 6057(a)(2) of the In-*
 13 *ternal Revenue Code of 1986; and*

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

16 “(f) *INFORMATION COLLECTION FROM FEDERAL*
 17 *AGENCIES.*—*The Secretary of Labor is authorized to access*
 18 *and receive information collected by other Federal agencies*
 19 *that may be necessary to perform work related to the Retire-*
 20 *ment Savings Lost and Found. Such necessary and appro-*
 21 *priate information, which shall be furnished to the Sec-*
 22 *retary of Labor on request, includes information covered by*
 23 *section 6103 of the Internal Revenue Code of 1986 and sec-*
 24 *tion 205(r) of the Social Security Act.*

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

7 (b) *CONFORMING AMENDMENT.*—The table of contents
 8 for the Employee Retirement Income Security Act of 1974
 9 (29 U.S.C. 1001 et seq.) is amended by inserting after the
 10 matter relating to section 521 the following:

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

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

12 Section 203(e)(1) of the Employee Retirement Income
 13 Security Act of 1974 and sections 401(a)(31)(B)(ii) and
 14 411(a)(11)(A) of the Internal Revenue Code of 1986 and
 15 are each amended by striking “\$5,000” and inserting
 16 “\$7,000”.

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

18 (a) *IN GENERAL.*—Section 403(b) of the Internal Rev-
 19 enue Code of 1986 is amended by adding at the end the
 20 following new paragraph:

21 “(15) *MULTIPLE EMPLOYER PLANS.*—

22 “(A) *IN GENERAL.*—Except in the case of a
 23 church plan, this subsection shall not be treated
 24 as failing to apply to an annuity contract solely

1 *by reason of such contract being purchased under*
2 *a plan maintained by more than 1 employer.*

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

5 “(i) *IN GENERAL.—In the case of a*
6 *plan maintained by more than 1 employer,*
7 *this subsection shall not be treated as fail-*
8 *ing to apply to an annuity contract held*
9 *under such plan merely because of one or*
10 *more employers failing to meet the require-*
11 *ments of this subsection if such plan satis-*
12 *fies rules similar to the rules of section*
13 *413(e)(2) with respect to any such employer*
14 *failure.*

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

1 (b) *ANNUAL REGISTRATION FOR 403(b) MULTIPLE*
 2 *EMPLOYER PLAN.*—Section 6057 of the Internal Revenue
 3 Code of 1986 is amended by redesignating subsection (g)
 4 as subsection (h) and by inserting after subsection (f) the
 5 following new subsection:

6 “(g) *403(b) MULTIPLE EMPLOYER PLANS TREATED AS*
 7 *ONE PLAN.*—In the case of annuity contracts to which this
 8 section applies and to which section 403(b) applies by rea-
 9 son of the plan under which such contracts are purchased
 10 meeting the requirements of paragraph (15) thereof, such
 11 plan shall be treated as a single plan for purposes of this
 12 section.”.

13 (c) *ANNUAL INFORMATION RETURNS FOR 403(b) MUL-*
 14 *TIPLE EMPLOYER PLAN.*—Section 6058 of the Internal Rev-
 15 enue Code of 1986 is amended by redesignating subsection
 16 (f) as subsection (g) and by inserting after subsection (e)
 17 the following new subsection:

18 “(f) *403(b) MULTIPLE EMPLOYER PLANS TREATED AS*
 19 *ONE PLAN.*—In the case of annuity contracts to which this
 20 section applies and to which section 403(b) applies by rea-
 21 son of the plan under which such contracts are purchased
 22 meeting the requirements of paragraph (15) thereof, such
 23 plan shall be treated as a single plan for purposes of this
 24 section.”.

