

111TH CONGRESS
2^D SESSION

H. R. 4742

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

MARCH 3, 2010

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 Labor, 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 2009”
6 or the “SAVE Act of 2009”.

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. 401(k) automatic deferral percentage parity.
- Sec. 9. Limited transfer of unused balance in flexible spending arrangement.
- Sec. 10. Prior years compensation taken into account in determining maximum
 retirement savings deduction.
- Sec. 11. Expanding small employer pension plan startup cost credit.
- Sec. 12. Financial education.
- Sec. 13. Multiple small employer plan.
- Sec. 14. Amendments to Employee Retirement Income Security Act of 1974.

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

5 (a) IN GENERAL.—Paragraph (3) of section 408(d)
 6 of the Internal Revenue Code of 1986 (relating to rollover
 7 contribution) is amended by striking subparagraph (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.

11 **SEC. 3. ALLOWING MID-YEAR SIMPLE IRA PLAN TERMI-**
 12 **NATION.**

13 (a) IN GENERAL.—Subsection (p) of section 408 of
 14 the Internal Revenue Code of 1986 is amended by adding
 15 at the end the following new paragraph:

16 “(11) SPECIAL RULES RELATING TO MID-YEAR
 17 TERMINATION.—

1 “(A) IN GENERAL.—An employer may
2 elect to terminate (in such form and manner as
3 the Secretary may provide) the qualified salary
4 reduction arrangement of the employer at any
5 time during the year.

6 “(B) PRORATION AND APPLICATION OF
7 QUALIFIED PLAN LIMITATION.—In the case of a
8 year during which an employer terminates a
9 qualified salary reduction arrangement before
10 the end of such year—

11 “(i) the applicable dollar amount in
12 effect for such year shall be prorated to
13 the date of such termination,

14 “(ii) for purposes of determining the
15 compensation of an employee for such ar-
16 rangement for such year, the year of such
17 termination shall be treated as ending on
18 the date of such termination, and

19 “(iii) subparagraph (D) of paragraph
20 (2) shall not apply with respect to a quali-
21 fied plan maintained in such year only
22 after the date of such termination.”.

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

1 **SEC. 4. ELIMINATION OF HIGHER PENALTY ON EARLY SIM-**
2 **PLE IRA DISTRIBUTIONS.**

3 (a) **IN GENERAL.**—Subsection (t) of section 72 of the
4 Internal Revenue Code of 1986 (relating to 10-percent ad-
5 ditional tax on early distributions from qualified retire-
6 ment plans) is amended by striking paragraph (6).

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

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

12 (a) **ADDITIONAL NONELECTIVE EMPLOYER CON-**
13 **TRIBUTIONS ALLOWED.**—

14 (1) **IN GENERAL.**—Subparagraph (A) of section
15 408(p)(2) of the Internal Revenue Code of 1986 (re-
16 lating to qualified salary reduction arrangement) is
17 amended by striking “and” at the end of clause (iii),
18 by redesignating clause (iv) as clause (v), and by in-
19 serting after clause (iii) the following new clause:

20 “(iv) the employer may make, in addi-
21 tion to any other contribution under this
22 paragraph, nonelective contributions of not
23 more than 10 percent of compensation
24 (subject to the limitation described in sub-
25 paragraph (B)(ii)) for each employee who
26 is eligible to participate in the arrangement

1 and who has at least \$5,000 of compensa-
2 tion from the employer for the year, and”.

3 (2) CONFORMING AMENDMENT.—Clause (v) of
4 section 408(p)(2)(A) of such Code, as redesignated
5 by this section, is amended by striking “clause (i) or
6 (iii)” and inserting “clause (i), (iii), or (iv)”.

7 (b) INCREASE IN ELECTIVE CONTRIBUTION LIMITA-
8 TION.—Subparagraph (E) of section 408(p)(2) is amend-
9 ed to read as follows:

10 “(E) APPLICABLE DOLLAR AMOUNT.—For
11 purposes of subparagraph (A)(ii), the applicable
12 dollar amount shall be the applicable dollar
13 amount in effect under subparagraph (B) of
14 section 402(g)(1).”.

