

118TH CONGRESS
1ST SESSION

H. R. 5060

To amend the Employee Retirement Income Security Act of 1974 to provide for greater spousal protection under defined contribution plans, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JULY 27, 2023

Ms. UNDERWOOD (for herself, Ms. SCHAKOWSKY, Mr. NORCROSS, and Ms. BONAMICI) introduced the following bill; which was referred to the Committee on Education and the Workforce, and in addition to the Committees on Financial Services, and Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend the Employee Retirement Income Security Act of 1974 to provide for greater spousal protection under defined contribution plans, 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 “Women’s Retirement
5 Protection Act”.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

1 (1) Approximately 25 percent of non-retired
2 adults have no defined benefit plan or retirement
3 savings, according to 2021 data from the Board of
4 Governors of the Federal Reserve System.

5 (2) In 2021, approximately one-third of the pri-
6 vate sector workforce did not have access to a retire-
7 ment plan at the workplace, and only half of the
8 workforce actually participated in a retirement plan.

9 (3) Women’s retirement preparedness often lags
10 significantly behind their male counterparts’, result-
11 ing in the median income for women aged 65 and
12 older in 2022 being just 83 percent of the median
13 income of men aged 65 and older, including income
14 from social security, pension plans, investments, and
15 earnings.

16 (4) Women aged 80 and older had the highest
17 poverty rate among older persons in all age groups,
18 with 14.7 percent of women aged 80 and older living
19 in poverty while 10.3 percent of men in the same
20 age group live in poverty.

21 (5) Women make up two-thirds of low-wage
22 workers, even though they comprise less than half of
23 all workers, and low-wage workers are less likely
24 than other workers to participate in a retirement
25 plan at work.

1 (6) Because of the pay gap, women working
2 full-time, year-round typically lose \$398,160 over a
3 40-year career thereby requiring the average woman
4 to work almost a decade longer than her male coun-
5 terpart to make up that career wage gap.

6 (7) Due to the lower lifetime wages stemming
7 from unequal pay and caregiving duties, the average
8 Social Security benefit in 2021 for a woman was
9 \$1,484 a month, while for men such average month-
10 ly benefit was \$1,838.

11 (8) While the SECURE 2.0 Act of 2022 (Pub-
12 lic Law 117–328) will go a long way to address this
13 coverage gap, just 1 in 5 part-time workers who
14 work a full year are eligible for a retirement plan,
15 and women are almost twice as likely to work part-
16 time as men.

17 (9) While traditional defined benefit retirement
18 plans have spousal protections, defined contribution
19 retirement plans, which have become increasingly
20 common, currently provide no similar spousal protec-
21 tions.

22 (10) The Thrift Savings Plan of the Federal
23 Government, the largest defined contribution plan in
24 the world with approximately 6,500,000 partici-

1 pants, requires its married participants to have their
2 spouses consent for withdrawals and loans.

3 (11) There were almost 700,000 divorces in the
4 United States between 2020 and 2021. After the
5 family home, retirement savings tends to be the larg-
6 est asset to be divided in a divorce.

7 (12) While fees and expenses associated with
8 retirement plans have been in decline, participants
9 have seen direct charges for processing qualified do-
10 mestic relations orders increase significantly.

11 **SEC. 3. INCREASING SPOUSAL PROTECTION UNDER DE-**
12 **FINED CONTRIBUTION PLANS.**

13 (a) AMENDMENT OF EMPLOYEE RETIREMENT IN-
14 COME SECURITY ACT OF 1974.—

15 (1) IN GENERAL.—Part 2 of subtitle B of title
16 I of the Employee Retirement Income Security Act
17 of 1974 (29 U.S.C. 1051 et seq.) is amended by in-
18 serting after section 205 the following new section:

19 **“SEC. 205A. ADDITIONAL SPOUSAL CONSENT REQUIRE-**
20 **MENTS.**

21 “(a) IN GENERAL.—Each individual account plan to
22 which section 205 does not apply shall provide that, except
23 as provided in subsections (e) and (d), no distribution may
24 be made under the plan unless the spousal consent re-
25 quirements of subsection (e) are met.

