

115TH CONGRESS  
1ST SESSION

# H. R. 4189

To reduce the disadvantages of individual retirement arrangements with respect to employer-sponsored retirement plans by helping taxpayers comply with laws affecting individual retirement arrangements, by providing for reduced penalties under the Internal Revenue Code of 1986 for certain self-corrections with respect to such laws, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

OCTOBER 31, 2017

Mr. KELLY of Pennsylvania introduced the following bill; which was referred to the Committee on Ways and Means

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## A BILL

To reduce the disadvantages of individual retirement arrangements with respect to employer-sponsored retirement plans by helping taxpayers comply with laws affecting individual retirement arrangements, by providing for reduced penalties under the Internal Revenue Code of 1986 for certain self-corrections with respect to such laws, 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.**

4 This Act may be cited as the “IRA Preservation Act  
5 of 2017”.

1 **SEC. 2. EDUCATION AND OUTREACH.**

2 (a) **INFORMATION MADE AVAILABLE.**—The Sec-  
3 retary shall make available to the public the following in-  
4 formation:

5 (1) An overview of the laws and regulations re-  
6 lated to individual retirement arrangements, includ-  
7 ing—

8 (A) limits on contributions;

9 (B) limits on deductions for contributions;

10 (C) rollovers;

11 (D) minimum required distributions;

12 (E) non-exempt prohibited transactions;

13 and

14 (F) tax consequences for early distribu-  
15 tions.

16 (2) Examples of common errors by taxpayers  
17 with respect to the laws and regulations described in  
18 paragraph (1) and instructions on how to avoid such  
19 errors.

20 (b) **TARGETED ADVANCE NOTICES.**—Based on the  
21 information on common errors identified under subsection  
22 (a)(2), the Secretary shall identify critical failure points  
23 and cause notices to be issued to individual taxpayers in  
24 advance of their reaching such critical failure points, with  
25 advice on how to avoid such failures.

26 (c) **SOFT NOTICE PROGRAM.**—

1           (1) IN GENERAL.—The Secretary shall, at such  
2 time as the Secretary considers appropriate, cause a  
3 notice under this subsection to be issued to a tax-  
4 payer if the Secretary detects a material inconsis-  
5 tency between or among any tax returns or reports  
6 filed under the Internal Revenue Code of 1986, in-  
7 cluding an individual tax return and a third-party  
8 information return, that could represent tax liability  
9 incurred by the taxpayer because of—

10           (A) an excess contribution to an individual  
11 retirement arrangement as described in section  
12 4973 of the Internal Revenue Code of 1986;

13           (B) an excess accumulation in an indi-  
14 vidual retirement arrangement as described in  
15 section 4974 of such Code; or

16           (C) any other error associated with an in-  
17 dividual retirement arrangement that the Sec-  
18 retary has the capability to detect automatically  
19 because of inconsistencies in returns filed or re-  
20 ports made under such Code.

21           (2) EXCEPTIONS.—The Secretary is not re-  
22 quired to issue a notice under paragraph (1) with re-  
23 spect to an individual retirement arrangement in any  
24 case in which the Secretary—

1 (A) intends to initiate an audit of the indi-  
2 vidual retirement arrangement;

3 (B) has reason to believe there is no out-  
4 standing tax liability attributable to an excess  
5 contribution, excess accumulation, or other  
6 error described in subparagraph (A), (B), or  
7 (C) of paragraph (1); or

8 (C) has other good cause consistent with  
9 the purposes of this Act.

10 (3) CONTENT.—A notice issued under para-  
11 graph (1) to a taxpayer with respect to an individual  
12 retirement arrangement shall include—

13 (A) an explanation of taxes that could be  
14 owed, as of the date of the notice, because of  
15 an excess contribution, excess accumulation, or  
16 other error described in subparagraph (A), (B),  
17 or (C) of paragraph (1), including, if applicable,  
18 an explanation of the reduced rates of tax avail-  
19 able under section 4973(i) or 4974(e), as the  
20 case may be, of the Internal Revenue Code of  
21 1986 for voluntary correction of an excess con-  
22 tribution or excess accumulation described in  
23 subparagraph (A) or (B) of paragraph (1) if  
24 voluntary correction is made within the correc-