1 (d) *AMENDMENTS TO EMPLOYEE RETIREMENT IN-*
 2 *COME SECURITY ACT OF 1974.*—

3 (1) *IN GENERAL.*—Section 3(43)(A) of the *Em-*
 4 *ployee Retirement Income Security Act of 1974* is
 5 *amended*—

6 (A) *in clause (ii), by striking “section*
 7 *501(a) of such Code or” and inserting “section*
 8 *501(a) of such Code, a plan that consists of con-*
 9 *tracts described in section 403(b) of such Code,*
 10 *or”;* and

11 (B) *in the flush text at the end, by striking*
 12 *“the plan.” and inserting “the plan, but such*
 13 *term shall include any program (other than a*
 14 *governmental plan) maintained for the benefit of*
 15 *the employees of more than 1 employer that con-*
 16 *sists of contracts described in section 403(b) of*
 17 *such Code and that meets the requirements of*
 18 *subparagraph (A) or (B) of section 413(e)(1) of*
 19 *such Code.”.*

20 (2) *CONFORMING AMENDMENTS.*—Sections
 21 *3(43)(B)(v)(II) and 3(44)(A)(i)(I) of the Employee*
 22 *Retirement Income Security Act of 1974* are each
 23 *amended by striking “section 401(a) of such Code or”*
 24 *and inserting “section 401(a) of such Code, a plan*

1 *that consists of contracts described in section 403(b)*
 2 *of such Code, or”.*

3 (e) *REGULATIONS RELATING TO PLAN TERMI-*
 4 *NATION.—The Secretary of the Treasury (or the Secretary’s*
 5 *designee) shall prescribe such regulations as may be nec-*
 6 *essary to clarify the treatment of a plan termination by*
 7 *an employer in the case of plans to which section 403(b)(15)*
 8 *of the Internal Revenue Code of 1986 applies.*

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

11 (1) *PLAN NOTIFICATIONS.—The Secretary of the*
 12 *Treasury (or the Secretary’s designee) shall modify*
 13 *the model plan language published under section*
 14 *413(e)(5) of the Internal Revenue Code of 1986 to in-*
 15 *clude language that notifies participating employers*
 16 *described in section 501(c)(3), and which are exempt*
 17 *from tax under section 501(a), that the plan is subject*
 18 *to the Employee Retirement Income Security Act of*
 19 *1974 and that such employer is a plan sponsor with*
 20 *respect to its employees participating in the multiple*
 21 *employer plan and, as such, has certain fiduciary du-*
 22 *ties with respect to the plan and to its employees.*

23 (2) *MODEL PLANS FOR MULTIPLE EMPLOYER*
 24 *403(b) NON-GOVERNMENTAL PLANS.—For plans to*
 25 *which section 403(b)(15)(A) of the Internal Revenue*

1 *Code of 1986 applies (other than a plan maintained*
 2 *for its employees by a State, a political subdivision*
 3 *of a State, or an agency or instrumentality of any*
 4 *one or more of the foregoing), the Secretary of the*
 5 *Treasury shall publish model plan language similar*
 6 *to model plan language published under section*
 7 *413(e)(5) of such Code.*

8 *(3) EDUCATIONAL OUTREACH TO EMPLOYERS EX-*
 9 *EMPT FROM TAX.—The Secretary of the Treasury*
 10 *shall provide education and outreach to increase*
 11 *awareness to employers described in section 501(c)(3)*
 12 *of the Internal Revenue Code of 1986, and which are*
 13 *exempt from tax under section 501(a) of such Code,*
 14 *that multiple employer plans are subject to the Em-*
 15 *ployee Retirement Income Security Act of 1974 and*
 16 *that such employer is a plan sponsor with respect to*
 17 *its employees participating in the multiple employer*
 18 *plan and, as such, has certain fiduciary duties with*
 19 *respect to the plan and to its employees.*

20 *(g) NO INFERENCE WITH RESPECT TO CHURCH*
 21 *PLANS.—Regarding any application of section 403(b) of the*
 22 *Internal Revenue Code of 1986 to an annuity contract pur-*
 23 *chased under a church plan (as defined in section 414(e)*
 24 *of such Code) maintained by more than 1 employer, or to*
 25 *any application of rules similar to section 413(e) of such*

1 *Code to such a plan, no inference shall be made from section*
 2 *403(b)(15)(A) of such Code (as added by this Act) not ap-*
 3 *plying to such plans.*

4 *(h) EFFECTIVE DATE.—*

5 *(1) IN GENERAL.—The amendments made by*
 6 *this section shall apply to plan years beginning after*
 7 *December 31, 2021.*

