

114TH CONGRESS
1ST SESSION

S. 2110

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 SENATE OF THE UNITED STATES

SEPTEMBER 30, 2015

Mrs. MURRAY (for herself, Mrs. GILLIBRAND, Mrs. MCCASKILL, Mrs. SHAHEEN, Ms. MIKULSKI, Ms. CANTWELL, Ms. BALDWIN, Ms. STABENOW, Ms. KLOBUCHAR, Mrs. FEINSTEIN, Ms. HIRONO, and Ms. WARREN) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

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; FINDINGS.**

4 (a) **SHORT TITLE.**—This Act may be cited as the
5 “Women’s Pension Protection Act of 2015”.

6 (b) **FINDINGS.**—Congress finds the following:

7 (1) Approximately 45.9 percent of private sec-
8 tor workers do not participate in a workplace retire-

1 ment savings program and, of those who do not par-
2 ticipate, 84 percent have reported that they do not
3 have access to a workplace retirement program, ac-
4 cording to a September 2015 report on retirement
5 coverage by the Government Accountability Office.

6 (2) Women's retirement preparedness often lags
7 significantly behind their male counterparts, result-
8 ing in the median retirement income for women in
9 2010 being just 59 percent of men's retirement in-
10 come.

11 (3) Women are almost twice as likely as men to
12 live in poverty after age 65.

13 (4) Women make up $\frac{2}{3}$ of low-wage workers,
14 even though they comprise less than half of all work-
15 ers, and low wage workers are less likely than other
16 workers to participate in a retirement plan at work.

17 (5) The cost impact on women who leave the
18 workforce early to become caregivers, in terms of
19 lost wages and Social Security benefits, equals
20 \$324,044 in lost retirement savings.

21 (6) Just 1 in 5 part-time workers who work a
22 full year are eligible for a retirement plan, and
23 women are almost twice as likely to work part-time
24 as men.

1 (7) While traditional defined benefit retirement
2 plans have spousal protections, defined contribution
3 retirement plans, which have become increasingly
4 common, currently provide no similar spousal protec-
5 tions.

6 **TITLE I—IMPROVING PENSION**
7 **PLAN COVERAGE**

8 **SEC. 101. INCREASING SPOUSAL PROTECTION UNDER DE-**
9 **FINED CONTRIBUTION PLANS.**

10 (a) IN GENERAL.—Part 2 of subtitle B of title I of
11 the Employee Retirement Income Security Act of 1974
12 (29 U.S.C. 1051 et seq.) is amended by inserting after
13 section 205 the following new section:

14 **“SEC. 205A. ADDITIONAL SPOUSAL CONSENT REQUIRE-**
15 **MENTS.**

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

21 “(b) COORDINATION WITH SECTION 205.—Nothing
22 in this section shall be construed to exempt an individual
23 account plan from the requirements of paragraph (1)(C)
24 or (2) of section 205(b) with respect to any participant.

1 “(c) EXCEPTIONS FOR CERTAIN DISTRIBUTIONS.—

2 Subsection (a) shall not apply to—

3 “(1) any distribution that is—

4 “(A) a minimum required distribution de-
5 scribed in section 4974(b) of the Internal Rev-
6 enue Code of 1986;

7 “(B) a result of the use of the partici-
8 pant’s accrued benefit as security for a loan, in-
9 cluding any distribution required by reason of a
10 failure to comply with the terms of such loan;

11 “(C) made upon hardship of the partici-
12 pant; or

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

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

24 “(3) in the case of a participant who does not
25 elect a form of benefit described in paragraph (2)

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

12 “(d) EXCEPTIONS FOR CERTAIN ROLLOVER CON-
13 TRIBUTIONS.—Subsection (a) shall not apply to any dis-
14 tribution that is an eligible rollover distribution (as de-
15 fined in section 402(f)(2)(A) of the Internal Revenue Code
16 of 1986) made in the form of a direct trustee-to-trustee
17 transfer within the meaning of section 401(a)(31) of the
18 Internal Revenue Code of 1986—

19 “(1) to a plan to which this section or section
20 205 applies; or

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

24 “(A) the beneficiary of such plan is the
25 spouse of the participant, or the spousal con-

1 sent requirements of subsection (e) are met
2 with respect to any designation of 1 or more
3 other beneficiaries; and

4 “(B) the beneficiary of such plan (whether
5 the spouse or other beneficiary designated
6 under paragraph (1)) may not be changed un-
7 less—

8 “(i) the spousal consent requirements
9 of subsection (e) are met with respect to
10 any such change, or

11 “(ii) the spousal consent under sub-
12 paragraph (A) to the designation of a ben-
13 eficiary other than the spouse expressly
14 permits such designation to be changed
15 without the further consent of the spouse.