1           tion window applicable under section 4973(i) or  
2           4974(e), as the case may be, of such Code;

3           (B) a statement that any failure to remit  
4           any taxes owed may result in an audit;

5           (C) in the case of an excess contribution or  
6           excess accumulation described in subparagraph  
7           (A) or (B) of paragraph (1), an explanation of  
8           taxes that could be owed because of such excess  
9           contribution or excess accumulation, if vol-  
10          untary correction is not made within the correc-  
11          tion window applicable under section 4973(i) or  
12          4974(e), as the case may be, of the Internal  
13          Revenue Code of 1986; and

14          (D) a copy of the applicable form to be  
15          used by the taxpayer to remit taxes owed with  
16          respect to the individual retirement arrange-  
17          ment because of the potential excess contribu-  
18          tion, excess accumulation, or other error de-  
19          scribed in the notice.

20          (4) COORDINATION WITH SELF-CORRECTION  
21          PROCEDURES.—A notice issued under this para-  
22          graph may not be considered as initiating an audit  
23          or otherwise demanding payment for purposes of  
24          section 4973(i) or 4974(e) of the Internal Revenue  
25          Code of 1986.

1 **SEC. 3. REDUCTION OF EXCISE TAXES FOR VOLUNTARY**  
2 **CORRECTION OF COMMON IRA ERRORS.**

3 (a) REDUCTION IN EXCISE TAX ON EXCESS CON-  
4 TRIBUTIONS.—Section 4973 of the Internal Revenue Code  
5 of 1986 is amended by adding at the end the following  
6 new subsection:

7 “(i) REDUCTION OF TAX IN CERTAIN CASES.—

8 “(1) REDUCTION.—In the case of a taxpayer  
9 who—

10 “(A) corrects, during the correction win-  
11 dow, an excess contribution that was made to  
12 an individual retirement arrangement and that  
13 resulted in imposition of a tax under paragraph  
14 (1) or (3) of subsection (a), and

15 “(B) submits a return, during the correc-  
16 tion window, reflecting such tax (as modified by  
17 this subsection),

18 the first and second sentences of subsection (a) shall  
19 be applied by substituting ‘3 percent’ for ‘6 percent’  
20 each place it appears.

21 “(2) CORRECTION WINDOW DEFINED.—For  
22 purposes of this subsection, the term ‘correction win-  
23 dow’ means the period beginning on the date on  
24 which the tax under subsection (a) is imposed with  
25 respect to an excess contribution, and ending on the  
26 earlier of—

1           “(A) the date on which the Secretary initi-  
2           ates an audit, or otherwise demands payment,  
3           with respect to the excess contribution, or

4           “(B) the last day of the second tax year  
5           that begins after the end of the tax year in  
6           which the tax under subsection (a) is im-  
7           posed.”.

8           (b) REDUCTION IN EXCISE TAX ON FAILURES TO  
9 TAKE REQUIRED MINIMUM DISTRIBUTIONS.—

10           (1) IN GENERAL.—Section 4974 of the Internal  
11 Revenue Code of 1986 is amended by adding at the  
12 end the following new subsection:

13           “(e) REDUCTION OF TAX IN CERTAIN CASES.—

14           “(1) REDUCTION.—In the case of a taxpayer  
15 who—

16           “(A) corrects, during the correction win-  
17 dow, a shortfall of distributions from an indi-  
18 vidual retirement arrangement that resulted in  
19 imposition of a tax under subsection (a), and

20           “(B) submits a return, during the correc-  
21 tion window, reflecting such tax (as modified by  
22 this subsection),

23           the first sentence of subsection (a) shall be applied  
24           by substituting ‘5 percent’ for ‘50 percent’.

1           “(2) CORRECTION WINDOW DEFINED.—For  
2 purposes of this subsection, the term ‘correction win-  
3 dow’ means the period of time beginning on the date  
4 on which the tax under subsection (a) is imposed  
5 with respect to a shortfall of distributions from an  
6 individual retirement arrangement, and ending on  
7 the earlier of—

8           “(A) the date on which the Secretary initi-  
9 ates an audit, or otherwise demands payment,  
10 with respect to the shortfall of distributions, or

11           “(B) the last day of the second tax year  
12 that begins after the end of the tax year in  
13 which the tax under subsection (a) is im-  
14 posed.”.