1 “(b) COORDINATION WITH SECTION 205.—Nothing
2 in this section shall be construed to exempt an individual
3 account plan from the requirements of paragraph (1)(B),
4 (1)(C), or (2) of section 205(b) with respect to any partici-
5 pant.

6 “(c) EXCEPTIONS FOR CERTAIN DISTRIBUTIONS.—
7 Subsection (a) shall not apply to—

8 “(1) any distribution that is—

9 “(A) a minimum required distribution de-
10 scribed in section 4974(b) of the Internal Rev-
11 enue Code of 1986;

12 “(B) permitted under section 203(e)(1) to
13 be made without the consent of the participant;
14 or

15 “(C) in an amount that is less than 25
16 percent of the account balance;

17 “(2) any distribution in the form of a qualified
18 joint and survivor annuity (as defined in section
19 205(d)(1)), a qualified optional survivor annuity (as
20 defined in section 205(d)(2)), a qualified preretire-
21 ment survivor annuity (as defined in section 205(e)),
22 or a series of substantially equal periodic payments
23 (not less frequently than annually) made for the
24 joint lives (or life expectancies) of the participant
25 and the participant’s spouse; or

1 “(3) in the case of a participant who does not
2 elect a form of benefit described in paragraph (2)
3 under the plan or who is participating in a plan that
4 does not provide such a form of benefit, any dis-
5 tribution of the participant’s entire nonforfeitable
6 accrued benefit if 50 percent of such accrued benefit
7 is transferred to an individual retirement plan (as
8 defined in section 7701(a)(37) of the Internal Rev-
9 enue Code of 1986) of the spouse of the participant.
10 A transfer described in paragraph (3) to an individual re-
11 tirement plan shall be treated in the same manner as a
12 transfer under section 408(d)(6) of the Internal Revenue
13 Code of 1986.

14 “(d) EXCEPTIONS FOR CERTAIN ROLLOVER CON-
15 TRIBUTIONS.—Subsection (a) shall not apply to any dis-
16 tribution, involving a participant who has a spouse, that
17 is an eligible rollover distribution (as defined in section
18 402(f)(2)(A) of the Internal Revenue Code of 1986) made
19 in the form of a direct trustee-to-trustee transfer within
20 the meaning of section 401(a)(31) of the Internal Revenue
21 Code of 1986—

22 “(1) to a plan to which this section or section
23 205 applies; or

1 “(2) to an individual retirement plan (as de-
2 fined in section 7701(a)(37) of the Internal Revenue
3 Code of 1986) if—

4 “(A) the beneficiary of such plan is the
5 spouse of the participant, or the spousal con-
6 sent requirements of subsection (e) are met
7 with respect to any designation of 1 or more
8 other beneficiaries; and

9 “(B) under the terms of the individual re-
10 tirement plan, the beneficiary of such plan
11 (whether the spouse or other beneficiary des-
12 ignated under paragraph (1)) may not be
13 changed unless—

14 “(i) the spousal consent requirements
15 of subsection (e) are met with respect to
16 any such change, or

17 “(ii) the spousal consent under sub-
18 paragraph (A) to the designation of a ben-
19 eficiary other than the spouse expressly
20 permits such designation to be changed
21 without the further consent of the spouse.

22 “(e) SPOUSAL CONSENT REQUIREMENTS.—

23 “(1) IN GENERAL.—For purposes of this sec-
24 tion, except as provided in paragraph (2), the spous-
25 al consent requirements of this subsection are met

1 with respect to any distribution or any designation
2 or change of beneficiary if—

3 “(A) the plan provides to each participant,
4 within a reasonable period of time before such
5 distribution or designation or change of bene-
6 ficiary is made and consistent with such regula-
7 tions as the Secretary of the Treasury may pre-
8 scribe, a written explanation of the rights of the
9 participant and the participant’s spouse under
10 this section;

11 “(B) the spouse of the participant consents
12 in writing to the distribution or designation or
13 change of beneficiary;

14 “(C) in the case of a distribution, the writ-
15 ten consent under subparagraph (B) is made
16 during the consent period; and

17 “(D) the written consent under subpara-
18 graph (B)—

19 “(i) acknowledges the effect of such
20 distribution or designation or change of
21 beneficiary; and

22 “(ii) is witnessed by a plan represent-
23 ative or a notary public.

