To establish an American Savings Account Fund and create a retirement savings plan available to all employees, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JANUARY 28, 2016

Mr. MERKLEY introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To establish an American Savings Account Fund and create a retirement savings plan available to all employees, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “American Savings Account Act of 2016”.

SEC. 2. AMERICAN SAVINGS ACCOUNTS.

(a) IN GENERAL.—The Employee Retirement Income Security Act of 1974 is amended by adding at the end the following:
“TITLE V—AMERICAN SAVINGS ACCOUNTS

“Subtitle A—Administration

“SEC. 5001. AMERICAN SAVINGS ACCOUNT BOARD OF DIRECTORS.

“(a) In general.—There is established an American Savings Account Board of Directors (hereafter referred to in this title as the ‘Board’) as a federally chartered organization. Except as otherwise provided, such Board has perpetual existence.

“(b) Purpose.—The purpose of the Board is—

“(1) to establish policies for the investment and management of the American Savings Account Fund; and

“(2) to carry out the responsibilities of the Board under section 5002.

“(c) Membership.—The Board shall be composed of 9 members appointed by the President in consultation with the Secretary of Labor and with the advice and consent of the Senate, to include—

“(1) the Secretary of Labor or a delegate of the Secretary;

“(2) 1 representative of employers;

“(3) 1 representative of the private retirement savings investment industry;
“(4) 1 representative of employees;

“(5) 1 representative of retirees; and

“(6) the Executive Director and 3 additional members of the Federal Retirement Thrift Investment Board established under section 8472(a) of title 5, United States Code.

Of such 9 members, 1 shall be elected by the members of the Board as the Chair.

“(d) TERMS AND VACANCIES.—

“(1) TERM.—A member of the Board shall be appointed for a term of 4 years and, after the expiration of such term, may be reappointed immediately to a subsequent term.

“(2) VACANCY.—A vacancy on the Board shall be filled in the manner in which the original appointment was made and shall be subject to any conditions which applied with respect to the original appointment. An individual chosen to fill a vacancy shall be appointed for the unexpired term of the member replaced.

“(3) EXPIRATION.—The term of any member shall not expire before the date on which the member’s successor takes office.
“(e) Responsibility.—The members of the Board shall discharge their responsibilities solely in the interest of participants and beneficiaries under this title.

“(f) Compensation.—

“(1) In general.—Each member of the Board who is not an officer or employee of the Federal Government shall be compensated at the daily rate of basic pay for grade GS–18 of the General Schedule under subchapter III of chapter 53 of title 5, United States Code, for each day during which such member is engaged in performing a function of the Board.

“(2) Per diem, etc.—A member of the Board shall be paid travel, per diem, and other necessary expenses while traveling away from such member’s home or regular place of business in the performance of the duties of the Board.

“(3) Payments.—Payments authorized under this subsection shall be paid from the American Savings Account Fund.

“SEC. 5002. RESPONSIBILITIES OF AMERICAN SAVINGS ACCOUNT BOARD OF DIRECTORS.

“(a) Establishment of Investment Funds and Options.—The Board shall select or establish a list of investment funds and options similar to those described
in subsection (b) of section 8438 of title 5, United States
Code, among which an individual participating in an
American Savings Account established under section
5003(a) may elect under subsection (b)(2).

“(b) INVESTMENT OF SUMS.—

“(1) IN GENERAL.—The Chair of the Board
shall invest the sums available in the American Sav-
ings Account Fund for investment as provided in
elections made under paragraph (2). If an election
has not been made with respect to any sums in the
American Savings Account Fund available for in-
vestment, the Chair shall invest such sums in a port-
folio similar to the age-appropriate target date asset
allocation portfolio established by the Federal Re-
tirement Thrift Investment Board under section
8438(b) of title 5, United States Code, in the same
manner as sums in the Thrift Savings Fund estab-
lished under section 8437 of title 5, United States
Code, are invested under such section.

“(2) ELECTION.—

“(A) IN GENERAL.—At least twice each
year, an individual participating in an American
Savings Account established under subsection
(c)(1) may elect any of the investment funds
and options referred to in subsection (a) into
which the sums in the American Savings Account Fund credited to such individual’s American Savings Account are to be invested or reinvested in the same manner as sums in the Thrift Savings Fund are invested under section 8438 of title 5, United States Code.

“(B) FORM AND MANNER OF ELECTION.—
An election may be made under subparagraph (A) only in such manner and within such period as shall be provided by the Chair of the Board.

“(c) ACCOUNTING AND INFORMATION.—
“(1) IN GENERAL.—The Chair of the Board shall establish and maintain—
“(A) an American Savings Account described in paragraph (1) of section 5021(a); or
“(B) at the election of the individual pursuant to section 5021(b)(2), an American Savings Account described in paragraph (2) of section 5021(a);
for each individual who makes contributions under section 5021(b)(3), or for whom contributions are made under section 5022, to the American Savings Account Fund.

“(2) BALANCE; ALLOCATION OF EARNINGS AND LOSSES, ETC.—Rules similar to the rules of para-
graphs (2) and (3) of section 8439(a) of title 5, United States Code, shall apply for purposes of an individual's American Savings Account established under paragraph (1).

“(3) EXAMINATION BY QUALIFIED PUBLIC ACCOUNTANT; REPORTING, ETC.—Rules similar to the requirements of subsections (b), (c), and (d) of section 8439 of title 5, United States Code, shall apply with respect to individuals for whom an American Savings Account is maintained under this subsection (in the case of such subsection (d), applied as if each such individual were an employee described in such subsection).