8 *(2) RULE OF CONSTRUCTION.—Nothing in the*
 9 *amendments made by subsection (a) shall be con-*
 10 *strued as limiting the authority of the Secretary of*
 11 *the Treasury or the Secretary’s delegate (determined*
 12 *without regard to such amendment) to provide for the*
 13 *proper treatment of a failure to meet any requirement*
 14 *applicable under the Internal Revenue Code of 1986*
 15 *with respect to one employer (and its employees) in*
 16 *the case of a plan to which section 403(b)(15) of the*
 17 *Internal Revenue Code of 1986 applies.*

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

20 *(a) IN GENERAL.—Subparagraph (A) of section*
 21 *401(k)(4) of the Internal Revenue Code of 1986 is amended*
 22 *by inserting “(other than a de minimis financial incen-*
 23 *tive)” after “any other benefit”.*

24 *(b) SECTION 403(b) PLANS.—Subparagraph (A) of sec-*
 25 *tion 403(b)(12) of the Internal Revenue Code of 1986, is*

1 *further amended by adding at the end the following: “A*
 2 *plan shall not fail to satisfy clause (ii) solely by reason*
 3 *of offering a de minimis financial incentive to employees*
 4 *to elect to have the employer make contributions pursuant*
 5 *to a salary reduction agreement.”.*

6 (c) *EXEMPTION FROM PROHIBITED TRANSACTION*
 7 *RULES.—Subsection (d) of section 4975 of the Internal Rev-*
 8 *enue Code of 1986 is amended by striking “or” at the end*
 9 *of paragraph (22), by striking the period at the end of para-*
 10 *graph (23) and inserting “, or”, and by adding at the end*
 11 *the following new paragraph:*

12 “(24) *the provision of a de minimis financial in-*
 13 *centive described in section 401(k)(4)(A) or*
 14 *403(b)(12)(A).”.*

15 (d) *AMENDMENT OF EMPLOYEE RETIREMENT INCOME*
 16 *SECURITY ACT OF 1974.—Subsection (b) of section 408 of*
 17 *the Employee Retirement Income Security Act of 1974 (29*
 18 *U.S.C. 1108(b)) is amended by adding at the end the fol-*
 19 *lowing new paragraph:*

20 “(21) *The provision of a de minimis financial*
 21 *incentive described in section 401(k)(4)(A) or section*
 22 *403(b)(12)(A) of the Internal Revenue Code of 1986.”.*

23 (e) *EFFECTIVE DATE.—The amendments made by this*
 24 *section shall apply with respect to plan years beginning*
 25 *after the date of enactment of this Act.*

1 **SEC. 6. PERFORMANCE BENCHMARKS FOR ASSET ALLOCA-**
2 **TION FUNDS.**

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

10 (1) *the blend is reasonably representative of the*
11 *asset class holdings of the designated investment alter-*
12 *native;*

13 (2) *for purposes of determining the blend's re-*
14 *turns for 1-, 5-, and 10-calendar-year periods (or for*
15 *the life of the alternative, if shorter), the blend is*
16 *modified at least once per year to reflect changes in*
17 *the asset class holdings of the designated investment*
18 *alternative;*

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

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

25 (b) *STUDY.*—Not later than 3 years after the date of
26 enactment of this Act, the Secretary of Labor shall deliver

1 *a report to the Committees on Finance and Health, Edu-*
 2 *cation, Labor, and Pensions of the Senate and the Commit-*
 3 *tees on Ways and Means and Education and Labor of the*
 4 *House of Representatives regarding the utilization, effective-*
 5 *ness, and participants' understanding of the benchmarking*
 6 *requirements under this section.*

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

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

11 *“(ii) designate a named fiduciary*
 12 *(other than an employer in the plan) to be*
 13 *responsible for collecting contributions to*
 14 *the plan and require such fiduciary to im-*
 15 *plement written contribution collection pro-*
 16 *cedures that are reasonable, diligent, and*
 17 *systematic;”.*

18 **SEC. 8. REVIEW OF PENSION RISK TRANSFER INTERPRE-**
 19 **TIVE BULLETIN.**

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

22 *(1) review section 2509.95–1 of title 29, Code of*
 23 *Federal Regulations (relating to the fiduciary stand-*
 24 *ards under the Employee Retirement Income Security*
 25 *Act of 1974 when selecting an annuity provider for*

1 *a defined benefit pension plan) to determine whether*
 2 *amendments to such section are warranted; and*