24 “(2) EXCEPTIONS UNDER SECTION 205(C)(2)(B)
25 TO APPLY.—The requirements of paragraph (1)

1 (other than subparagraph (A) thereof) shall not
2 apply with respect to any distribution or designation
3 or change of beneficiary if a participant establishes
4 to the satisfaction of the plan administrator that—

5 “(A) there is no spouse;

6 “(B) the participant and the participant’s
7 spouse have not been married for at least 1
8 year as of the date of the distribution or des-
9 ignation or change of beneficiary; or

10 “(C) such consent cannot be obtained be-
11 cause—

12 “(i) the spouse cannot be located; or

13 “(ii) of such other circumstances as
14 the Secretary of the Treasury, in consulta-
15 tion with the Secretary of Labor, may by
16 regulations prescribe.

17 “(3) CONSENT LIMITED TO SPOUSE AND
18 EVENT.—Any written consent by a spouse under
19 paragraph (1), or the establishment by a participant
20 that an exception under paragraph (2) applies with
21 respect to a spouse, shall be effective only with re-
22 spect to that spouse and to the distribution or des-
23 ignation or change of beneficiary to which it relates.

1 “(4) CONSENT PERIOD.—For purposes of this
2 subsection, the term ‘consent period’ means, with re-
3 spect to any distribution—

4 “(A) the 90-day period immediately pre-
5 ceding the date of such distribution; or

6 “(B) such other period as the Secretary of
7 the Treasury may provide.

8 “(f) DISCHARGE OF PLAN FROM LIABILITY.—Rules
9 similar to the rules of section 205(c)(6) shall apply for
10 purposes of this section.”.

11 (2) CLERICAL AMENDMENT.—The table of sec-
12 tions of part 2 of subtitle B of title I of the Em-
13 ployee Retirement Income Security Act of 1974 is
14 amended by inserting after the item relating to sec-
15 tion 205 the following new item:

“Sec. 205A. Additional spousal consent requirements.”.

16 (3) RIGHT OF ACTION.—Section 502(a) of the
17 Employee Retirement Income Security Act of 1974
18 (29 U.S.C. 1132) is amended—

19 (A) by striking “or” at the end of para-
20 graph (10);

21 (B) by striking the period at the end of
22 paragraph (11) and inserting “; or”; and

23 (C) by adding at the end the following new
24 paragraph:

1 “(12) by an individual for appropriate relief in
2 the case of a violation of the individual’s rights
3 under section 205A.”.

4 (4) PARALLEL AMENDMENT TO SECTION 205.—
5 Section 205(c)(2)(B) of the Employee Retirement
6 Income Security Act of 1974 (29 U.S.C.
7 1055(c)(2)(B)) is amended by inserting “, because
8 due to exceptional circumstances requiring the par-
9 ticipant to seek the spouse’s consent would be inap-
10 propriate” after “located”.

11 (b) CONFORMING AMENDMENT TO INTERNAL REV-
12 ENUE CODE OF 1986.—Section 401(a) of the Internal
13 Revenue Code of 1986 is amended by inserting after para-
14 graph (17) the following new paragraph:

15 “(18) ADDITIONAL SPOUSAL CONSENT RE-
16 QUIREMENTS.—

17 “(A) IN GENERAL.—In the case of a de-
18 fined contribution plan to which paragraph (11)
19 does not apply, except as provided in sub-
20 sections (c) and (d), a trust forming part of
21 such plan shall not constitute a qualified trust
22 under this section unless no distribution may be
23 made under the plan unless the spousal consent
24 requirements of subparagraph (E) are met.

1 “(B) COORDINATION WITH PARAGRAPH
2 (11).—Nothing in this paragraph shall be con-
3 strued to exempt a defined contribution plan
4 from the requirements of subparagraph (B)(ii),
5 (B)(iii), or (C) of paragraph (11) with respect
6 to any participant.