“(d) REPORTING REQUIREMENTS.—

“(1) ANNUAL REPORT.—The Board shall, not later than June 30 of each year, submit to Congress an annual report on the operations of the American Savings Account Fund. Such report shall include, for the prior calendar year, information on the number of participants as of the last day of such prior calendar year, the median balance in participants’ accounts as of such last day, demographic information on participants, the percentage allocation of amounts among investment funds or options, the status of the development and implementation of the
mutual fund window, the diversity demographics of
any company, investment adviser, or other entity re-
tained to invest and manage the assets of the Amer-
ican Savings Account Fund, and such other informa-
tion as the Board considers appropriate. A copy of
each annual report under this subsection shall be
made available to the public through an Internet
website.

“(2) Reporting of Fees and Other Infor-
mation.—

“(A) In General.—The Board shall pro-
vide to each individual for whom an account is
maintained—

“(i) a periodic statement relating to
the individual’s account;

“(ii) a summary description of the in-
vestment funds and options under sub-
section (a) covering, and an evaluation of,
each such option during the 5-year period
preceding the date as of which such eval-
uation is made;

“(iii) a statement of the amount of
the investment management fees, adminis-
trative expenses, and any other fees or ex-
penses paid with respect to each such in-
vestment fund and option; and

“(iv) a statement notifying partici-
pants as to how they may access the an-
nual report described in paragraph (1), as
well as any other information concerning
American Savings Accounts that might be
useful.

If the fees and expenses described in clause (iii)
exceed the fees charged to a similarly situated
individual who contributes to the Thrift Savings
Fund established under section 8437 of title 5,
United States Code, the information required
under the preceding sentence shall include a
statement identifying the reason for such ex-
cess.

“(B) TIME WHEN SENT.—Information
under subparagraph (A) with respect to each
participant shall be provided immediately upon
payment of the participant’s first contribution
to the American Savings Account Fund and on
a regular basis thereafter, in a manner designed
to facilitate informed decisionmaking with re-
spect to elections under subsection (b)(2).

Nothing in this subparagraph shall be consid-
ered to limit the dissemination of information
only to the times required under the preceding
sentence.

“(C) USE OF ESTIMATES.—For purposes
of providing the information required under this
paragraph, the Board may provide a reasonable
and representative estimate of any fees or ex-
penses described in subparagraph (A) and shall
indicate any such estimate as being such an es-
timate. Any such estimate shall be based on the
previous year’s experience.

“SEC. 5003. FIDUCIARY RESPONSIBILITIES; LIABILITY AND
PENALTIES.

“(a) DEFINITIONS.—For purposes of this section—

“(1) the term ‘adequate consideration’ means—

“(A) in the case of a security for which
there is a generally recognized market—

“(i) the price of the security pre-
vailing on a national securities exchange
which is registered under section 6 of the
Securities Exchange Act of 1934; or

“(ii) if the security is not traded on
such a national securities exchange, a price
not less favorable to the American Savings
Account Fund than the offering price for
the security as established by the current
bid and asked prices quoted by persons
independent of the issuer and of any party
in interest; and

“(B) in the case of an asset other than a
security for which there is a generally recog-
nized market, the fair market value of the asset
as determined in good faith by a fiduciary or fi-
duciaries in accordance with regulations pre-
scribed by the Secretary of Labor;

“(2) the term ‘fiduciary’ means—

“(A) a member of the Board, including the
Chair;

“(B) any person who has or exercises dis-
cretionary authority or discretionary control
over the management or disposition of the as-
sets of the American Savings Account Fund;
and

“(C) any person who, with respect to the
American Savings Account Fund, is described
in section 3(21)(A); and

“(3) the term ‘party in interest’ includes—

“(A) any fiduciary;
“(B) any counsel to a person who is a fiduciary, with respect to the actions of such person as a fiduciary;

“(C) any participant;

“(D) any person providing services to the Board and, with respect to the actions of the Chair as a fiduciary, any person providing services to the Chair;

“(E) a labor organization, the members of which are participants;

“(F) a spouse, sibling, ancestor, lineal descendant, or spouse of a lineal descendant of a person described in subparagraph (A), (B), or (D);

“(G) a corporation, partnership, or trust or estate of which, or in which, at least 50 percent of—

“(i) the combined voting power of all classes of stock entitled to vote or the total value of shares of all classes of stock of such corporation;

“(ii) the capital interest or profits interest of such partnership; or

“(iii) the beneficial interest of such trust or estate,
is owned, directly or indirectly, or held by a
person described in subparagraph (A), (B), (D),
or (E);

“(H) an official (including a director) of,
or an individual employed by, a person de-
scribed in subparagraph (A), (B), (D), (E), or
(G), or an individual having powers or respon-
sibilities similar to those of such an official;

“(I) a holder (directly or indirectly) of at
least 10 percent of the shares in a person de-
scribed in any subparagraph referred to in sub-
paragraph (H); and

“(J) a person who, directly or indirectly, is
at least a 10 percent partner or joint venturer
(measured in capital or profits) in a person de-
scribed in any subparagraph referred to in sub-
paragraph (H).

“(b) IN GENERAL.—

“(1) DISCHARGE OF RESPONSIBILITIES.—To
the extent not inconsistent with the provisions of
this title and the policies prescribed by the Board,
a fiduciary shall discharge the fiduciary’s respon-
sibilities with respect to the American Savings Ac-
count Fund or applicable portion thereof solely in
the interest of the participants and beneficiaries and—

“(A) for the exclusive purpose of—

“(i) providing benefits to participants and their beneficiaries; and

“(ii) defraying reasonable expenses of administering the American Savings Account Fund or applicable portions thereof;

“(B) with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent individual acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like objectives; and

“(C) to the extent permitted by this title, by diversifying the investments of the American Savings Account Fund or applicable portions thereof so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so.

“(2) OWNERSHIP.—No fiduciary may maintain the indicia of ownership of any assets of the American Savings Account Fund outside the jurisdiction of the district courts of the United States.