16 “(e) SPOUSAL CONSENT REQUIREMENTS.—

17 “(1) IN GENERAL.—For purposes of this sec-
18 tion, except as provided in paragraph (2), the spous-
19 al consent requirements of this subsection are met
20 with respect to any distribution or any designation
21 or change of beneficiary if—

22 “(A) the plan provides to each participant,
23 within a reasonable period of time before such
24 distribution or designation or change of bene-
25 ficiary is made and consistent with such regula-

1 tions as the Secretary of the Treasury may pre-
2 scribe, a written explanation of the rights of the
3 participant and the participant’s spouse under
4 this section;

5 “(B) the spouse of the participant consents
6 in writing to the distribution or designation or
7 change of beneficiary;

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

11 “(D) the written consent under subpara-
12 graph (B)—

13 “(i) acknowledges the effect of such
14 distribution or designation or change of
15 beneficiary; and

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

18 “(2) EXCEPTIONS UNDER SECTION
19 205(c)(2)(B) TO APPLY.—The requirements of para-
20 graph (1) (other than subparagraph (A) thereof)
21 shall not apply with respect to any distribution or
22 designation or change of beneficiary if a participant
23 establishes to the satisfaction of the plan adminis-
24 trator that—

25 “(A) there is no spouse;

1 “(B) the participant and the participant’s
2 spouse have not been married throughout the 1-
3 year period ending on the date of the distribu-
4 tion or designation or change of beneficiary; or

5 “(C) such consent cannot be obtained be-
6 cause—

7 “(i) the spouse cannot be located;

8 “(ii) due to exceptional circumstances,
9 requiring the participant to seek the
10 spouse’s consent would be inappropriate;
11 or

12 “(iii) of such other circumstances as
13 the Secretary of the Treasury may by reg-
14 ulations prescribe.

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

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

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

3 “(B) such other period as the Secretary of
4 the Treasury may provide.

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

8 (b) CLERICAL AMENDMENT.—The table of sections
9 of part 2 of subtitle B of title I of the Employee Retire-
10 ment Income Security Act of 1974 is amended by insert-
11 ing after the item relating to section 205 the following
12 new item:

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

13 (c) RIGHT OF ACTION.—Section 502(a) of the Em-
14 ployee Retirement Income Security Act of 1974 (29
15 U.S.C. 1132), as amended by the Multiemployer Pension
16 Reform Act of 2014, is amended by striking “or” at the
17 end of paragraph (10), by striking the period at the end
18 of paragraph (11) and inserting “; or”, and by adding at
19 the end the following new paragraph:

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

23 (d) PARALLEL AMENDMENT TO SECTION 205.—Sec-
24 tion 205(c)(2)(B) of the Employee Retirement Income Se-
25 curity Act of 1974 (29 U.S.C. 1055(c)(2)(B)) is amended

1 by inserting “, because due to exceptional circumstances
 2 requiring the participant to seek the spouse’s consent
 3 would be inappropriate” after “located”.

4 **SEC. 102. IMPROVING COVERAGE FOR LONG-TERM PART-**
 5 **TIME WORKERS.**

6 (a) IN GENERAL.—Section 202 of the Employee Re-
 7 tirement Income Security Act of 1974 (29 U.S.C. 1052)
 8 is amended by adding at the end the following new sub-
 9 section:

10 “(c) SPECIAL RULE FOR CERTAIN PART-TIME EM-
 11 PLOYEES.—

12 “(1) IN GENERAL.—A pension plan that in-
 13 cludes either a qualified cash or deferred arrange-
 14 ment (as defined in section 401(k) of the Internal
 15 Revenue Code of 1986) or a salary reduction agree-
 16 ment (as described in section 403(b) of such Code)
 17 shall not require, as a condition of participation in
 18 the arrangement or agreement, that an employee
 19 complete a period of service with the employer (or
 20 employers) maintaining the plan extending beyond
 21 the close of the earlier of—

22 “(A) the period permitted under subsection
 23 (a)(1) (determined without regard to subpara-
 24 graph (B)(i) thereof) and section 410(a)(1) of

1 such Code (determined without regard to sub-
2 paragraph (B)(i) thereof); or

3 “(B) the first 36-month period—

4 “(i) consisting of 3 consecutive 12-
5 month periods during each of which the
6 employee has at least 500 hours of service;
7 and

8 “(ii) by the close of which the em-
9 ployee has attained the age of 21.

