

114TH CONGRESS
1ST SESSION

H. R. 4067

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

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 18, 2015

Mr. KIND (for himself and Mr. REICHERT) introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committee on Education and the Workforce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

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

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

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

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Small Businesses Add Value for Employees Act of 2015”
6 or the “SAVE Act of 2015”.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19 (d) EFFECTIVE DATE.—The amendments made by
20 this section shall apply to contributions for taxable years
21 beginning after December 31, 2015.

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

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

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

19 (b) EFFECTIVE DATE.—The amendment made by
20 this section shall apply to plan years beginning after De-
21 cember 31, 2015.

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

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

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

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

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

13 “(c) AUTOMATIC DEFERRAL IRA ARRANGEMENTS.—

14 “(1) ENROLLMENT.—

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

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

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

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

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

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

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

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

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

6 “(I) 3 percent, plus

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

11 “(2) NOTICE.—

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

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

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

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

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

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

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

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

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

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

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

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

9 “(A) an employer must make—

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

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

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

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

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

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

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

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

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

6 (d) CLERICAL AMENDMENT.—

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

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

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

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

14 (e) EFFECTIVE DATE.—The amendments made by
 15 this section shall apply to taxable years beginning after
 16 December 31, 2015.

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

19 (a) IN GENERAL.—

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

1 (2) CONFORMING AMENDMENTS.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6 “(D) MATCHING CONTRIBUTIONS.—

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

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

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

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

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

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

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

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

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

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

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

10 (c) EFFECTIVE DATE.—The amendments made by
11 this section shall apply to plan years beginning after De-
12 cember 31, 2015.

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

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

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

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

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

6 “(b) LIMITATIONS.—

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

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

20 “(c) DEFINITIONS.—

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

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

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

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

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

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

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

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

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

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

1 (d) EFFECTIVE DATE.—The amendments made by
2 this section shall apply to taxable years that include any
3 portion of a plan year beginning after December 31, 2015.

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

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

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

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

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

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

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

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

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

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

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

15 “(2) QUALIFIED RETIREMENT DISTRIBUTION.—

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

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

23 “(I) \$250, or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12 (a) **IN GENERAL.**—

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

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

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

22 (2) **ADDITIONAL CREDIT AMOUNT.**—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3 (b) FINANCIAL LITERACY.—

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

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

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

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

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

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

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

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

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

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

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

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

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

17 “(II) such \$10,000 amount shall,
18 in the case years beginning after De-
19 cember 31, 2016, be adjusted as de-
20 scribed in section 408(p)(2)(E)(ii) ex-
21 cept that the base period taken into
22 account shall be the calendar quarter
23 beginning July 1, 2015,

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

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

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

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

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

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

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

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

14 (b) SIMPLIFICATION.—

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

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

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

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

7 (A) publish rules clarifying the extent to
8 which the fiduciary duties, if any, of a partici-
9 pating employer fiduciary with respect to a plan
10 described in section 413(c) of such Code are
11 limited to—

12 (i) the selection and monitoring of the
13 named fiduciary, and

14 (ii) the investment and management
15 of the portion of the plan’s assets attrib-
16 utable to employees of the employer to the
17 extent not otherwise delegated to another
18 fiduciary, and

19 (B) prescribe interim final regulations pro-
20 viding simplified means by which plans de-
21 scribed in section 413(c) of such Code may sat-
22 isfy the requirements of sections 102, 103, and
23 105 of the Employee Retirement Income Secu-
24 rity Act of 1974.

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

10 (4) ELIMINATION OF DISINCENTIVE TO POOL-
11 ING.—Not later than one year after the date of the
12 enactment of this Act, the Secretary of the Treasury
13 shall prescribe final regulations under which a plan
14 described in section 413(c) of such Code may be
15 treated as satisfying the qualification requirements
16 of section 401(a) of such Code despite the violation
17 of such requirements with respect to one or more
18 participating employers without regard to whether
19 such violation continues. Solely for this purpose, a
20 plan shall be treated as violating the qualification re-
21 quirements of section 401(a) of such Code with re-
22 spect to a participating employer if such employer
23 has failed to provide the plan sponsor with the infor-
24 mation needed to comply with such requirements
25 and such failure has continued over a period of time

1 that clearly demonstrates a lack of commitment to
2 compliance. Such rules may require that the portion
3 of the plan attributable to such participating em-
4 ployers be spun off to plans maintained by such em-
5 ployers.