“(c) PROHIBITED TRANSACTIONS.—
“(1) IN GENERAL.—A fiduciary shall not per-
mit the American Savings Account Fund to engage
in any of the following transactions, except in ex-
change for adequate consideration:

“(A) A transfer of any assets of the Amer-
ican Savings Account Fund to any person the
fiduciary knows or should know to be a party
in interest or the use of such assets by any such
person.

“(B) An acquisition of any property from
or sale of any property to the American Savings
Account Fund by any person the fiduciary
knows or should know to be a party in interest.

“(C) A transfer or exchange of services be-
tween the American Savings Account Fund and
any person the fiduciary knows or should know
to be a party in interest.

“(2) SPECIAL RULES.—Notwithstanding para-
graph (1), a fiduciary with respect to the American
Savings Account Fund shall not—

“(A) deal with any assets of the American
Savings Account Fund in the fiduciary’s own
interest or for the fiduciary’s own account;

“(B) act, in an individual capacity or any
other capacity, in any transaction involving the
American Savings Account Fund on behalf of a party, or representing a party, whose interests are adverse to the interests of the American Savings Account Fund or the interests of its participants or beneficiaries; or

“(C) receive any consideration for the fiduciary’s own personal account from any party dealing with sums credited to the American Savings Account Fund in connection with a transaction involving assets of the American Savings Account Fund.

“(3) GRANTING OF EXEMPTIONS.—

“(A) The Secretary may, in accordance with procedures which the Secretary shall by regulation prescribe, grant a conditional or unconditional exemption of any fiduciary or transaction, or class of fiduciaries or transactions, from all or part of the restrictions imposed by paragraph (2).

“(B) An exemption granted under this paragraph shall not relieve a fiduciary from any other applicable provision of this title.

“(C) The Secretary may not grant an exemption under this paragraph unless the Secretary finds that such exemption is—
“(i) administratively feasible;
“(ii) in the interests of the American
Savings Account Fund and of its partici-
pants and beneficiaries; and
“(iii) protective of the rights of par-
ticipants and beneficiaries of such Fund.
“(D) An exemption under this paragraph
may not be granted unless—
“(i) notice of the proposed exemption
is published in the Federal Register;
“(ii) interested persons are given an
opportunity to present views; and
“(iii) the Secretary affords an oppor-
tunity for a hearing and makes a deter-
mination on the record with respect to the
respective requirements of clauses (i), (ii),
and (iii) of subparagraph (C).
“(E) Notwithstanding subparagraph (D),
the Secretary may determine that an exemption
granted for any class of fiduciaries or trans-
actions under section 408(a) shall, upon publi-
cation of notice in the Federal Register under
this subparagraph, constitute an exemption for
purposes of the provisions of paragraph (2).
“(d) ALLOWANCES.—This section does not prohibit any fiduciary from—

“(1) receiving any benefit which the fiduciary is entitled to receive under this title as a participant or beneficiary;

“(2) receiving any reasonable compensation authorized by this title for services rendered, or for reimbursement of expenses properly and actually incurred, in the performance of the fiduciary’s duties under this title; or

“(3) serving as a fiduciary in addition to being an officer, employee, agent, or other representative of a party in interest.

“(e) LIABILITY.—

“(1) IN GENERAL.—

“(A) Any fiduciary that breaches the responsibilities, duties, and obligations set out in subsection (b) or violates subsection (e) shall be personally liable to the American Savings Account Fund for any losses to such Fund resulting from each such breach or violation and to restore to such Fund any profits made by the fiduciary through use of assets of such Fund by the fiduciary, and shall be subject to such other equitable or remedial relief as a court considers
appropriate, except as provided in paragraphs (3) and (4). A fiduciary may be removed for a breach referred to in the preceding sentence.

“(B) The Secretary may assess a civil penalty against a party in interest with respect to each transaction which is engaged in by the party in interest and is prohibited by subsection (c). The amount of such penalty shall be equal to 5 percent of the amount involved in each such transaction (as defined in section 4975(f)(4) of the Internal Revenue Code of 1986) for each year or part thereof during which the prohibited transaction continues, except that, if the transaction is not corrected (in such manner as the Secretary shall prescribe by regulation consistent with section 4975(f)(5) of such Code) within 90 days after the date the Secretary transmits notice to the party in interest (or such longer period as the Secretary may permit), such penalty may be in an amount not more than 100 percent of the amount involved.

“(C)(i) A fiduciary shall not be liable under subparagraph (A) with respect to a breach of fiduciary duty under subsection (b)
committed before becoming a fiduciary or after ceasing to be a fiduciary.

“(ii) A fiduciary shall not be liable under subparagraph (A), and no civil action may be brought against a fiduciary—

“(I) for providing for the automatic enrollment of a participant in accordance with this title; or

“(II) for enrolling a participant or beneficiary in a default investment fund or option in accordance with this title.

“(D) A fiduciary shall be jointly and severally liable under subparagraph (A) for a breach of fiduciary duty under subsection (b) by another fiduciary only if—

“(i) the fiduciary participates knowingly in, or knowingly undertakes to conceal, an act or omission of such other fiduciary, knowing such act or omission is such a breach;

“(ii) by the fiduciary’s failure to comply with subsection (b) in the administration of the fiduciary’s specific responsibilities which give rise to the fiduciary status,
the fiduciary has enabled such other fiduciary to commit such a breach; or

“(iii) the fiduciary has knowledge of a breach by such other fiduciary, unless the fiduciary makes reasonable efforts under the circumstances to remedy the breach.

“(E) The Secretary shall prescribe, in regulations, procedures for allocating fiduciary responsibilities among fiduciaries, including investment managers. Any fiduciary who, pursuant to such procedures, allocates to a person or persons any fiduciary responsibility shall not be liable for an act or omission of such person or persons unless—

“(i) such fiduciary violated subsection (b) with respect to the allocation, with respect to the implementation of the procedures prescribed by the Secretary, or in continuing such allocation; or

“(ii) such fiduciary would otherwise be liable in accordance with subparagraph (D).