7 “(C) EXCEPTIONS FOR CERTAIN DISTRIBUTIONS.—Subparagraph (A) shall not apply to—

8 “(i) any distribution that is—

9 “(I) a minimum required dis-
10 tribution described in section 4974(b),

11 “(II) permitted under section
12 411(a)(11) to be made without the
13 consent of the participant, or

14 “(III) in an amount that is less
15 than 25 percent of the account bal-
16 ance,

17 “(ii) any distribution in the form of a
18 qualified joint and survivor annuity (as de-
19 fined in section 417(b)), a qualified op-
20 tional survivor annuity (as defined in sec-
21 tion 417(g)), a qualified preretirement sur-
22 vivor annuity (as defined in section
23 417(e)), or a series of substantially equal
24 periodic payments (not less frequently than
25

1 annually) made for the joint lives (or life
2 expectancies) of the participant and the
3 participant's spouse, or

4 “(iii) in the case of a participant who
5 does not elect a form of benefit described
6 in clause (ii) under the plan or who is par-
7 ticipating in a plan that does not provide
8 such a form of benefit, any distribution of
9 the participant's entire nonforfeitable ac-
10 crued benefit if 50 percent of such accrued
11 benefit is transferred to an individual re-
12 tirement plan of the spouse of the partici-
13 pant.

14 A transfer described in clause (iii) to an indi-
15 vidual retirement plan shall be treated in the
16 same manner as a transfer under section
17 408(d)(6).

18 “(D) EXCEPTIONS FOR CERTAIN ROLL-
19 OVER CONTRIBUTIONS.—Subparagraph (A)
20 shall not apply to any distribution, involving a
21 participant who has a spouse, that is an eligible
22 rollover distribution (as defined in section
23 402(f)(2)(A)) made in the form of a direct
24 trustee-to-trustee transfer within the meaning
25 of paragraph (31)—

1 “(i) to a plan to which this paragraph
2 or paragraph (11) applies; or

3 “(ii) to an individual retirement plan
4 if—

5 “(I) the beneficiary of such plan
6 is the spouse of the participant, or the
7 spousal consent requirements of sub-
8 paragraph (E) are met with respect to
9 any designation of 1 or more other
10 beneficiaries; and

11 “(II) under the terms of the indi-
12 vidual retirement plan, the beneficiary
13 of such plan (whether the spouse or
14 other beneficiary designated under
15 clause (i)) may not be changed un-
16 less—

17 “(aa) the spousal consent
18 requirements of subparagraph
19 (E) are met with respect to any
20 such change, or

21 “(bb) the spousal consent
22 under subclause (I) to the des-
23 ignation of a beneficiary other
24 than the spouse expressly permits
25 such designation to be changed

1 without the further consent of
2 the spouse.

3 “(E) SPOUSAL CONSENT REQUIRE-
4 MENTS.—

5 “(i) IN GENERAL.—For purposes of
6 this paragraph, except as provided in
7 clause (ii), the spousal consent require-
8 ments of this subparagraph are met with
9 respect to any distribution or any designa-
10 tion or change of beneficiary if—

11 “(I) the plan provides to each
12 participant, within a reasonable period
13 of time before such distribution or
14 designation or change of beneficiary is
15 made and consistent with such regula-
16 tions as the Secretary may prescribe,
17 a written explanation of the rights of
18 the participant and the participant’s
19 spouse under this paragraph,

20 “(II) the spouse of the partici-
21 pant consents in writing to the dis-
22 tribution or designation or change of
23 beneficiary,

24 “(III) in the case of a distribu-
25 tion, the written consent under sub-

1 clause (II) is made during the consent
2 period, and

3 “(IV) the written consent under
4 subclause (ii)—

5 “(aa) acknowledges the ef-
6 fect of such distribution or des-
7 ignation or change of beneficiary,
8 and

9 “(bb) is witnessed by a plan
10 representative or a notary public.

11 “(ii) EXCEPTIONS UNDER SECTION
12 417(A)(2)(B) TO APPLY.—The requirements
13 of clause (i) (other than subclause (I)
14 thereof) shall not apply with respect to any
15 distribution or designation or change of
16 beneficiary if a participant establishes to
17 the satisfaction of the plan administrator
18 that—

19 “(I) there is no spouse,

20 “(II) the participant and the par-
21 ticipant’s spouse have not been mar-
22 ried for at least 1 year as of the date
23 of the distribution or designation or
24 change of beneficiary, or

1 “(III) such consent cannot be ob-
2 tained because—

3 “(aa) the spouse cannot be
4 located, or

5 “(bb) of such other cir-
6 cumstances as the Secretary, in
7 consultation with the Secretary
8 of Labor, may by regulations pre-
9 scribe.