6 (c) EFFECTIVE DATE.—

7 (1) IN GENERAL.—Except as provided in para-
8 graph (2), the amendments made by this section
9 shall apply to years beginning after December 31,
10 2015.

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

13 **SEC. 17. MODIFICATION OF ERISA RULES RELATING TO**
14 **MULTIPLE EMPLOYER DEFINED CONTRIBU-**
15 **TION PLANS.**

16 (a) IN GENERAL.—

17 (1) REQUIREMENT OF COMMON INTEREST.—
18 Section 3(2) of the Employee Retirement Income Se-
19 curity Act of 1974 is amended by adding at the end
20 the following:

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

1 “(ii) For purposes of this subparagraph, the
2 term ‘qualified multiple employer plan’ means a plan
3 described in section 413(c) of the Internal Revenue
4 Code of 1986 which—

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

8 “(II) includes in its annual report required
9 to be filed under section 104(a) the name and
10 identifying information of each employer main-
11 taining the plan.

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

15 “(I) the selection and monitoring of the
16 named fiduciary, and

17 “(II) the investment and management of
18 the portion of the plan’s assets attributable to
19 employees of the employer to the extent not
20 otherwise delegated to another fiduciary.

21 “(iv) The requirements of this clause are met if,
22 under the plan, an employer maintaining the plan is
23 not subject to unreasonable restrictions, fees, or pen-
24 alties by reason of ceasing to maintain, or otherwise
25 transferring assets from, the plan.

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

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

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

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

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

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

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

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

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

4 (b) CONFORMING AMENDMENT.—Section 3(2)(A) of
5 such Act is amended by striking “Except as provided in
6 subparagraph (B)” and inserting “Except as provided in
7 subparagraphs (B) and (C)”.

8 (c) EFFECTIVE DATE.—The amendments made by
9 this section shall apply to years beginning after December
10 31, 2015.

11 **SEC. 18. CLARIFICATION OF TREATMENT OF INDIVIDUAL**
12 **RETIREMENT PLANS WITH PAYROLL DEDUC-**
13 **TION.**

14 (a) IN GENERAL.—Section 3(2) of the Employee Re-
15 tirement Income Security Act of 1974 (29 U.S.C.
16 1002(2)), as amended by this Act, is amended by adding
17 at the end the following new subparagraph:

18 “(E) Neither an individual retirement plan (as de-
19 fined in section 7701(a)(37) of the Internal Revenue Code
20 of 1986) nor an automatic deferral IRA arrangement (as
21 described in section 408B of such Code) maintained in
22 connection with any such individual retirement plan shall
23 be considered a pension plan merely because an employer
24 establishes a payroll deduction program for the purpose

1 of enabling employees to make voluntary contributions to
2 such account or annuity.”.

3 (b) **EFFECTIVE DATE.**—The amendments made by
4 this section shall take effect on the date of the enactment
5 of this Act.

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

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

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

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

12 and inserting “diversification, and”; and

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

14 “(iii) the lifetime income disclosure
15 described in subparagraph (D)(i).

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

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

25 “(D) **LIFETIME INCOME DISCLOSURE.**—

1 “(i) IN GENERAL.—

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

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

21 “(III) LIFETIME INCOME
22 STREAMS.—The lifetime income
23 streams described in this subclause
24 are a qualified joint and survivor an-
25 nuity (as defined in section 205(d)),

1 based on assumptions specified in
2 rules prescribed by the Secretary, in-
3 cluding the assumption that the par-
4 ticipant or beneficiary has a spouse of
5 equal age, and a single life annuity.
6 Such lifetime income streams may
7 have a term certain or other features
8 to the extent permitted under rules
9 prescribed by the Secretary.

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

17 “(I) explains that the lifetime in-
18 come stream equivalent is only pro-
19 vided as an illustration;

20 “(II) explains that the actual
21 payments under the lifetime income
22 stream described in clause (i)(III)
23 that may be purchased with the total
24 benefits accrued will depend on nu-
25 merous factors and may vary substan-

1 tially from the lifetime income stream
2 equivalent in the disclosures;

3 “(III) explains the assumptions
4 upon which the lifetime income stream
5 equivalent was determined; and

6 “(IV) provides such other similar
7 explanations as the Secretary con-
8 siders appropriate.