“(2) CIVIL ACTION ONLY AS PROVIDED.—No civil action may be maintained against any fiduciary with respect to the responsibilities, liabilities, and
penalties authorized or provided for in this section except in accordance with paragraphs (3) and (4).

“(3) Rules regarding civil actions.—A civil action may be brought in the district courts of the United States—

“(A) by the Secretary against any fiduciary other than a Member of the Board or the Chair of the Board—

“(i) to determine and enforce a liability under paragraph (1)(A);

“(ii) to collect any civil penalty under paragraph (1)(B);

“(iii) to enjoin any act or practice which violates any provision of subsection (b) or (c);

“(iv) to obtain any other appropriate equitable relief to redress a violation of any such provision; or

“(v) to enjoin any act or practice which violates section 5001(e);

“(B) by any participant, beneficiary, or fiduciary against any fiduciary—

“(i) to enjoin any act or practice which violates any provision of subsection (b) or (c);
“(ii) to obtain any other appropriate equitable relief to redress a violation of any such provision; or

“(iii) to enjoin any act or practice which violates section 5001(e); or

“(C) by any participant or beneficiary—

“(i) to recover benefits of such participant or beneficiary under the provisions of this title, to enforce any right of such participant or beneficiary under such provisions, or to clarify any such right to future benefits under such provisions; or

“(ii) to enforce any claim otherwise cognizable under sections 1346(b) and 2671 through 2680 of title 28, United States Code, provided that the remedy against the United States provided by sections 1346(b) and 2672 of title 28, United States Code, for damages for injury or loss of property caused by the negligent or wrongful act or omission of any fiduciary while acting within the scope of the fiduciary’s duties or employment shall be exclusive of any other civil action or proceeding by the participant or beneficiary
for recovery of money by reason of the
same subject matter against the fiduciary
(or the estate of such fiduciary) whose act
or omission gave rise to such action or pro-
ceeding, whether or not such action or pro-
ceeding is based on an alleged violation of
subsection (b) or (c).

“(4) OTHER RULES.—

“(A) In all civil actions under paragraph
(3)(A), attorneys appointed by the Secretary
may represent the Secretary (except as provided
in section 518(a) of title 28, United States
Code), however all such litigation shall be sub-
ject to the direction and control of the Attorney
General.

“(B) The Attorney General shall defend
any civil action or proceeding brought in any
court against any fiduciary referred to in para-
graph (3)(C)(ii) (or the estate of such fidu-
 ciary) for any such injury. Any fiduciary
against whom such a civil action or proceeding
is brought shall deliver, within such time after
date of service or knowledge of service as deter-
mined by the Attorney General, all process
served upon such fiduciary (or an attested copy
thereof) to the Chair of the Board, who shall promptly furnish copies of the pleading and process to the Attorney General and the United States Attorney for the district wherein the action or proceeding is brought.

“(C) Upon certification by the Attorney General that a fiduciary described in paragraph (3)(C)(ii) was acting in the scope of such fiduciary’s duties or employment as a fiduciary at the time of the occurrence or omission out of which the action arose, any such civil action or proceeding commenced in a State court shall be—

“(i) removed without bond at any time before trial by the Attorney General to the district court of the United States for the district and division in which it is pending; and

“(ii) deemed a tort action brought against the United States under the provisions of title 28, United States Code, and all references thereto.

“(D) The Attorney General may compromise or settle any claim asserted in such civil action or proceeding in the manner pro-
vided in section 2677 of title 28, United States
Code, and with the same effect. To the extent
section 2672 of title 28, United States Code,
provides that persons other than the Attorney
General or the Attorney General’s designee may
compromise and settle claims, and that pay-
ment of such claims may be made from agency
appropriations, such provisions shall not apply
to claims based upon an alleged violation of
subsection (b) or (c).

“(E) For the purposes of paragraph
(3)(C)(ii) the provisions of sections 2680(h) of
title 28, United States Code, shall not apply to
any claim based upon an alleged violation of
subsection (b) or (c).

“(F) Notwithstanding sections 1346(b)
and 2671 through 2680 of title 28, United
States Code, whenever an award, compromise,
or settlement is made under such sections upon
any claim based upon an alleged violation of
subsection (b) or (c), payment of such award,
compromise, or settlement shall be made to the
appropriate account within the American Sav-
ings Account Fund, or where there is no such
appropriate account, to the participant or beneficiar bringing the claim.

“(G) For purposes of paragraph (3)(C)(ii), the term ‘fiduciary’ includes only the Members of the Board and the Board’s Chair.

“(5) PROHIBITION OF MONETARY RELIEF.—
Any relief awarded against a Member of the Board or the Chair of the Board in a civil action authorized by paragraph (3) may not include any monetary damages or any other recovery of money.

“(6) LIMITATION.—An action may not be commenced under paragraph (3)(A) or (B) with respect to a fiduciary’s breach of any responsibility, duty, or obligation under subsection (b) or a violation of subsection (c) after the earlier of—

“(A) 6 years after—

“(i) the date of the last action which constituted a part of the breach or violation; or

“(ii) in the case of an omission, the latest date on which the fiduciary could have cured the breach or violation; or

“(B) 3 years after the earliest date on which the plaintiff had actual knowledge of the breach or violation, except that, in the case of
fraud or concealment, such action may be commenced not later than 6 years after the date of discovery of such breach or violation.

“(7) JURISDICTION.—

“(A) The district courts of the United States shall have exclusive jurisdiction of civil actions under this subsection.