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

6 **SEC. 9. REVIEW AND REPORT TO CONGRESS RELATING TO**
 7 **REPORTING AND DISCLOSURE REQUIRE-**
 8 **MENTS.**

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

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

18 *(2) the Internal Revenue Code of 1986 applicable*
 19 *to qualified retirement plans (as defined in section*
 20 *4974(c) of such Code, without regard to paragraphs*
 21 *(4) and (5) of such section).*

22 *(b) REPORT.—*

23 *(1) IN GENERAL.—Not later than 2 years after*
 24 *the date of enactment of this Act, the Secretary of*
 25 *Labor, the Secretary of the Treasury, and the Direc-*

1 *tor of the Pension Benefit Guaranty Corporation,*
2 *jointly, and after consultation with a balanced group*
3 *of participant and employer representatives, shall*
4 *with respect to plans referenced in subsection (a) re-*
5 *port on the effectiveness of the applicable reporting*
6 *and disclosure requirements and make such rec-*
7 *ommendations as may be appropriate to the Com-*
8 *mittee on Education and Labor and the Committee*
9 *on Ways and Means of the House of Representatives*
10 *and the Committee on Health, Education, Labor, and*
11 *Pensions and the Committee on Finance of the Senate*
12 *to consolidate, simplify, standardize, and improve*
13 *such requirements so as to simplify reporting for such*
14 *plans and ensure that plans can furnish and partici-*
15 *pants and beneficiaries timely receive and better un-*
16 *derstand the information they need to monitor their*
17 *plans, plan for retirement, and obtain the benefits*
18 *they have earned.*

19 (2) *ANALYSIS OF EFFECTIVENESS.—To assess the*
20 *effectiveness of the applicable reporting and disclosure*
21 *requirements, the report shall include an analysis,*
22 *based on plan data, of how participants and bene-*
23 *ficiaries are providing preferred contact information,*
24 *the methods by which plan sponsors and plans are*
25 *furnishing disclosures, and the rate at which partici-*

1 *pants and beneficiaries (grouped by key demo-*
 2 *graphics) are receiving, accessing, understanding, and*
 3 *retaining disclosures.*

4 (3) *COLLECTION OF INFORMATION.—The agencies*
 5 *shall conduct appropriate surveys and data collection*
 6 *to obtain any needed information.*

7 **SEC. 10. ELIMINATING UNNECESSARY PLAN REQUIRE-**
 8 **MENTS RELATED TO UNENROLLED PARTICI-**
 9 **PANTS.**

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

12 (1) *IN GENERAL.—Part 1 of subtitle B of sub-*
 13 *chapter I of the Employee Retirement Income Secu-*
 14 *rity Act of 1974 is amended by redesignating section*
 15 *111 as section 112 and by inserting after section 110*
 16 *the following new section:*

17 **“SEC. 111. ELIMINATING UNNECESSARY PLAN REQUIRE-**
 18 **MENTS RELATED TO UNENROLLED PARTICI-**
 19 **PANTS.**

20 “(a) *IN GENERAL.—Notwithstanding any other provi-*
 21 *sion of this title, with respect to any individual account*
 22 *plan, no disclosure, notice, or other plan document (other*
 23 *than the notices and documents described in paragraphs (1)*
 24 *and (2)) shall be required to be furnished under this title*

1 *to any unenrolled participant if the unenrolled participant*
2 *receives—*

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

6 *“(2) any document requested by such participant*
7 *that the participant would be entitled to receive not-*
8 *withstanding this section.*

9 *“(b) UNENROLLED PARTICIPANT.—For purposes of*
10 *this section, the term ‘unenrolled participant’ means an em-*
11 *ployee who—*

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

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

19 *“(3) is not participating in such plan;*

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

21 *“(5) satisfies such other criteria as the Secretary*
22 *of Labor may determine appropriate, as prescribed in*
23 *guidance issued in consultation with the Secretary of*
24 *Treasury.*

1 *For purposes of this section, any eligibility to participate*
 2 *in the plan following any period for which such employee*
 3 *was not eligible to participate shall be treated as initial*
 4 *eligibility.*

5 “(c) *ANNUAL REMINDER NOTICE.*—*For purposes of*
 6 *this section, the term ‘annual reminder notice’ means a no-*
 7 *tice provided in accordance with section 2520.104b–1 of*
 8 *title 29, Code of Federal Regulations (or any successor regu-*
 9 *lation), which—*