10 “(2) EXCEPTION.—Paragraph (1)(B) shall not
11 apply to employees who are included in a unit of em-
12 ployees covered by an agreement which the Secretary
13 finds to be a collective bargaining agreement be-
14 tween employee representatives and 1 or more em-
15 ployers, if there is evidence that retirement benefits
16 were the subject of good faith bargaining between
17 such employee representatives and such employer or
18 employers.

19 “(3) COORDINATION WITH OTHER RULES.—In
20 the case of employees who are not highly com-
21 pensated employees (within the meaning of section
22 414(q) of the Internal Revenue Code of 1986) and
23 who are eligible to participate in the arrangement or
24 agreement solely by reason of paragraph (1)(B):

1 “(A) EXCLUSIONS.—An employer may
2 elect to exclude such employees from the deter-
3 mination of whether the plan that includes the
4 arrangement or agreement satisfies the require-
5 ments of subsections (a)(4), (k)(3), (k)(12),
6 (k)(13), (m)(2), (m)(11), and (m)(12) of sec-
7 tion 401 of such Code, section 410(b) of such
8 Code, and section 416 of such Code. If the em-
9 ployer so excludes such employees with respect
10 to the requirements of any such provision, such
11 employees shall be excluded with respect to the
12 requirements of all such provisions. This sub-
13 paragraph shall cease to apply to any employee
14 as of the first plan year beginning after the
15 plan year in which the employee completes 1
16 year of service (without regard to paragraph
17 (1)(B) of this subsection).

18 “(B) TIME OF PARTICIPATION.—The rules
19 of subsection (a)(4) and section 410(a)(4) of
20 the Internal Revenue Code of 1986 shall apply
21 to such employees.

22 “(4) 12-MONTH PERIOD.—For purposes of this
23 subsection, 12-month periods shall be determined in
24 the same manner as under the last sentence of sub-
25 section (a)(3)(A), except that 12-month periods be-

1 ginning before January 1, 2014, shall not be taken
2 into account.”.

3 (b) VESTING.—Section 203(b) of the Employee Re-
4 tirement Income Security Act of 1974 (29 U.S.C.
5 1053(a)) is amended by redesignating paragraph (4) as
6 paragraph (5) and by inserting after paragraph (3) the
7 following new paragraph:

8 “(4) PART-TIME EMPLOYEES.—For purposes of de-
9 termining whether an employee who is eligible to partici-
10 pate in a qualified cash or deferred arrangement or a sal-
11 ary reduction agreement under a plan solely by reason of
12 section 202(c)(1)(B) has a nonforfeitable right to em-
13 ployer contributions—

14 “(A) except as provided in subparagraph (B),
15 each 12-month period for which the employee has at
16 least 500 hours of service shall be treated as a year
17 of service; and

18 “(B) 12-month periods occurring before the 36-
19 month period described in section 202(c)(1)(B) shall
20 not be treated as years of service.

21 For purposes of this paragraph, 12-month periods shall
22 be determined in the same manner as under the last sen-
23 tence of section 202(a)(3)(A), except that 12-month peri-
24 ods beginning before January 1, 2014, shall not be taken
25 into account.”.

1 (c) PENALTY.—Section 502 of the Employee Retirement
2 Income Security Act of 1974 (29 U.S.C. 1132) is
3 amended by adding at the end the following new sub-
4 section:

5 “(n) REQUIREMENTS RELATING TO PART-TIME EM-
6 PLOYEES.—In the case of a plan that fails to permit par-
7 ticipation as required by section 202(c), the Secretary may
8 assess a civil penalty against the plan sponsor in an
9 amount equal to \$10,000 per year per employee to whom
10 such failure relates. The Secretary may, in the Secretary’s
11 sole discretion, waive or reduce the penalty under this sub-
12 section if the Secretary determines that the plan sponsor
13 acted reasonably and in good faith.”

14 **SEC. 103. EFFECTIVE DATES.**

15 (a) INCREASING SPOUSAL PROTECTION UNDER DE-
16 FINED CONTRIBUTION PLANS.—Except as provided in
17 subsections (c) and (d), the amendments made by section
18 101 shall apply to distributions and rollover contributions
19 made in plan years beginning after the date that is 6
20 months after the date of the enactment of this Act.

21 (b) ENSURING COVERAGE FOR LONG-TERM PART-
22 TIME WORKERS.—Except as provided in subsections (c)
23 and (d), the amendments made by section 102 shall apply
24 to plan years beginning after December 31, 2016.