“(B) An action under this subsection may be brought in the District Court of the United States for the District of Columbia or a district court of the United States in the district where the breach alleged in the complaint or petition filed in the action took place or in the district where a defendant resides or may be found. Process may be served in any other district where a defendant resides or may be found.

“(8) SERVICE.—

“(A) A copy of the complaint or petition filed in any action brought under this subsection (other than by the Secretary) shall be served on the Chair, the Secretary, and the Secretary of the Treasury by certified mail.

“(B) Any officer referred to in subparagraph (A) shall have the right in the officer’s discretion to intervene in any action. If the Sec-
Secretary brings an action under paragraph (2) on behalf of a participant or beneficiary, the Secretary shall notify the Chair and the Secretary of the Treasury.

“(f) REGULATIONS.—The Secretary may prescribe regulations to carry out this section.

“(g) AUDITS BY SECRETARY.—

“(1) IN GENERAL.—The Secretary of Labor shall establish a program to carry out audits to determine the level of compliance with the requirements of this section relating to fiduciary responsibilities and prohibited activities of fiduciaries.

“(2) CONTRACTS, ETC.—An audit under this subsection may be conducted by the Secretary, by contract with a qualified nongovernmental organization, or in cooperation with the Comptroller General of the United States, as the Secretary considers appropriate.

“SEC. 5004. AMERICAN SAVINGS ACCOUNT FUND ADVISORY COUNCIL.

“(a) IN GENERAL.—The Board shall establish an American Savings Account Fund Advisory Council, to be composed of 14 members appointed by the Chair of the Board. The Chair of the Board shall designate 1 member of the Council to serve as head of the Council.
“(b) Terms and Vacancies.—

“(1) Term.—A member of the Council shall be appointed for a term of 4 years.

“(2) Vacancies.—

“(A) A vacancy in the Council shall be filled in the manner in which the original appointment was made and shall be subject to any conditions which applied with respect to the original appointment.

“(B) An individual chosen to fill a vacancy shall be appointed for the unexpired term of the member replaced.

“(C) The term of any member shall not expire before the date on which the member’s successor takes office.

“(c) Action by Majority Resolution.—The Council shall act by resolution of a majority of the members.

“(d) Responsibilities.—The Council shall—

“(1) advise the Board and the Chair of the Board on matters relating to—

“(A) investment policies for the American Savings Account Fund; and

“(B) the administration of this title; and
“(2) perform such other duties as the Board may direct with respect to investment funds established in accordance with this title.

“Subtitle B—American Savings Account Fund

“SEC. 5011. AMERICAN SAVINGS ACCOUNT FUND.

“(a) IN GENERAL.—There is established in the Treasury of the United States an American Savings Account Fund.

“(b) AMOUNTS IN FUND.—The American Savings Account Fund consists of the sum of all amounts contributed under section 5022, increased by the total net earnings from investments of sums in the American Savings Account Fund or reduced by the total net losses from investments of the American Savings Account Fund, and reduced by the total amount of payments made from the American Savings Account Fund (including payments for administrative expenses).

“(c) APPROPRIATIONS FROM FUND.—The sums in the American Savings Account Fund are appropriated and shall remain available without fiscal year limitation—

“(1) to invest as provided in section 5002(b)(1);

“(2) to pay benefits or purchase annuity contracts under section 5021(b);
“(3) to pay the administrative expenses of the Board relating to the responsibilities under section 5002; and

“(4) at the discretion of the Chair of the Board, to purchase insurance to cover potential liability of persons who serve in a fiduciary capacity with respect to the American Savings Account Fund, in a manner consistent with rules similar to the provisions of section 8479 of title 5, United States Code.

“(d) Benefits Inalienable and Nonforfeitable.—

“(1) In general.—Subject to paragraphs (3) and (4) of subsection (c) and paragraphs (3) and (4) of this subsection, sums in the American Savings Account Fund credited to the American Savings Account of a participant may not be used for, or diverted to, purposes other than for the exclusive benefit of the participant or the participant’s beneficiaries.

“(2) Protection from alienation.—Except as provided in paragraphs (3) and (4), sums in the American Savings Account Fund may not be assigned or alienated and are not subject to execution,
levy, attachment, garnishment, or other legal process.

“(3) Certain exceptions.—Moneys due or payable from the American Savings Account Fund to any individual shall be subject to legal process for the enforcement of the individual’s legal obligations to provide child support or make alimony payments as provided in section 459 of the Social Security Act, the enforcement of an order for restitution under section 3663A of title 18, United States Code, or an obligation of the Chair of the Board to make a payment to another person under paragraph (4), and shall be subject to a Federal tax levy under section 6331 of the Internal Revenue Code of 1986.

“(4) Court orders.—Rules similar to the rules of section 8467 of title 5, United States Code, shall apply with respect to payments which would otherwise be made to a participant under section 5021(b).

“(e) Limitation on further appropriation.—The sums in the American Savings Account Fund shall not be appropriated for any purpose other than the purposes specified in this section and may not be used for any other purpose.
“(f) Amounts Held in Trust.—All sums contributed to the American Savings Account Fund by a participant or by an employer for the benefit of such participant and all net earnings in such Fund attributable to investment of such sums are held in such Fund in trust for such participant.

“SEC. 5012. TAX TREATMENT OF THE AMERICAN SAVINGS ACCOUNT FUND.

“(a) In General.—For purposes of the Internal Revenue Code of 1986—

“(1) the American Savings Account Fund shall be treated as a trust described in section 401(a) of such Code which is exempt from taxation under section 501(a) of such Code;

“(2) any contribution to, or distribution from, the American Savings Account Fund shall be treated in the same manner as contributions to or distributions from such a trust;

“(3) contributions to the American Savings Account Fund shall not be treated as distributed or made available to a participant nor as a contribution made to the Fund by an individual merely because the individual has, under section 5022(b)(1)(C), made an election whether the contribution will be
made to the American Savings Account Fund or re-
ceived by the individual in cash; and

“(4) the rules of section 414(w) of such Code
shall apply with respect to American Savings Ac-
counts, except that paragraph (2)(B) thereof shall
be applied by substituting ‘the due date for the re-
turn of tax for the taxable year in which the first
elective contribution is made with respect to the em-
ployee under the arrangement’ for ‘the date which is
90 days after the date of the first elective contribu-
tion with respect to the employee under the arrange-
ment’.