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

15 “(2) *notifies the unenrolled participant of—*

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

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

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

24 (2) *CLERICAL AMENDMENT.*—*The table of con-*
 25 *tents in section 1 of the Employee Retirement Income*

1 *Security Act of 1974 is amended by striking the item*
 2 *relating to section 111 and by inserting after the item*
 3 *relating to section 110 the following new items:*

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

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

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

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

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

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

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

1 “(2) *UNENROLLED PARTICIPANT.*—For purposes
2 of this subsection, the term ‘unenrolled participant’
3 means an employee who—

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

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

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

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

15 “(E) satisfies such other criteria as the Sec-
16 retary of the Treasury may determine appro-
17 priate, as prescribed in guidance issued in con-
18 sultation with the Secretary of Labor.

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

23 “(3) *ANNUAL REMINDER NOTICE.*—For purposes
24 of this subsection, the term ‘annual reminder notice’

1 *means the notice described in section 111(c) of the*
 2 *Employee Retirement Income Security Act of 1974.”.*

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

6 **SEC. 11. RECOVERY OF RETIREMENT PLAN OVERPAYMENTS.**

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

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

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

20 *“(A) any participant or beneficiary,*

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

23 *“(i) an individual account plan, pro-*
 24 *vided that the amount needed to prevent or*
 25 *restore any impermissible forfeiture from*

1 *any participant's or beneficiary's account*
2 *arising in connection with the overpayment*
3 *is, separately from and independently of the*
4 *overpayment, allocated to such account pur-*
5 *suant to the nonforfeitability requirements*
6 *of section 203 (for example, out of the plan's*
7 *forfeiture account, additional employer con-*
8 *tributions, or recoveries from those respon-*
9 *sible for the overpayment), or*

10 “(ii) *a defined benefit pension plan*
11 *subject to the funding rules in part 3 of this*
12 *subtitle B, unless the responsible plan fidu-*
13 *ciary determines, in the exercise of its fidu-*
14 *ciary discretion, that failure to recover all*
15 *or part of the overpayment faster than re-*
16 *quired under such funding rules would ma-*
17 *terially affect the plan's ability to pay bene-*
18 *fits due to other participants and bene-*
19 *ficiaries, or*

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

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

5 “(2) *REDUCTION IN FUTURE BENEFIT PAYMENTS*
 6 *AND RECOVERY FROM RESPONSIBLE PARTY.—Para-*
 7 *graph (1) shall not fail to apply with respect to any*
 8 *inadvertent benefit overpayment merely because, after*
 9 *discovering such overpayment, the responsible plan fi-*
 10 *duciary—*

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

14 “(B) *seeks recovery from the person or per-*
 15 *sons responsible for the overpayment.*

16 “(3) *EMPLOYER FUNDING OBLIGATIONS.—Noth-*
 17 *ing in this subsection shall relieve an employer of any*
 18 *obligation imposed on it to make contributions to a*
 19 *plan to meet the minimum funding standards under*
 20 *part 3 of this subtitle B or to prevent or restore an*
 21 *impermissible forfeiture in accordance with section*
 22 *203.*

23 “(4) *RECOUPMENT FROM PARTICIPANTS AND*
 24 *BENEFICIARIES.—If the responsible plan fiduciary, in*
 25 *the exercise of its fiduciary discretion, decides to seek*

1 *recoupment from a participant or beneficiary of all*
2 *or part of an inadvertent benefit overpayment made*
3 *by the plan to such participant or beneficiary, it may*
4 *do so, subject to the following conditions:*

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

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

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

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

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

23 *Alternatively, if the plan seeks to recoup past*
24 *overpayments of a non-decreasing periodic ben-*
25 *efit through one or more installment payments,*

1 *the sum of such installment payments in any*
2 *calendar year does not exceed the sum of the re-*
3 *ductions that would be permitted in such year*
4 *under the preceding sentence.*

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

10 *“(D) Efforts to recoup overpayments are—*

11 *“(i) not accompanied by threats of liti-*
12 *gation, unless the responsible plan fiduciary*
13 *reasonably believes it could prevail in a*
14 *civil action brought in Federal or State*
15 *court to recoup the overpayments, and*

16 *“(ii) not made through a collection*
17 *agency or similar third party, unless the*
18 *participant or beneficiary ignores or rejects*
19 *efforts to recoup the overpayment following*
20 *either a final judgment in Federal or State*
21 *court or a settlement between the partici-*
22 *pant or beneficiary and the plan, in either*
23 *case authorizing such recoupment.*

24 *“(E) Recoupment of past overpayments to a*
25 *participant is not sought from any beneficiary of*

1 the participant, including a spouse, surviving
2 spouse, former spouse, or other beneficiary.