10 “(iii) CONSENT LIMITED TO SPOUSE
11 AND EVENT.—Any written consent by a
12 spouse under clause (i), or the establish-
13 ment by a participant that an exception
14 under clause (ii) applies with respect to a
15 spouse, shall be effective only with respect
16 to that spouse and to the distribution or
17 designation or change of beneficiary to
18 which it relates.

19 “(iv) CONSENT PERIOD.—For pur-
20 poses of this subparagraph, the term ‘con-
21 sent period’ means, with respect to any
22 distribution—

23 “(I) the 90-day period imme-
24 diately preceding the date of such dis-
25 tribution, or

1 “(II) such other period as the
2 Secretary may provide.”.

3 **SEC. 4. EFFECTIVE DATES.**

4 (a) INCREASING SPOUSAL PROTECTION UNDER DE-
5 FINED CONTRIBUTION PLANS.—Except as provided in
6 subsection (b), the amendments made by section 3 shall
7 apply to distributions and rollover contributions made in
8 plan years beginning after the date that is 1 year after
9 the date of the enactment of this Act.

10 (b) PROVISIONS RELATING TO PLAN AMEND-
11 MENTS.—

12 (1) IN GENERAL.—If this paragraph applies to
13 any plan or contract amendment, such plan or con-
14 tract shall be treated as being operated in accord-
15 ance with the terms of the plan during the period
16 described in paragraph (2)(C).

17 (2) AMENDMENTS TO WHICH PARAGRAPH (1)
18 APPLIES.—

19 (A) IN GENERAL.—Paragraph (1) shall
20 apply to any amendment to any plan or annuity
21 contract which is made—

22 (i) pursuant to the amendments made
23 by section 3 or pursuant to any regulation
24 issued under either such section; and

1 (ii) on or before the last day of the
2 first plan year beginning on or after the
3 date that is 3 years after the applicable
4 day described in subsection (c)(1)(B).

5 In the case of a governmental plan (as defined
6 in section 414(d) of the Internal Revenue Code
7 of 1986), this subparagraph shall be applied by
8 substituting “5 years” for “3 years” in clause
9 (ii).

10 (B) CONDITIONS.—Subparagraph (A) shall
11 not apply to any amendment unless—

12 (i) the plan or contract is operated as
13 if such plan or contract amendment were
14 in effect for the period described in sub-
15 paragraph (C); and

16 (ii) such plan or contract amendment
17 applies retroactively for such period.

18 (C) PERIOD DESCRIBED.—The period de-
19 scribed in this subparagraph is the period—

20 (i) beginning on the effective date
21 specified by the plan; and

22 (ii) ending on the date described in
23 subparagraph (A)(ii) (or, if earlier, the
24 date the plan or contract amendment is
25 adopted).

1 **SEC. 5. ACCESS TO INDEPENDENT CONSUMER INFORMA-**
2 **TION AND UNDERSTANDING.**

3 (a) DEFINITIONS.—In this section—

4 (1) the term “consumer” means any person
5 who purchases or acquires any goods, products, serv-
6 ices, or credit related to the retirement or later life
7 economic security of the consumer; and

8 (2) the term “financial product or service pro-
9 vider” means any person who engages in the busi-
10 ness of providing any retirement financial product or
11 service to any consumer.

12 (b) REQUIRED LINK TO CONSUMER AWARENESS IN-
13 FORMATION.—In any offer for the sale, exchange, or other
14 transfer of a retirement financial product or service to a
15 consumer carried out by a financial product or service pro-
16 vider, such provider shall provide, in a manner consistent
17 with subsection (c), an easily accessible link to the website
18 of the Bureau of Consumer Financial Protection (referred
19 to in this section as the “CFPB”) at which the consumer
20 may access information, literature, guides, programs,
21 tools, strategies, or any other resource produced by the
22 CFPB or other Federal agency relating to retirement
23 planning or later life economic security.