“(b) COORDINATION WITH SOCIAL SECURITY ACT.—
Subsection (a) shall not be construed to provide that any
amount of the employee’s compensation which is contrib-
uted to the American Savings Account Fund shall not be
included in the term ‘wages’ for the purposes of section
209 of the Social Security Act or section 3121(a) of the

“Subtitle C—American Savings
Accounts

“SEC. 5021. AMERICAN SAVINGS ACCOUNTS.

“(a) In General.—For purposes of this title, the
term ‘American Savings Account’ means—
“(1) an individual retirement account (as defined in section 408(a) of the Internal Revenue Code of 1986); and

“(2) in the case of an individual making the election under subsection (b)(2), a Roth IRA (as defined in section 408A(b) of such Code);

established and maintained by the Board, as trustee of such account.

“(b) Special Rules.—

“(1) Eligibility.—

“(A) In general.—All qualified employees shall be eligible to participate in an American Savings Account.

“(B) Qualified employee.—For purposes of this subtitle—

“(i) In general.—The term ‘qualified employee’ means an employee (other than an employee described in section 410(b)(3)(C) of the Internal Revenue Code of 1986) of an American employer if the employer does not provide the opportunity for the employee to participate in a defined contribution plan (within the meaning of section 414(i) of the Internal Revenue Code of 1986) maintained by the employer.
that satisfies the requirements of section 401(a) or 403(b) of the Internal Revenue Code of 1986.

“(ii) Exception for employees covered by collective bargaining agreements.—Such term shall not include any employee who is included in a group of employees covered by a collective bargaining agreement described in section 410(b)(3)(A) of such Code.

“(iii) American employer.—The term ‘American employer’ has the meaning given such term by section 3121(h) of such Code.

“(2) Election to convert to Roth IRA.—Subject to the rules of section 408A(d)(3) of the Internal Revenue Code of 1986, an individual may elect at any time to convert all or a portion of the individual retirement account established for the individual under section 5002(e)(1)(A) to a Roth IRA (as defined in section 408A(b) of such Code).

“(3) Contributions.—

“(A) In general.—Subject to section 5022(b)(1), an individual may contribute to the American Savings Account Fund in any year,
pursuant to an election under section 5002(b)(2), an amount not to exceed the limitation described in subparagraph (C). Contributions pursuant to such an election shall, with respect to each pay period for which such election remains in effect, be made in accordance with a program of regular contributions as prescribed by the Chair.

“(B) ELIGIBLE ROLLOVER DISTRIBUTIONS.—An individual may contribute to the American Savings Account Fund an eligible rollover that an individual retirement account or Roth IRA could accept under section 408 or 408A of the Internal Revenue Code of 1986, whichever is applicable (after the application of subparagraph (C)). In the case of an eligible rollover distribution (as defined in section 402(c)(4) of such Code), the maximum amount transferred to the American Savings Account Fund shall not exceed the amount which would otherwise have been included in the individual’s gross income for Federal income tax purposes.

“(C) MODIFICATION OF CONTRIBUTION LIMITATION.—In lieu of the contribution limitations for individual retirement accounts or Roth
IRAs, whichever is applicable, under part I of
subchapter D of chapter 1 of the Internal Rev-
ue Code of 1986, the annual contribution lim-
itation applicable to an American Savings Ac-
count shall be equal to the limitation applicable
under section 415(e) of the Internal Revenue
Code of 1986 to contributions to a defined con-
tribution plan.

“(4) ANNUITIES, ETC.—

“(A) IN GENERAL.—The Board shall pre-
scribe methods of payment of annuities similar
to the methods available under section
8434(a)(2) of title 5, United States Code.

“(B) RULES APPLICABLE.—Rules similar
to the rules of subsections (b), (c), (d), and (e)
of section 8434 of title 5, United States Code,
shall apply for purposes of this paragraph.

“(5) PROTECTIONS FOR SPOUSES AND FORMER
SPOUSES.—

“(A) IN GENERAL.—Except as provided in
subsection (A), rules similar to the rules of
sections 8433(e) and 8435 of title 5, United
States Code, shall apply for purposes of this
subsection.
“(B) ADDITIONAL PROTECTION FOR SURVIVING SPOUSES.—A surviving spouse shall be the first party entitled to receive benefits (before any designated beneficiary other than the surviving spouse) unless the surviving spouse consents in writing to the application of the order of precedence in effect but for this subparagraph.

“SEC. 5022. EMPLOYER REQUIREMENTS.

“(a) IN GENERAL.—Except as provided in subsections (a) and (b) of section 5023, each United States employer shall make contributions meeting the requirements of subsection (b) on behalf of such qualified employee to the American Savings Account Fund, beginning with the later of—

“(1) the first pay period for which the employee receives compensation from the employer; or

“(2) the first pay period beginning on or after the contribution beginning date.

“(b) CONTRIBUTIONS.—The requirements of this subsection are met for a taxable year with respect to contributions to the American Savings Account Fund on behalf of a qualified employee if—

“(1) CONTRIBUTION AMOUNT.—With respect to any pay period beginning in such taxable year—
“(A) IN GENERAL.—Except as provided in
subparagraphs (B) and (C), such contributions
are equal to 3 percent of the compensation of
the employee for such period.