3 “(F) *Recoupment may not be sought if the*
4 *first overpayment occurred more than 3 years be-*
5 *fore the participant or beneficiary is first noti-*
6 *fied in writing of the error.*

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

11 “(H) *In determining the amount of*
12 *recoupment to seek, the responsible plan fidu-*
13 *ciary may take into account the hardship that*
14 *recoupment likely would impose on the partici-*
15 *pant or beneficiary.*

16 “(5) *EFFECT OF CULPABILITY.—Subparagraphs*
17 *(A) through (F) of paragraph (4) shall not apply to*
18 *protect a participant or beneficiary who is culpable.*
19 *For purposes of this paragraph, a participant or ben-*
20 *eficiary is culpable if the individual bears responsi-*
21 *bility for the overpayment (such as through misrepre-*
22 *sentations or omissions that led to the overpayment),*
23 *or if the individual knew, or had good reason to know*
24 *under the circumstances, that the benefit payment or*
25 *payments were materially in excess of the correct*

1 *amount. Notwithstanding the preceding sentence, an*
 2 *individual is not culpable merely because the indi-*
 3 *vidual believed the benefit payment or payments were*
 4 *or might be in excess of the correct amount, if the in-*
 5 *dividual raised that question with an authorized plan*
 6 *representative and was told the payment or payments*
 7 *were not in excess of the correct amount. With respect*
 8 *to a culpable participant or beneficiary, efforts to re-*
 9 *coup overpayments shall not be made through threats*
 10 *of litigation, unless a lawyer for the plan could make*
 11 *the representations required under Rule 11 of the Fed-*
 12 *eral Rules of Civil Procedure if the litigation were*
 13 *brought in Federal court.”.*

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

16 *(1) QUALIFICATION REQUIREMENTS.—Section*
 17 *414 of the Internal Revenue Code of 1986, is further*
 18 *amended by adding at the end the following new sub-*
 19 *section:*

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

22 *“(1) IN GENERAL.—A plan shall not fail to be*
 23 *treated as described in clause (i), (ii), (iii), or (iv) of*
 24 *section 219(g)(5)(A) (and shall not fail to be treated*

1 *as satisfying the requirements of section 401(a) or*
2 *403) merely because—*

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

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

12 *“(2) REDUCTION IN FUTURE BENEFIT PAYMENTS*
13 *AND RECOVERY FROM RESPONSIBLE PARTY.—Para-*
14 *graph (1) shall not fail to apply to a plan merely be-*
15 *cause, after discovering a benefit overpayment, such*
16 *plan—*

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

20 *“(B) seeks recovery from the person or per-*
21 *sons responsible for such overpayment.*

22 *“(3) EMPLOYER FUNDING OBLIGATIONS.—Noth-*
23 *ing in this subsection shall relieve an employer of any*
24 *obligation imposed on it to make contributions to a*
25 *plan to meet the minimum funding standards under*

1 *sections 412 and 430 or to prevent or restore an im-*
 2 *permissible forfeiture in accordance with section 411.*

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

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

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

22 “(12) *In the case of an inadvertent benefit over-*
 23 *payment from a plan to which section 414(bb)(1) ap-*
 24 *plies that is transferred to an eligible retirement plan*
 25 *by or on behalf of a participant or beneficiary—*

1 “(A) the portion of such overpayment with
2 respect to which recoupment is not sought on be-
3 half of the plan shall be treated as having been
4 paid in an eligible rollover distribution if the
5 payment would have been an eligible rollover
6 distribution but for being an overpayment, and

7 “(B) the portion of such overpayment with
8 respect to which recoupment is sought on behalf
9 of the plan shall be permitted to be returned to
10 such plan and in such case shall be treated as
11 an eligible rollover distribution transferred to
12 such plan by the participant or beneficiary who
13 received such overpayment (and the plans mak-
14 ing and receiving such transfer shall be treated
15 as permitting such transfer).