15           (2) COORDINATION WITH WAIVER PROVI-  
16 SIONS.—

17           (A) IN GENERAL.—Subsection (d) of sec-  
18 tion 4974 of the Internal Revenue Code of 1986  
19 is amended—

20           (i) by redesignating paragraphs (1)  
21 and (2) as subparagraphs (A) and (B), re-  
22 spectively;

23           (ii) by striking “If the taxpayer” and  
24 inserting:



1 “(1) WAIVER.—Subject to paragraph (2), if the  
2 taxpayer”; and

3 (iii) by adding at the end the fol-  
4 lowing:

5 “(2) EXCEPTION.—The Secretary may not  
6 waive the tax imposed by subsection (a) with respect  
7 to an individual retirement arrangement.”.

8 (B) AUTHORITY TO COMPROMISE.—The  
9 amendments made by subparagraph (A) shall  
10 not limit the authority of the Secretary of the  
11 Treasury under section 7121 or any other pro-  
12 vision of the Internal Revenue Code of 1986 to  
13 compromise the amount of any tax due under  
14 section 4974 of such Code, except that, in de-  
15 termining the amount of any such compromise,  
16 the Secretary may take into account the avail-  
17 ability, under section 4974(e) of such Code, of  
18 voluntary correction during the correction win-  
19 dow (as defined in section 4974(e)(2) of such  
20 Code).

21 **SEC. 4. HARMONIZATION OF TREATMENT OF IRAS WITH**  
22 **EMPLOYER PLANS.**

23 (a) ELIMINATION OF ADDITIONAL TAX ON CERTAIN  
24 DISTRIBUTIONS.—Subparagraph (A) of section 72(t)(2)  
25 of the Internal Revenue Code of 1986 is amended—

1 (1) by striking “or” at the end of clause (vii);

2 (2) by striking the period at the end of clause  
3 (viii) and inserting “, or”; and

4 (3) by adding at the end the following new  
5 clause:

6 “(ix) attributable to withdrawal of in-  
7 terest or other income earned on excess  
8 contributions to an individual retirement  
9 arrangement.”.

10 (b) REPEAL OF TAX DISQUALIFICATION PENALTY.—

11 (1) IN GENERAL.—Paragraph (2) of subsection  
12 (e) of section 408 of the Internal Revenue Code of  
13 1986 is repealed.

14 (2) CONFORMING AMENDMENTS.—

15 (A) Section 408(e)(1) of such Code is  
16 amended by striking “(2) or”.

17 (B) Sections 220(e)(2), 223(e)(2), and  
18 530(e) of such Code are amended by striking  
19 “paragraphs (2) and (4) of section 408(e)”  
20 each place it appears and inserting “paragraph  
21 (4) of section 408(e)”.

22 (C) Section 4975(c)(3) of such Code is  
23 amended by striking “the account ceases to be  
24 an individual retirement account by reason of  
25 the application of section 408(e)(2)(A) or if”.

1 (c) STATUTE OF LIMITATIONS.—Subsection (l) of  
2 section 6501 of the Internal Revenue Code of 1986 is  
3 amended—

4 (1) in paragraph (1), by inserting “(other than  
5 for individual retirement arrangements)” after “sec-  
6 tion 4975”; and

7 (2) by adding at the end the following new  
8 paragraph:

9 “(4) INDIVIDUAL RETIREMENT ARRANGE-  
10 MENTS.—For purposes of any tax imposed by sec-  
11 tion 4973, 4974, or 4975 in connection with an indi-  
12 vidual retirement arrangement, the return referred  
13 to in this section shall be the income tax return filed  
14 by the person on whom the tax under such section  
15 is imposed for the year in which the act (or failure  
16 to act) giving rise to such liability for such tax oc-  
17 curred. In the case of a person who is not required  
18 to file an income tax return for the year in which  
19 the act (or failure to act) giving rise to such liability  
20 for such tax occurred—

21 “(A) the return referred to in this section  
22 shall be the income tax return that such person  
23 would have been required to file but for the fact  
24 that such person was not required to file such  
25 return, and

1           “(B) the 3-year period referred to in sub-  
2           section (a) with respect to the return shall be  
3           deemed to begin on the date by which the re-  
4           turn would have been required to be filed (ex-  
5           cluding any extension thereof).”.

