

117TH CONGRESS  
2D SESSION

# S. 4086

To amend the Employee Retirement Income Security Act of 1974 to better enable plan sponsors to implement beneficial plan features.

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IN THE SENATE OF THE UNITED STATES

APRIL 26, 2022

Ms. ROSEN (for herself and Mr. SCOTT of South Carolina) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

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## A BILL

To amend the Employee Retirement Income Security Act of 1974 to better enable plan sponsors to implement beneficial plan features.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Increasing Small Busi-  
5 ness Retirement Choices Act”.

6 **SEC. 2. FINDINGS.**

7 Congress finds as follows:

8 (1) Retirement plan sponsors engage advisors  
9 to assist in administering their retirement plans.

1 Such advisors and other service providers are paid  
2 via monthly or annual retainers to advise on plan  
3 administration or the investment fund lineup. Such  
4 retainers are charged to the retirement plan.

5 (2) Other, incidental expenses incurred related  
6 to plan design, may not be charged to the plan be-  
7 cause they are deemed settlor functions. For exam-  
8 ple, if a plan sponsor were to inquire about a bene-  
9 ficial plan design feature, such as automatic enroll-  
10 ment and reenrollment or automatic escalation, the  
11 advisor or other service provider would bill the em-  
12 ployer a separate amount that could not be charged  
13 back to the plan. Because these inquiries result in  
14 additional costs, many employers—especially small  
15 employers—choose to forego these incidental plan  
16 design features, even when they might generate tre-  
17 mendous benefits for their employees.

18 (3) According to the 2021 Plan Sponsor Coun-  
19 cil of America’s Annual Survey of Profit Sharing  
20 and 401(k) Plans, only 30.5 percent of employers  
21 with fewer than 50 workers have an automatic en-  
22 rollment feature in their retirement plan, compared  
23 to over 77 percent of employers with more than  
24 1,000 workers. Small employers need additional re-  
25 sources to improve their retirement plan design.

1 **SEC. 3. FACILITATING THE IMPLEMENTATION OF BENE-**  
2 **FICIAL PLAN FEATURES.**

3 (a) **PLAN ASSETS.**—Section 403(c)(1) of the Em-  
4 ployee Retirement Income Security Act of 1974 (29  
5 U.S.C. 1103(c)(1)) is amended by inserting “(including  
6 incidental expenses solely for the benefit of the partici-  
7 pants and their beneficiaries)” before the period.

8 (b) **FIDUCIARY STANDARD OF CARE.**—Section  
9 404(a)(1)(A)(ii) of the Employee Retirement Income Se-  
10 curity Act of 1974 (29 U.S.C. 1104(a)(1)(A)(ii)) is  
11 amended by inserting “(including incidental expenses sole-  
12 ly for the benefit of the participants and their bene-  
13 ficiaries)” before the semicolon.

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