“(B) COORDINATION WITH LIMITA-
tIONS.—The total contributions to the Fund on
behalf of the employee for pay periods in any
taxable year do not exceed the contribution lim-
itation described in section 5021(b)(3)(C).

“(C) ELECTION.—After the first pay pe-
riod with respect to which a contribution is
made with respect to a qualified employee
under subsection (a), the qualified employee
may elect—

“(i) to change the percentage of com-
pensation which is contributed to the Fund
on behalf of such employee, except that
such percentage may not be less than 2
percent or greater than the highest per-
centage that would not cause total con-
tributions during the taxable year to ex-
ceed the limitation under subparagraph
(B); or

“(ii) to discontinue contributions to
the Fund and withdraw all contributions
previously made through a salary reduction arrangement in the same calendar year other than nonelective contributions made by the employer on behalf of the employee.

In the event a qualified employee elects to withdraw all contributions previously made to the Fund under the preceding sentence, the amount of any nonelective contributions made by the employer on behalf of the employee shall be withdrawn and paid to the employer.

“(D) CONTRIBUTIONS MAY BE MADE THROUGH SALARY REDUCTION ARRANGEMENT.—Contributions by an employer shall not fail to meet the requirements of this subsection solely because the employee may elect to have the employer make payments—

“(i) to the American Savings Account of the employee; or

“(ii) to the employee directly in cash. The preceding sentence shall apply only if the contributions on behalf of all qualified employees of the employer for a pay period are in a uniform dollar amount or a uniform percentage of compensation.
“(E) Mandatory percentage increase offer.—

“(i) In general.—If a qualified employee elects under subparagraph (C) a contribution percentage that is less than 5 percent, then 12 months after such election is made and every 12 months thereafter the Board shall notify the employee in writing that such contribution percentage will be increased by 0.5 percent unless the employee objects within 30 days of receipt of such notice. If the employee does not so object, upon notification by the Board, the employer shall increase the percentage of the employee’s compensation which is contributed to the Fund on behalf of the employee by 0.5 percent.

“(ii) Applicability.—

“(I) In general.—Clause (i) shall cease to apply once the percentage of compensation contributed to the Fund on behalf of the employee is greater than or equal to 5 percent.

“(II) Coordination with limitations.—Clause (i) shall not apply
during a taxable year if, as so increased, the percentage of compensation contributed to the Fund on behalf of the employee would exceed the percentage described in subparagraph (C)(i).

“(2) FREQUENCY AND TIMING OF CONTRIBUTIONS.—Contributions under subsection (a) are made not less frequently than monthly during such year, and each such contribution is made not later than 30 days after the close of the pay period to which it relates.

“(c) EXCEPTIONS.—Subsection (a) shall not apply to an employer that is a church or convention or association of churches which is exempt from tax under section 501(a) of the Internal Revenue Code of 1986. If such an employer elects to make contributions to the American Savings Account Fund on behalf of qualified employees of the employer, such contributions must meet the requirements of paragraph (1).

“(d) SELF-EMPLOYED INDIVIDUALS.—An individual—

“(1) who has net earnings from self-employment (as defined in section 1402(a) of the Internal Revenue Code of 1986);
“(2) who is not a qualified employee with respect to any employer; and

“(3) who is not eligible to participate in a defined contribution plan (within the meaning of section 414(i) of the Internal Revenue Code of 1986) maintained by any employer;

may elect to make contributions on the individual’s own behalf to the American Savings Account Fund. Such contributions shall be made under rules similar to the rules of section 5021(b)(3).

“(e) Contribution Beginning Date.—For purposes of this section, the term ‘contribution beginning date’ means January 1 of the 3rd calendar year beginning after the date of the enactment of the American Savings Account Act of 2016.

“SEC. 5023. STATE RETIREMENT SAVINGS PLANS.

“(a) In General.—If a State—

“(1) maintains a public retirement savings plan that allows all covered employers in the State to enroll all employees of the employer automatically in such plan; or

“(2) allows all covered employers in the State to make contributions to an individual retirement plan (as defined in section 7701(a)(37) of the Inter-
nal Revenue Code of 1986) on behalf of the employees of the employer;

such State may prohibit employers in the State from making contributions to the American Savings Account Fund on behalf of their employees, and section 5022 shall not apply to covered employers to which such prohibition applies.

“(b) EXEMPTION.—For purposes of this Act, the term ‘employee pension benefit plan’ shall not include a payroll deduction program established by a State for the purpose of making contributions to 1 or more individual retirement plans (as defined in section 7701(a)(37) of the Internal Revenue Code of 1986), including such a program which provides for automatic enrollment.

“(c) WAIVER OF PENALTY.—The penalty under section 6672(f) of the Internal Revenue Code of 1986 shall not apply to a failure to make a contribution on behalf of a qualified employee if the employer makes contributions to a State plan described in subsection (a) or (b) on behalf of such employee that satisfy the applicable requirements of such State plan. The employer shall certify to the Secretary of the Treasury, in such manner as shall be determined by such Secretary, that such contributions have been made.
“(d) COVERED EMPLOYER.—For purposes of this section, the term ‘covered employer’ means an employer—

“(1) that does not provide the opportunity for employees to participate in a defined contribution plan (within the meaning of section 414(i) of the Internal Revenue Code of 1986) maintained by the employer; and

“(2) whose employees are not covered by a collective bargaining agreement described in section 410(b)(3)(A) of the Internal Revenue Code of 1986.

“SEC. 5024. DEFINITIONS.

“(b) CLERICAL AMENDMENT.—The table of contents of the Employee Retirement Income Security Act of 1974 is amended by adding at the end the following:

“TITLE V—AMERICAN SAVINGS ACCOUNTS

“Subtitle A—Administration

“Sec. 5001. American Savings Account Board of Directors.
“Sec. 5002. Responsibilities of American Savings Account Board of Directors.
“Sec. 5003. Fiduciary responsibilities; liability and penalties.