6 **SEC. 5. INDIVIDUAL RETIREMENT ARRANGEMENT DE-**  
7           **FINED.**

8           (a) IN GENERAL.—For purposes of this Act, the term  
9           “individual retirement arrangement” means an individual  
10          retirement account, an individual retirement annuity, and  
11          a Roth IRA described in sections 408(a), 408(b), and  
12          408A, respectively, of the Internal Revenue Code of 1986.

13          (b) INTERNAL REVENUE CODE.—Section 408 of the  
14          Internal Revenue Code of 1986 is amended—

15                 (1) by redesignating subsection (r) as sub-  
16                 section (s); and

17                 (2) by inserting after subsection (q) the fol-  
18                 lowing new subsection:

19                 “(r) INDIVIDUAL RETIREMENT ARRANGEMENT DE-  
20                 FINED.—For purposes of this section and sections 72(t),  
21                 4973, 4974, and 6501(l), the term ‘individual retirement  
22                 arrangement’ means an individual retirement account de-  
23                 scribed in section 408(a), an individual retirement annuity  
24                 described in section 408(b), and a Roth IRA described in  
25                 section 408A.”.

1 **SEC. 6. EFFECTIVE DATE.**

2 (a) IN GENERAL.—Subject to subsections (b) and (c),  
3 this Act and the amendments made by this Act shall take  
4 effect on the date of the enactment of this Act.

5 (b) TRANSITION PROVISIONS.—

6 (1) REQUESTS FOR WAIVERS.—

7 (A) IN GENERAL.—Notwithstanding the  
8 amendments to section 4974(d) of the Internal  
9 Revenue Code of 1986 made by section 3(b)(2)  
10 of this Act, a taxpayer may, at any time before  
11 or during the transition period, file a written  
12 request for a waiver under section 4974(d) of  
13 such Code, as in effect on the day before the  
14 date of the enactment of this Act. The Sec-  
15 retary of the Treasury shall consider any such  
16 request as if the amendments made by section  
17 3(b)(2) had not been made.

18 (B) TRANSITION PERIOD DEFINED.—For  
19 purposes of this paragraph, the term “transi-  
20 tion period” means the period beginning on the  
21 date of the enactment of this Act and ending on  
22 the date that is 1 year after such date of enact-  
23 ment.

24 (2) APPLICABILITY TO CERTAIN PRIOR ACTS.—

25 (A) IN GENERAL.—Except as provided in  
26 paragraph (1), the amendments made by this

1 Act shall apply to any determination of or af-  
2 fecting liability for taxes, interest, or penalties  
3 that is made on or after the date of the enact-  
4 ment of this Act, even if the conduct upon  
5 which the determination is based occurred be-  
6 fore such date of enactment.

7 (B) CALCULATION OF CORRECTION WIN-  
8 DOW IN CERTAIN CASES.—In the case of an  
9 error that would have been eligible for correc-  
10 tion under section 4973(i) or 4974(e) of the In-  
11 ternal Revenue Code of 1986 if tax had not  
12 been imposed under 4973(a) or 4974(a), as the  
13 case may be, of such Code before the date of  
14 the enactment of this Act, the correction win-  
15 dow referred to in sections 4973(i) and 4974(e)  
16 of such Code shall be the period beginning on  
17 the date on which such tax was imposed and  
18 ending on the earlier of—

19 (i) the date on which the Secretary of  
20 the Treasury initiates an audit or other-  
21 wise demands payment with respect to the  
22 conduct described in section 4973(a) or  
23 4974(a), as the case may be, of such Code;  
24 or

1                   (ii) the last day of the second tax year  
2                   that begins after the tax year in which the  
3                   date of the enactment of this Act occurs.

4           (c) IMPLEMENTATION.—Section 2 shall be imple-  
5 mented as soon as reasonably practicable after the enact-  
6 ment of this Act but in no case later than the date that  
7 is 1 year after the date of the enactment of this Act.

○