16 In any case in which recoupment is sought on behalf
17 of the plan but is disputed by the participant or bene-
18 ficiary who received such overpayment, such dispute
19 shall be subject to the claims procedures of the plan
20 that made such overpayment, such plan shall notify
21 the plan receiving the rollover of such dispute, and the
22 plan receiving the rollover shall retain such overpay-
23 ment on behalf of the participant or beneficiary (and
24 shall be entitled to treat such overpayment as plan as-
25 sets) pending the outcome of such procedures.”.

1 (c) *EFFECTIVE DATE.*—*The amendments made by this*
2 *section shall apply as of the date of the enactment of this*
3 *Act.*

4 (d) *CERTAIN ACTIONS BEFORE DATE OF ENACT-*
5 *MENT.*—*Plans, fiduciaries, employers, and plan sponsors*
6 *are entitled to rely on—*

7 (1) *a good faith interpretation of then existing*
8 *administrative guidance for inadvertent benefit over-*
9 *payment recoupments and recoveries that commenced*
10 *before the date of enactment of this Act, and*

11 (2) *determinations made before the date of enact-*
12 *ment of this Act by the responsible plan fiduciary, in*
13 *the exercise of its fiduciary discretion, not to seek*
14 *recoupment or recovery of all or part of an inad-*
15 *vertent benefit overpayment.*

16 *In the case of a benefit overpayment that occurred prior*
17 *to the date of enactment of this Act, any installment pay-*
18 *ments by the participant or beneficiary to the plan or any*
19 *reduction in periodic benefit payments to the participant*
20 *or beneficiary, which were made in recoupment of such*
21 *overpayment and which commenced prior to such date, may*
22 *continue after such date. Nothing in this subsection shall*
23 *relieve a fiduciary from responsibility for an overpayment*
24 *that resulted from a breach of its fiduciary duties.*

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

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

4 (1) *IN GENERAL.*—*Section 202 of the Employee*
 5 *Retirement Income Security Act of 1974 (29 U.S.C.*
 6 *1052) is amended by adding at the end the following*
 7 *new subsection:*

8 “(c) *SPECIAL RULE FOR CERTAIN PART-TIME EM-*
 9 *PLOYEES.*—

10 “(1) *IN GENERAL.*—*A pension plan that includes*
 11 *either a qualified cash or deferred arrangement (as*
 12 *defined in section 401(k) of the Internal Revenue*
 13 *Code of 1986) or a salary reduction agreement (as de-*
 14 *scribed in section 403(b) of such Code) shall not re-*
 15 *quire, as a condition of participation in the arrange-*
 16 *ment or agreement, that an employee complete a pe-*
 17 *riod of service with the employer (or employers)*
 18 *maintaining the plan extending beyond the close of*
 19 *the earlier of—*

20 “(A) *the period permitted under subsection*
 21 *(a)(1) (determined without regard to subpara-*
 22 *graph (B)(i) thereof); or*

23 “(B) *the first 24-month period—*

24 “(i) *consisting of 2 consecutive 12-*
 25 *month periods during each of which the em-*
 26 *ployee has at least 500 hours of service; and*

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

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

6 “(3) *COORDINATION WITH OTHER RULES.—*

7 “(A) *IN GENERAL.—In the case of employees*
 8 *who are eligible to participate in the arrange-*
 9 *ment or agreement solely by reason of paragraph*
 10 *(1)(B):*

11 “(i) *EXCLUSIONS.—An employer may*
 12 *elect to exclude such employees from the ap-*
 13 *plication of subsections (a)(4), (k)(3),*
 14 *(k)(12), (k)(13), (k)(15)(B)(i)(I), and*
 15 *(m)(2) of section 401 of the Internal Rev-*
 16 *enue Code of 1986 and section 410(b) of*
 17 *such Code.*

18 “(ii) *TIME OF PARTICIPATION.—The*
 19 *rules of subsection (a)(4) shall apply to such*
 20 *employees.*

21 “(B) *TOP-HEAVY RULES.—An employer*
 22 *may elect to exclude all employees who are eligi-*
 23 *ble to participate in a plan maintained by the*
 24 *employer solely by reason of paragraph (1)(B)*
 25 *from the application of the vesting and benefit*

1 requirements under subsections (b) and (c) of
2 section 416 of the Internal Revenue Code of
3 1986.