9 “(iii) ASSUMPTIONS AND RULES.—
10 Not later than 1 year after the date of the
11 enactment of the Lifetime Income Dislo-
12 sure Act, the Secretary shall—

13 “(I) prescribe assumptions that
14 administrators of individual account
15 plans may use in converting total ac-
16 crued benefits into lifetime income
17 stream equivalents for purposes of
18 this subparagraph; and

19 “(II) issue interim final rules
20 under clause (i).

21 In prescribing assumptions under sub-
22 clause (I), the Secretary may prescribe a
23 single set of specific assumptions (in which
24 case the Secretary may issue tables or fac-
25 tors that facilitate such conversions), or

1 ranges of permissible assumptions. To the
2 extent that an accrued benefit is or may be
3 invested in a lifetime income stream de-
4 scribed in clause (i)(III), the assumptions
5 prescribed under subclause (I) shall, to the
6 extent appropriate, permit administrators
7 of individual account plans to use the
8 amounts payable under such lifetime in-
9 come stream as a lifetime income stream
10 equivalent.

11 “(iv) LIMITATION ON LIABILITY.—No
12 plan fiduciary, plan sponsor, or other per-
13 son shall have any liability under this title
14 solely by reason of the provision of lifetime
15 income stream equivalents which are de-
16 rived in accordance with the assumptions
17 and rules described in clause (iii) and
18 which include the explanations contained in
19 the model lifetime income disclosure de-
20 scribed in clause (ii). This clause shall
21 apply without regard to whether the provi-
22 sion of such lifetime income stream equiva-
23 lent is required by subparagraph (B)(iii).

24 “(v) EFFECTIVE DATE.—The require-
25 ment in subparagraph (B)(iii) shall apply

1 to pension benefit statements furnished
2 more than 12 months after the latest of
3 the issuance by the Secretary of—

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

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

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

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

13 **SEC. 20. LIFETIME INCOME SAFE HARBOR.**

14 Section 404 of the Employee Retirement Income Se-
15 curity Act of 1974 (29 U.S.C. 1104) is amended by adding
16 at the end the following:

17 “(e) SAFE HARBOR FOR ANNUITY SELECTION.—

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

23 “(A) engages in an objective, thorough and
24 analytical search for the purpose of identifying

1 insurers from which to purchase guaranteed re-
2 tirement income contracts;

3 “(B) with respect to each insurer identified
4 by the fiduciary under subparagraph (A)—

5 “(i) considers the financial capability
6 of such insurer to satisfy its obligations
7 under the guaranteed retirement income
8 contract; and

9 “(ii) considers the cost (including fees
10 and commissions) of the guaranteed retire-
11 ment income contract offered by the in-
12 surer in relation to the benefits and prod-
13 uct features of the contract and adminis-
14 trative services to be provided under such
15 contract; and

16 “(C) on the basis of the foregoing, con-
17 cludes that—

18 “(i) at the time of the selection, the
19 insurer is financially capable of satisfying
20 its obligations under the guaranteed retire-
21 ment income contract; and

22 “(ii) the cost (including fees and com-
23 missions) of the selected guaranteed retire-
24 ment income contract is reasonable in rela-
25 tion to the benefits and product features of

1 the contract and the administrative serv-
2 ices to be provided under such contract.

3 “(2) FINANCIAL CAPABILITY OF THE IN-
4 SURER.—For purposes of this section, a fiduciary
5 will be deemed to satisfy the requirements of para-
6 graphs (1)(B)(i) and (1)(C)(i) if—

7 “(A) the fiduciary obtains written rep-
8 resentations from the insurer that—

9 “(i) the insurer is licensed to offer
10 guaranteed retirement income contracts;

11 “(ii) the insurer, at the time of selec-
12 tion and for each of the immediately pre-
13 ceding seven years—

14 “(I) operates under a certificate
15 of authority from the Insurance Com-
16 missioner of its domiciliary State that
17 has not been revoked or suspended;

18 “(II) has filed audited financial
19 statements in accordance with the
20 laws of its domiciliary State under ap-
21 plicable statutory accounting prin-
22 ciples;

23 “(III) maintains (and has main-
24 tained) reserves that satisfies all the

1 statutory requirements of all States
2 where the insurer does business; and

3 “(IV) is not operating under an
4 order of supervision, rehabilitation, or
5 liquidation; and