15 (c) SIMPLE IRA SUBJECT TO DEFINED CONTRIBU-
16 TION PLAN LIMITATION.—Subsection (p) of section 408
17 of such Code is amended by adding at the end the fol-
18 lowing new paragraph:

19 “(11) SUBJECT TO DEFINED CONTRIBUTION
20 PLAN LIMITATION.—An arrangement shall not be
21 treated as a qualified salary reduction arrangement
22 for any year if contributions with respect to any em-
23 ployee for the year exceed the limitation of para-
24 graph (1) of section 415(c) (relating to limitation for
25 defined contribution plans).”.

1 (d) EFFECTIVE DATE.—The amendments made by
2 this section shall apply to contributions for taxable years
3 beginning after December 31, 2007.

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

6 (a) IN GENERAL.—Subparagraph (B) of section
7 401(k)(11) of such Code (relating to contribution require-
8 ments) is amended by adding at the end the following new
9 clause:

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

23 (b) EFFECTIVE DATE.—The amendment made by
24 this section shall apply to plan years beginning after De-
25 cember 31, 2007.

1 **SEC. 7. AUTOMATIC DEFERRAL IRAS.**

2 (a) IN GENERAL.—Subpart A of part I of subchapter
3 D of chapter 1 of the Internal Revenue Code of 1986 (re-
4 lating to pension, profit-sharing, stock bonus plans, etc.)
5 is amended by inserting after section 408A the following
6 new section:

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

8 “(a) IN GENERAL.—An automatic deferral IRA shall
9 be treated for purposes of this title in the same manner
10 as an individual retirement plan. An automatic deferral
11 IRA may also be treated as a Roth IRA for purposes of
12 this title if it meets the requirements of section 408A.

13 “(b) AUTOMATIC DEFERRAL IRA.—For purposes of
14 this section, the term ‘automatic deferral IRA’ means an
15 individual retirement plan (as defined in section
16 7701(a)(37)) with respect to which contributions are made
17 under an arrangement which satisfies the requirements of
18 paragraphs (1) through (4) of subsection (c).

19 “(c) AUTOMATIC DEFERRAL IRA ARRANGEMENTS.—

20 “(1) ENROLLMENT.—

21 “(A) IN GENERAL.—The requirements of
22 this paragraph are met if each employee eligible
23 to participate in the arrangement is treated as
24 having elected to have the employer make pay-
25 ments as elective contributions to an automatic
26 deferral IRA on behalf of such employee (which

1 would have otherwise been made to the em-
2 ployee directly in cash) in an amount equal to
3 so much of a qualified percentage of compensa-
4 tion of such employee as does not exceed the
5 deductible amount for such year (within the
6 meaning of section 219(b)).

7 “(B) ELIGIBILITY.—An employee is eligi-
8 ble to participate if such employee is described
9 in paragraph (2) of section 408(k), except that
10 for purposes of determining whether an em-
11 ployee is described in such paragraph, subpara-
12 graph (C) thereof shall be applied by sub-
13 stituting ‘\$5,000’ for ‘\$450’.

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

18 “(i) to not have such elective contribu-
19 tions made, or

20 “(ii) not later than the close of the
21 30-day period beginning on the date of the
22 first contribution with respect to such em-
23 ployee, to make elective contributions at a
24 level specified in such affirmative election.

1 “(D) QUALIFIED PERCENTAGE.—For pur-
2 poses of this paragraph, the term ‘qualified per-
3 centage’ means, with respect to any employee,
4 any percentage determined under the trust
5 agreement if such percentage is applied uni-
6 formly, does not exceed 15 percent, and is at
7 least—

8 “(i) 3 percent during the period end-
9 ing on the last day of the first plan year
10 which begins after the date on which the
11 first elective contribution described in sub-
12 paragraph (A) is made with respect to
13 such employee, and

14 “(ii) during any subsequent plan year,
15 a percentage equal to—

16 “(I) 3 percent, plus

17 “(II) 1 percent multiplied by the
18 number of plan years (but not more
19 than 12) beginning after the plan year
20 described in clause (i).