1 (c) COLLECTIVE BARGAINING AGREEMENTS.—In the
2 case of a plan maintained pursuant to one or more collec-
3 tive bargaining agreements between employee representa-
4 tives and one or more employers ratified before the date
5 of the enactment of this Act, the amendments made by
6 this title shall not apply to distributions or rollover con-
7 tributions on behalf of employees covered by any such
8 agreement for plan years beginning before the earlier of—

9 (1) the later of—

10 (A) the date on which the last of such col-
11 lective bargaining agreements terminates (de-
12 termined without regard to any extension there-
13 of on or after such date of the enactment); or

14 (B) the day after the date specified in sub-
15 section (a) or (b), whichever is applicable; or

16 (2) the date that is 3 years after the applicable
17 day described in paragraph (1)(B).

18 (d) PROVISIONS RELATING TO PLAN AMEND-
19 MENTS.—

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

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

3 (A) IN GENERAL.—Paragraph (1) shall
4 apply to any amendment to any plan or annuity
5 contract which is made—

6 (i) pursuant to the amendments made
7 by this title or pursuant to any regulation
8 issued under the Employee Retirement In-
9 come Security Act of 1974 as amended by
10 this title; and

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

15 (B) CONDITIONS.—Subparagraph (A) shall
16 not apply to any amendment unless—

17 (i) the plan or contract is operated as
18 if such plan or contract amendment were
19 in effect for the period described in sub-
20 paragraph (C); and

21 (ii) such plan or contract amendment
22 applies retroactively for such period.

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

- 1 (i) beginning on the effective date
 2 specified by the plan; and
 3 (ii) ending on the date described in
 4 subparagraph (A)(ii) (or, if earlier, the
 5 date the plan or contract amendment is
 6 adopted).

7 **TITLE II—IMPROVING**
 8 **FINANCIAL LITERACY**

9 **SEC. 201. ACCESS TO INDEPENDENT CONSUMER INFORMA-**
 10 **TION AND UNDERSTANDING.**

11 (a) DEFINITIONS.—As used in this section—

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

16 (2) the term “financial product or service pro-
 17 vider” means any person who engages in the busi-
 18 ness of providing any retirement financial product or
 19 service to any consumer.

20 (b) REQUIRED LINK TO CONSUMER AWARENESS IN-
 21 FORMATION.—In any offer for the sale, exchange, or other
 22 transfer of a retirement financial product or service to a
 23 consumer carried out by a financial product or service pro-
 24 vider, such provider shall provide, in a manner consistent
 25 with subsection (c), an easily accessible link to the website

1 of the Bureau of Consumer Financial Protection (CFPB)
2 at which the consumer may access information, literature,
3 guides, programs, tools, strategies, or any other resource
4 produced by the CFPB or other Federal agency relating
5 to retirement planning or later life economic security.

6 (c) DETERMINATION.—In order to ensure that the re-
7 quirement under subsection (b) is effectively carried out,
8 the Financial Literacy and Education Commission
9 (FLEC) shall determine and publish on its website the
10 appropriate link to the CFPB’s website for access to the
11 CFPB’s and other Federal agencies’ consumer education
12 materials, the preferred format of such link, and any ac-
13 companying description of the CFPB and the consumer
14 education materials associated with such link.

15 **SEC. 202. GRANTS TO PROMOTE FINANCIAL LITERACY FOR**
16 **WOMEN.**

17 (a) AUTHORIZATION OF GRANT AWARDS.—The Sec-
18 retary of Labor, acting through the Director of the Wom-
19 en’s Bureau, Department of Labor, shall award grants on
20 a competitive basis to eligible entities to enable such enti-
21 ties to improve the financial literacy of women who are
22 working age or in retirement, to increase the likelihood
23 of their realizing a secure and stable retirement.

24 (b) DEFINITION OF ELIGIBLE ENTITY.—In this sec-
25 tion, the term “eligible entity” means a community-based

1 organization with proven experience and expertise in serv-
2 ing working-age or retired women.

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

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

11 (e) USE OF FUNDS.—An eligible entity that receives
12 a grant under this section shall use the grant funds to
13 develop and implement financial literacy education, and
14 related activities including outreach, awareness building,
15 and counseling to increase women’s knowledge of retire-
16 ment planning and consumer, economic, and personal fi-
17 nancial concepts.

18 (f) AUTHORIZATION OF APPROPRIATIONS.—There is
19 authorized to be appropriated such sums as are necessary
20 to carry out this section.

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