6 “(iii) the insurer undergoes, at least
7 every five years, a financial examination
8 (within the meaning of the law of its domi-
9 ciliary State) by the Insurance Commis-
10 sioner of the domiciliary State (or rep-
11 resentative, designee, or other party ap-
12 proved thereby);

13 “(B) if, following the issuance of the rep-
14 resentations described in clauses (i) through
15 (iii) of subparagraph (A), there is any change
16 that would preclude the insurer from making
17 the same representations at the time of
18 issuance of the guaranteed retirement income
19 contract, the insurer shall notify the fiduciary,
20 in advance of the issuance of any guaranteed
21 retirement income contract, that the fiduciary
22 can no longer rely on one or more of the rep-
23 resentations; and

24 “(C) the fiduciary has not received the no-
25 tification described in subparagraph (B) and

1 has no other facts that would cause it to ques-
2 tion the representations described in clauses (i)
3 through (iii) of subparagraph (A).

4 “(3) Nothing herein shall be construed to re-
5 quire a fiduciary to select the lowest cost contract.
6 Accordingly, a fiduciary may consider the value, in-
7 cluding features and benefits of the contract and at-
8 tributes of the insurer in conjunction with the con-
9 tract’s cost. Attributes of the insurer that may be
10 considered may include, without limitation, the
11 issuer’s financial strength.

12 “(4) TIME OF SELECTION.—

13 “(A) For purposes of paragraph (1), the
14 ‘time of selection’ may be either—

15 “(i) the time that the insurer and con-
16 tract are selected for distribution of bene-
17 fits to a specific participant or beneficiary;
18 or

19 “(ii) the time that the insurer and
20 contract are selected to provide benefits at
21 future dates to participants or bene-
22 ficiaries, provided that the selecting fidu-
23 ciary periodically reviews the continuing
24 appropriateness of the conclusion described
25 in paragraph (1)(C), taking into account

1 the considerations described in paragraph
2 (1).

3 For purposes of this paragraph, a fiduciary is
4 not required to review the appropriateness of
5 this conclusion following the purchase of any
6 contract(s) for specific participants or bene-
7 ficiaries.

8 “(B) For purposes of paragraph (4)(A)(ii),
9 a fiduciary will be deemed to have conducted a
10 periodic review of the financial capability of the
11 insurer if the fiduciary obtains the written rep-
12 resentations described in clauses (i) through
13 (iii) of paragraph (2)(A) on an annual basis,
14 unless, in the interim, the fiduciary has received
15 the notice described in paragraph (2)(B) or oth-
16 erwise becomes aware of facts that would cause
17 it to question the such representations.

18 “(5) LIMITED LIABILITY.—A fiduciary that is
19 deemed to satisfy the requirements of this section
20 shall not be liable following the distribution of any
21 benefit or the investment by or on behalf of a partic-
22 ipant or beneficiary pursuant to the selected guaran-
23 teed retirement income contract for any losses that
24 may result to the participant or beneficiary due to

1 an insurer's inability to satisfy its financial obliga-
2 tions under the terms of such contract.

3 “(6) DEFINITIONS.—For purposes of this sec-
4 tion—

5 “(A) INSURER.—The term ‘insurer’ means
6 an insurance company, insurance service or in-
7 surance organization qualified to do business in
8 a State; and includes affiliates of such compa-
9 nies to the extent the affiliate is licensed to
10 offer guaranteed retirement income contracts.

11 “(B) GUARANTEED RETIREMENT INCOME
12 CONTRACT.—The term ‘guaranteed retirement
13 income contract’ means an annuity contract for
14 a fixed term or a contract (or provision or fea-
15 ture thereof) designed to provide a participant
16 guaranteed benefits annually (or more fre-
17 quently) for at least the remainder of the life of
18 the participant or joint lives of the participant
19 or the participant's designated beneficiary as
20 part of an individual account plan. This section
21 sets forth an optional means by which a plan fi-
22 duciary will be considered to satisfy the respon-
23 sibilities set forth in section 404(a)(1)(B) with
24 respect to the selection of insurers and guaran-
25 teed retirement income contracts. This section

1 does not establish minimum requirements or
2 the exclusive means for satisfying these respon-
3 sibilities.”.

○