21 “(2) NOTICE.—

22 “(A) IN GENERAL.—The requirements of
23 this paragraph are met if, within a reasonable
24 period before the first day an employee is eligi-
25 ble to participate in the arrangement, the em-

1 ployee receives written notice of the employee’s
2 rights and obligations under the arrangement
3 which—

4 “(i) is sufficiently accurate and com-
5 prehensive to apprise the employee of such
6 rights, and

7 “(ii) is written in a manner calculated
8 to be understood by the average employee
9 to whom the arrangement applies.

10 “(B) TIMING AND CONTENT.—A notice
11 shall not be treated as meeting the require-
12 ments of subparagraph (A) with respect to an
13 employee unless—

14 “(i) the notice explains the employee’s
15 right to elect not to have elective contribu-
16 tions made on the employee’s behalf (or to
17 elect to have such contributions made at a
18 different percentage),

19 “(ii) the notice explains how contribu-
20 tions made under the arrangement will be
21 invested in the absence of any investment
22 election by the employee, and

23 “(iii) the employee has a reasonable
24 period of time after receipt of the notice
25 described in clauses (i) and (ii) and before

1 the first elective contribution is made to
2 make either such election.

3 “(3) DEFAULT INVESTMENT ARRANGEMENT.—

4 The requirements of this paragraph are met if—

5 “(A) in the absence of an investment elec-
6 tion by the employee with respect to the em-
7 ployee’s interest in the trust, such interest is in-
8 vested as provided in regulations prescribed
9 pursuant to subparagraph (A) of section
10 404(c)(5) of the Employee Retirement Income
11 Security Act of 1974, and

12 “(B) the employer provides each employee
13 who has an interest in the trust, notice which
14 meets the requirements of subparagraph (B) of
15 such section.

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

18 “(A) an employer must make the elective
19 employer contributions under paragraph (1)(A)
20 not later than the close of the 30-day period
21 following the last day of the month with respect
22 to which the contributions are to be made,

23 “(B) an employee may elect to terminate
24 participation in the arrangement at any time
25 during the year, except that if the employee so

1 terminates, the arrangement may provide that
2 the employee may elect to resume participation
3 until the beginning of the next year, and

4 “(C) each employee eligible to participate
5 may elect, during the 30-day period before the
6 beginning of any year, or to modify the amount
7 subject to such arrangement, for such year.”.

8 (b) PREEMPTION OF CONFLICTING STATE LAWS.—
9 Any law of a State shall be superseded if it would directly
10 or indirectly prohibit or restrict an employer from creating
11 or organizing an automatic deferral IRA (as defined in
12 section 408B of the Internal Revenue Service of 1986).

13 (c) CLERICAL AMENDMENT.—The table of sections
14 for subpart A of part I of subchapter D of chapter 1 of
15 the Internal Revenue Code of 1986 is amended by insert-
16 ing after the item relating to 408A the following new item:
“408B. Automatic deferral IRAs.”.

17 (d) EFFECTIVE DATE.—The amendments made by
18 this section shall apply to taxable years beginning after
19 December 31, 2007.

20 **SEC. 8. 401(k) AUTOMATIC DEFERRAL PERCENTAGE PAR-**
21 **ITY.**

22 (a) IN GENERAL.—Clause (iii) of section
23 401(k)(13)(C) of the Internal Revenue Code of 1986 is
24 amended by striking “10 percent” and inserting “15 per-
25 cent”.

1 (b) EFFECTIVE DATE.—The amendment made by
2 this section shall apply to plan years beginning after De-
3 cember 31, 2009.

4 **SEC. 9. LIMITED TRANSFER OF UNUSED BALANCE IN**
5 **FLEXIBLE SPENDING ARRANGEMENT.**

6 (a) IN GENERAL.—Section 125 of the Internal Rev-
7 enue Code of 1986 is amended by redesignating sub-
8 sections (i) and (j) as subsections (j) and (k), respectively,
9 and by inserting after subsection (h) the following new
10 subsection:

11 “(i) SPECIAL RULE FOR UNUSED BENEFITS IN
12 FLEXIBLE SPENDING ARRANGEMENTS.—

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

18 “(2) QUALIFIED RETIREMENT DISTRIBUTION.—

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

24 “(i) the amount does not exceed the
25 lesser of—

1 “(I) \$250, or

2 “(II) the unused benefits with re-
3 spect to the arrangement, and

4 “(ii) the amount received is paid into
5 a qualified retirement plan (as defined in
6 section 4974(c)), or an eligible deferred
7 compensation plan (as defined in section
8 457(b)) of an eligible employer described in
9 section 457(e)(1)(A), of the individual not
10 later than the 60th day after the day on
11 which the individual receives the payment
12 or distribution.