“Subtitle B—American Savings Account Fund

“Sec. 5011. American Savings Account Fund.

“Subtitle C—American Savings Accounts

“Sec. 5021. American Savings Accounts.
“Sec. 5022. Employer requirements.
“Sec. 5023. State retirement savings plans.
“Sec. 5024. Definitions.”
(c) CONFORMING AMENDMENT.—Section 7701 of the Internal Revenue Code of 1986 is amended by redesignating subsection (p) as subsection (q) and by inserting after subsection (o) the following new subsection:

“(p) TAX TREATMENT OF AMERICAN SAVINGS ACCOUNT FUND.—

“(1) IN GENERAL.—For purposes of this title—

“(A) the American Savings Account Fund shall be treated as a trust described in section 401(a) which is exempt from taxation under section 501(a);

“(B) any contribution to, or distribution from, the American Savings Account Fund shall be treated in the same manner as contributions to or distributions from such a trust;

“(C) contributions to the American Savings Account Fund shall not be treated as distributed or made available to a participant nor as a contribution made to the Fund by an individual merely because the individual has, under section 5022(b)(1)(C) of the Employee Retirement Income Security Act of 1974, made an election whether the contribution will be made to the American Savings Account Fund or received by the individual in cash; and
“(D) the rules of section 414(w) shall apply with respect to American Savings Accounts, except that paragraph (2)(B) thereof shall be applied by substituting ‘the due date for the return of tax for the taxable year in which the first elective contribution is made with respect to the employee under the arrangement’ for ‘the date which is 90 days after the date of the first elective contribution with respect to the employee under the arrangement’.

“(2) Coordination with social security act.—Paragraph (1) shall not be construed to provide that any amount of the employee’s compensation which is contributed to the American Savings Account Fund shall not be included in the term ‘wages’ for the purposes of section 209 of the Social Security Act or section 3121(a) of this title.

“(3) Definitions.—For purposes of this subsection, the terms ‘employee’ and ‘American Savings Account Fund’ shall have the same respective meanings as when used in title V of the Employee Retirement Income Security Act of 1974.

“(4) Coordination with other provisions of law.—No provision of law not contained in this title shall apply for purposes of determining the
treatment under this title of the American Savings
Account Fund or any contribution to, or distribution
from, such Fund.”.

(d) TREATMENT OF CONTRIBUTIONS TO AMERICAN
Savings Account Fund.—

(1) IN GENERAL.—Part III of subchapter B of
chapter 1 of the Internal Revenue Code of 1986 is
amended by inserting after section 139E the fol-
lowing new section:

“SEC. 139F. AMOUNTS CONTRIBUTED TO AMERICAN SAV-
ings Accounts.

“(a) IN GENERAL.—Gross income does not include
so much of the contributions made to the American Sav-
ings Account Fund on behalf of an individual for pay peri-
ods in the taxable year as does not exceed the limitation
applicable under section 415(c) of the Internal Revenue
Code of 1986 to contributions to a defined contribution
plan.

“(b) AMERICAN SAVINGS ACCOUNT FUND.—For pur-
poses of this section, the term ‘American Savings Account
Fund’ means the Fund established under section 5011 of
the Employee Retirement Income Security Act of 1974.”.

(2) DENIAL OF DEDUCTION.—Subsection (b) of
section 219 of such Code is amended by adding at
the end the following new paragraph:
“(6) **Special rule for American savings accounts.**—This section shall not apply with respect to any amount contributed to an individual retirement account (as defined in section 408(a)) or a Roth IRA (as defined in section 408A(b)) which is an American Savings Account (as defined in section 5021 of the Employee Retirement Income Security Act of 1974).”.

(3) **Clerical amendment.**—The table of sections for part III of subchapter B of chapter 1 of such Code is amended by inserting after the item relating to section 139E the following new item:

“Sec. 139F. Amounts contributed to American Savings Accounts.”.

(e) **Treatment of distributions as separate from other IRAs and Roth IRAs.**—Subparagraph (A) of section 408(d)(2) of the Internal Revenue Code of 1986 is amended by striking “plans” and inserting “plans (other than American Savings Accounts, within the meaning of section 5021 of the Employee Retirement Income Security Act of 1974)”.

(f) **Effective date.**—

(1) **Program.**—The Chair of the American Savings Account Board of Directors shall establish the American Savings Account program such that the American Savings Account Fund is prepared to begin receiving contributions on January 1 of the
3rd calendar year beginning after the date of the enactment of this Act.

(2) Treatment of Contributions.—Except as provided in paragraph (1), the amendments made by this section shall apply to contributions made to the American Savings Account Fund, as established by the amendments made by subsection (a), after December 31 of the 2nd calendar year beginning after the date of the enactment of this Act.

SEC. 3. PENALTY FOR EMPLOYER NONCOMPLIANCE.

Section 6672 of the Internal Revenue Code of 1986 is amended by adding at the end the following new subsection:

“(f) Employer Noncompliance With Requirements of American Savings Account Act.—Except as provided in section 5023(c) of the Employee Retirement Income Security Act of 1974, any employer that fails to make any contribution required by section 5022 of such Act shall be treated for purposes of subsection (a) as if the employer had willfully failed to collect a tax in the amount of such required contribution.”.

SEC. 4. OUTREACH.

The Commissioner of Internal Revenue shall provide to any person filing Form 1099 information on contributing to the American Savings Account Fund.
1 SECTIONS 5. INDEPENDENT CONTRACTORS.

2 The Secretary of Labor shall promulgate rules allowing employers to—

3 (1) request explicit authorization from independent contractors with such employers to contribute on behalf of such independent contractors to the American Savings Account Fund; and

4 (2) automatically withhold and transmit a set amount or percentage of compensation paid to such independent contractors to such Fund.