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

10 (2) VESTING.—Section 203(b) of the Employee
11 Retirement Income Security Act of 1974 (29 U.S.C.
12 1053(a)) is amended by redesignating paragraph (4)
13 as paragraph (5) and by inserting after paragraph
14 (3) the following new paragraph:

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

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

1 “(B) paragraph (3) shall be applied by sub-
 2 stituting ‘at least 500 hours of service’ for ‘more
 3 than 500 hours of service’ in subparagraph (A)
 4 thereof; and

5 “(C) 12-month periods occurring before the
 6 24-month period described in section
 7 202(c)(1)(B) shall not be treated as years of serv-
 8 ice.

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

14 (3) *PRE-2021 SERVICE*.—Section 112(b) of the
 15 *Setting Every Community Up for Retirement En-*
 16 *hancement Act of 2019* (26 U.S.C. 401 note) is
 17 amended by striking “section 401(k)(2)(D)(ii)” and
 18 inserting “paragraphs (2)(D)(ii) and (15)(B)(iii) of
 19 section 401(k)”.

20 (b) *CONFORMING AMENDMENTS TO INTERNAL REV-*
 21 *ENUE CODE OF 1986*.—

22 (1) *IN GENERAL*.—Section 410(a) of the *Internal*
 23 *Revenue Code of 1986* is amended by adding at the
 24 end the following new paragraph:

1 “(6) *SPECIAL RULE FOR CERTAIN PART-TIME*
 2 *EMPLOYEES.*—

3 “(A) *IN GENERAL.*—*In the case of a plan*
 4 *that includes either a qualified cash or deferred*
 5 *arrangement (as defined in section 401(k)), a*
 6 *trust of which such plan is a part shall not con-*
 7 *stitute a qualified trust under section 401(a) if*
 8 *the plan requires, as a condition of participation*
 9 *in the plan or arrangement, that an employee*
 10 *complete a period of service with the employer*
 11 *(or employers) maintaining the plan extending*
 12 *beyond the close of the earlier of—*

13 “(i) *the period permitted under para-*
 14 *graph (1) (determined without regard to*
 15 *subparagraph (B)(i) thereof), or*

16 “(ii) *the first 24-month period—*

17 “(I) *consisting of 2 consecutive*
 18 *12-month periods during each of which*
 19 *the employee has at least 500 hours of*
 20 *service, and*

21 “(II) *by the close of which the em-*
 22 *ployee has attained the age of 21.*

23 “(B) *EXCEPTION.*—*Subparagraph (A)(ii)*
 24 *shall not apply to any employee described in sec-*
 25 *tion 410(b)(3).*

1 “(C) *COORDINATION WITH OTHER RULES.*—

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

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

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

15 “(ii) *TOP-HEAVY RULES.*—*An em-*
16 *ployer may elect to exclude all employees*
17 *who are eligible to participate in a plan*
18 *maintained by the employer solely by rea-*
19 *son of subparagraph (A)(ii) from the appli-*
20 *cation of the vesting and benefit require-*
21 *ments under subsections (b) and (c) of sec-*
22 *tion 416.*

23 “(D) *12-MONTH PERIOD.*—*For purposes of*
24 *this paragraph, 12-month periods shall be deter-*
25 *mined in the same manner as under the last sen-*

1 tence of paragraph (3)(A), except that 12-month
 2 periods beginning before January 1, 2021, shall
 3 not be taken into account.”.

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

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

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

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

21 “(C) 12-month periods occurring before the
 22 24-month period described in paragraph
 23 (6)(A)(ii) shall not be treated as years of service.

1 *For purposes of this paragraph, 12-month periods*
2 *shall be determined in the same manner as under*
3 *paragraph (6)(D).”.*

Union Calendar No. 180

117TH CONGRESS
2D Session

H. R. 5891

[Report No. 117-250, Part I]

A BILL

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

FEBRUARY 25, 2022

Reported from the Committee on Education and Labor
with an amendment

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