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

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

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

24 “(C) SPECIAL RULES FOR TREATMENT OF
25 CONTRIBUTIONS TO RETIREMENT PLANS.—For

1 purposes of this title, qualified retirement dis-
2 tributions—

3 “(i) shall be treated as elective defer-
4 rals (as defined in section 402(g)(3)) in
5 the case of contributions to a qualified
6 cash or deferred arrangement (as defined
7 in section 401(k)) or to an annuity con-
8 tract described in section 403(b),

9 “(ii) shall be treated as employer con-
10 tributions to which the employee has a
11 nonforfeitable right in the case of a plan
12 which is described in section 401(a) which
13 includes a trust exempt from tax under
14 section 501(a),

15 “(iii) shall be treated as deferred com-
16 pensation in the case of contributions to an
17 eligible deferred compensation plan (as de-
18 fined in section 457(b)), and

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

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

1 **SEC. 10. PRIOR YEARS COMPENSATION TAKEN INTO AC-**
2 **COUNT IN DETERMINING MAXIMUM RETIRE-**
3 **MENT SAVINGS DEDUCTION.**

4 (a) IN GENERAL.—Subparagraph (B) of section
5 219(b)(1) of the Internal Revenue Code of 1986 is amend-
6 ed by striking “for such taxable year” and inserting “for
7 the preceding taxable year”.

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

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

13 (a) IN GENERAL.—

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

20 “(A) a qualified employer plan within the
21 meaning of section 4972(d), or

22 “(B) a plan of which a trust described in
23 section 408(c) is a part.”.

24 (2) ADDITIONAL CREDIT AMOUNT.—

25 (A) IN GENERAL.—Subsection (a) of sec-
26 tion 45E of such Code is amended by striking

1 “50 percent of” and all that follows and insert-
2 ing “the sum of—

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

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

10 (B) APPLICABLE PERCENTAGE.—Sub-
11 section (d) of section 45E of such Code is
12 amended by adding at the end the following
13 new paragraph:

14 “(4) APPLICABLE PERCENTAGE.—The applica-
15 ble percentage is—

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

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

20 (C) CONFORMING AMENDMENT.—Para-
21 graph (2) of section 45E(c) of such Code (de-
22 fining eligible employer) is amended—

23 (i) by striking “qualified employer
24 plan” in each place it appears and insert-
25 ing “eligible employer plan”, and

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

3 (3) INCREASED LIMITATION.—Paragraph (1) of
4 section 45E(b) of such Code is amended by striking
5 “\$500” and inserting “\$750 (\$2,000 in the case of
6 qualified startup costs attributable to a plan de-
7 scribed in subsection (d)(2)(A)”.

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

12 **SEC. 12. FINANCIAL EDUCATION.**

13 (a) RETIREMENT PLAN EDUCATION FOR SMALL
14 BUSINESSES.—Not later than 6 months after the date of
15 the enactment of this Act—

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

22 (2) the Secretary of the Treasury and the Sec-
23 retary of Labor shall develop recommendations for
24 small businesses in order to improve retirement out-
25 comes. Such recommendations shall take into ac-

1 count established behavioral trends of employee in-
2 vestment and the effect of default design features
3 such as auto escalation, expansion of auto rollovers,
4 auto diversification for near retirees, and automatic
5 forms of distribution.

6 (b) FINANCIAL LITERACY.—

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

13 (2) CONTENT OF CURRICULA.—Such curricula
14 shall include the following:

15 (A) How to balance a checkbook, read a
16 credit card statement, and calculate interest
17 rates.

18 (B) What a pay stub is and why Federal
19 and State income taxes and Social Security and
20 Medicare taxes are withheld from wages.

21 (C) The differences between various types
22 of bank accounts.