24 (c) DETERMINATION.—In order to ensure that the re-
25 quirement under subsection (b) is effectively carried out,
26 the Financial Literacy and Education Commission shall

1 determine and publish on its website the appropriate link
2 to the CFPB’s website for access to the CFPB’s and other
3 Federal agencies’ consumer education materials, the pre-
4 ferred format of such link, and any accompanying descrip-
5 tion of the CFPB and the consumer education materials
6 associated with such link.

7 **SEC. 6. GRANTS TO PROMOTE FINANCIAL LITERACY FOR**
8 **WOMEN.**

9 (a) **AUTHORIZATION OF GRANT AWARDS.**—The Sec-
10 retary of Labor, acting through the Director of the Wom-
11 en’s Bureau, shall award grants on a competitive basis to
12 eligible entities to enable such entities to improve the fi-
13 nancial literacy of women who are working age or in re-
14 tirement, to increase the likelihood of the women realizing
15 a secure and stable retirement.

16 (b) **DEFINITION OF ELIGIBLE ENTITY.**—In this sec-
17 tion, the term “eligible entity” means a community-based
18 organization with proven experience and expertise in serv-
19 ing working-age or retired women.

20 (c) **APPLICATION.**—An eligible entity that desires to
21 receive a grant under this section shall submit an applica-
22 tion to the Secretary of Labor at such time, in such man-
23 ner, and accompanied by such information as such Sec-
24 retary may require.

1 (d) MINIMUM GRANT AMOUNT.—The Secretary of
2 Labor shall award grants under this section in amounts
3 of not less than \$250,000.

4 (e) USE OF FUNDS.—An eligible entity that receives
5 a grant under this section shall use the grant funds to
6 develop and implement financial literacy education, and
7 related activities including outreach, awareness building,
8 and counseling to increase women’s knowledge of retire-
9 ment planning and consumer, economic, and personal fi-
10 nancial concepts.

11 (f) AUTHORIZATION OF APPROPRIATIONS.—There is
12 authorized to be appropriated to carry out this section
13 \$100,000,000 for fiscal year 2024 and each succeeding
14 fiscal year.

15 **SEC. 7. GRANTS TO ASSIST LOW-INCOME WOMEN AND SUR-**
16 **VIVORS OF DOMESTIC VIOLENCE IN OBTAIN-**
17 **ING QUALIFIED DOMESTIC RELATIONS OR-**
18 **DERS.**

19 (a) AUTHORIZATION OF GRANT AWARDS.—The Sec-
20 retary of Labor, acting through the Director of the Wom-
21 en’s Bureau and in conjunction with the Assistant Sec-
22 retary of the Employee Benefits Security Administration,
23 shall award grants, on a competitive basis, to eligible enti-
24 ties to enable such entities to assist low-income women
25 and survivors of domestic violence in obtaining qualified

1 domestic relations orders and ensuring that those women
2 actually obtain the benefits to which they are entitled
3 through those orders.

4 (b) DEFINITION OF ELIGIBLE ENTITY.—In this sec-
5 tion, the term “eligible entity” means a community-based
6 organization with proven experience and expertise in serv-
7 ing women and the financial and retirement needs of
8 women.

9 (c) APPLICATION.—An eligible entity that desires to
10 receive a grant under this section shall submit an applica-
11 tion to the Secretary of Labor at such time, in such man-
12 ner, and accompanied by such information as the Sec-
13 retary of Labor may require.

14 (d) MINIMUM GRANT AMOUNT.—The Secretary of
15 Labor shall award grants under this section in amounts
16 of not less than \$250,000.

17 (e) USE OF FUNDS.—An eligible entity that receives
18 a grant under this section shall use the grant funds to
19 develop programs to offer help to low-income women or
20 survivors of domestic violence who need assistance in pre-
21 paring, obtaining, and effectuating a qualified domestic re-
22 lations order.

23 (f) AUTHORIZATION OF APPROPRIATIONS.—There is
24 authorized to be appropriated to carry out this section

- 1 \$100,000,000 for fiscal year 2024 and each succeeding
- 2 fiscal year.