23 (D) The significance of a credit score and
24 how to read credit reports.

1 (E) The marketing techniques frequently
2 used by individuals and businesses to attract
3 patrons.

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

8 **SEC. 13. MULTIPLE SMALL EMPLOYER PLAN.**

9 (a) IN GENERAL.—Paragraph (11) of section 401(k)
10 of the Internal Revenue Code of 1986 is amended by add-
11 ing the following at the end thereof:

12 “(E) MULTIPLE SMALL EMPLOYER
13 PLAN.—

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

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

20 “(II) such \$10,000 amount shall
21 be adjusted as described in section
22 408(p)(2)(E)(ii) except that the base
23 period taken into account shall be the
24 calendar quarter beginning July 1,
25 2010,

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 is described in
13 section 413(c).

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

23 “(IV) The plan does not permit
24 any participant or beneficiary to re-

1 ceive or maintain a loan from the
2 plan.

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

13 “(VI) The plan is maintained
14 pursuant to a model plan document
15 published by the Secretary.”.

16 (b) SIMPLIFICATION.—

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

23 (2) PROTECTION AGAINST LOSS.—Within 120
24 days of the date of the enactment of this Act, the
25 Secretary of Labor shall amend Department of

1 Labor Regulation section 2550.404e-5(e)(4)(iv)(B)
2 so that, in the case of a plan described in section
3 401(k)(11)(E) of such Code “four years” shall be
4 substituted for “120 days”.

5 (3) CLARIFYING DUTIES AND REDUCING BUR-
6 DENS.—Within one year of the date of the enact-
7 ment of this Act, the Secretary of Labor shall—

8 (A) publish rules clarifying the extent to
9 which the fiduciary duties of a participating
10 employer and of a named fiduciary with respect
11 to a plan described in section 401(k)(11)(E) of
12 such Code are limited to prudently selecting
13 and monitoring the provider of such plan and
14 the services, fees, and investment options avail-
15 able from such provider, and

16 (B) prescribe interim final regulations pro-
17 viding simplified means by which plans de-
18 scribed in section 401(k)(11)(E) of such Code
19 may satisfy the requirements of sections 102,
20 103, and 105 of the Employee Retirement In-
21 come Security Act of 1974.

22 (4) ELIMINATION OF DISINCENTIVE TO POOL-
23 ING.—Not later than one year after the date of en-
24 actment of this Act, the Secretary of the Treasury
25 shall prescribe final regulations under which a plan

1 described in section 413(c) of such Code may be
2 treated as satisfying the qualification requirements
3 of section 401(a) of such Code despite the violation
4 of such requirements with respect to one or more
5 participating employers. Such rules may require that
6 the portion of the plan attributable to such partici-
7 pating employers be spun off to plans maintained by
8 such employers.

9 (c) EFFECTIVE DATE.—

10 (1) IN GENERAL.—Except as provided in para-
11 graph (2), the amendments made by this section
12 shall apply to years beginning after December 31,
13 2010.

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

16 **SEC. 14. AMENDMENTS TO EMPLOYEE RETIREMENT IN-**
17 **COME SECURITY ACT OF 1974.**

18 (a) IN GENERAL.—Section 3(2) of the Employee Re-
19 tirement Income Security Act of 1974 (29 U.S.C.
20 1002(2)) is amended by adding at the end the following
21 new subparagraph:

22 “(C) An individual retirement plan (as defined in sec-
23 tion 7701(a)(37) of the Internal Revenue Code of 1986)
24 shall not be considered a pension plan merely because an
25 employer establishes a payroll deduction program for the

1 purpose of enabling employees to make voluntary con-
2 tributions to such account or annuity.”.

3 (b) DISCLOSURE REGARDING LIFETIME INCOME.—

4 (1) IN GENERAL.—Subparagraph (B) of section
5 105(a)(2) of such Act (29 U.S.C. 1025(a)(2)) is
6 amended—

7 (A) in clause (i), by striking “and” at the
8 end;

9 (B) in clause (ii), by striking “diversifica-
10 tion.” and inserting “diversification, and”; and

11 (C) by inserting at the end the following:

12 “(iii) the lifetime income disclosure
13 described in subparagraph (D)(i).

14 In the case of pension benefit statements de-
15 scribed in clause (i) of paragraph (1)(A), a life-
16 time income disclosure under clause (iii) of this
17 subparagraph shall only be required to be in-
18 cluded in one pension benefit statement in each
19 calendar year.”.

20 (2) LIFETIME INCOME.—Paragraph (2) of sec-
21 tion 105(a) of such Act (29 U.S.C. 1025(a)) is
22 amended by adding at the end the following new
23 subparagraph:

24 “(D) LIFETIME INCOME DISCLOSURE.—

25 “(i) IN GENERAL.—

1 “(I) DISCLOSURE.—A lifetime in-
2 come disclosure shall set forth the an-
3 nuity equivalent of the total benefits
4 accrued with respect to the partici-
5 pant or beneficiary.

6 “(II) ANNUITY EQUIVALENT OF
7 THE TOTAL BENEFITS ACCRUED.—
8 For purposes of this subparagraph,
9 the ‘annuity equivalent of the total
10 benefits accrued’ means the amount of
11 monthly payments the participant or
12 beneficiary would receive at the plan’s
13 normal retirement age if the total ac-
14 crued benefits of such participant or
15 beneficiary were used on the date of
16 the lifetime income disclosure to pur-
17 chase the life annuities described in
18 subclause (III), with payments under
19 such annuities commencing at the
20 plan’s normal retirement age.

21 “(III) LIFE ANNUITIES.—The
22 life annuities described in this sub-
23 clause are a qualified joint and sur-
24 vivor annuity (as defined in section
25 205(d)), based on assumptions speci-

1 fied in rules prescribed by the Sec-
2 retary, including the assumption that
3 the participant or beneficiary has a
4 spouse of equal age, and a single life
5 annuity. Such annuities may have a
6 term certain or other features to the
7 extent permitted under rules pre-
8 scribed by the Secretary.

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

16 “(I) explains that the annuity
17 equivalent is only provided as an illus-
18 tration;

19 “(II) explains that the actual an-
20 nuity payments that may be pur-
21 chased with the total benefits accrued
22 will depend on numerous factors and
23 may vary substantially from the annu-
24 ity equivalent in the disclosures;

1 “(III) explains the assumptions
2 upon which the annuity equivalent
3 was determined; and

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

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

11 “(I) prescribe assumptions that
12 administrators of individual account
13 plans may use in converting total ac-
14 crued benefits into annuity equiva-
15 lents for purposes of this subpara-
16 graph; and

17 “(II) issue interim final rules
18 under clause (i).

19 In prescribing assumptions under sub-
20 clause (I), the Secretary may prescribe a
21 single set of specific assumptions (in which
22 case the Secretary may issue tables or fac-
23 tors that facilitate such conversions), or
24 ranges of permissible assumptions. To the
25 extent that an accrued benefit is or may be

1 invested in an annuity contract, the as-
2 sumptions prescribed under subclause (I)
3 shall, to the extent appropriate, permit ad-
4 ministrators of individual account plans to
5 use the amounts payable under such con-
6 tract as an annuity equivalent.

7 “(iv) LIMITATION ON LIABILITY.—No
8 plan fiduciary, plan sponsor, or other per-
9 son shall have any liability under this title
10 solely by reason of the provision of annuity
11 equivalents which are derived in accord-
12 ance with the assumptions and rules de-
13 scribed in clause (iii) and which include the
14 explanations contained in the model life-
15 time income disclosure described in clause
16 (ii). This clause shall apply without regard
17 to whether the provision of such annuity
18 equivalent is required by subparagraph
19 (B)(iii).

20 “(v) EFFECTIVE DATE.—The require-
21 ment in subparagraph (B)(iii) shall apply
22 to pension benefit statements furnished
23 more than 12 months after the latest of
24 the issuance by the Secretary of—

1 “(I) interim final rules under
2 clause (i);

3 “(II) the model disclosure under
4 clause (ii); or

5 “(III) the assumptions under
6 clause (iii).”.

7 (c) EFFECTIVE DATE.—The amendments made by
8 this section shall take effect on the date of the enactment
9 of this Act.

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