H. R. 6540

To increase portability of and access to retirement savings, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JULY 26, 2018

Ms. BONAMICI (for herself, Mr. MESSER, and Mr. BANKS of Indiana) introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committee on Education and the Workforce, 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 increase portability of and access to retirement savings, 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 “Retirement Savings Lost and Found Act of 2018”.

SECTION 2. RETIREMENT SAVINGS LOST AND FOUND.

(a) Establishment.—
(1) IN GENERAL.—Not later than 2 years after the date of the enactment of this Act, the Commissioner of Social Security and the Secretary of the Treasury in cooperation shall establish an online mechanism to be known as the “Retirement Savings Lost and Found”, to be managed by the Director of the Retirement Savings Lost and Found established under section 4 of this Act—

(A) to allow an individual to search for information that enables the individual to locate the plan administrator of any plans with respect to which the individual is a participant or beneficiary, and to provide contact information for the plan administrator of any plan described in paragraph (2) with respect to which the individual may be entitled to a benefit;

(B) to allow such Director to assist such an individual in locating any plan of the individual; and

(C) to allow such Director to make any necessary changes to contact information on record for the plan administrator based on any changes to the plan due to merger or consolidation of the plan with any other plan, division of the plan into two or more plans, bankruptcy,
termination, change in name of the plan, change in name or address of the plan administrator, or other causes.

The Retirement Savings Lost and Found established under this paragraph shall contain the information obtained by the Commissioner of Social Security regarding deferred vested benefits under section 6057 of the Internal Revenue Code of 1986 (including information so obtained before the date of the enactment of this Act). Such information shall be retained in the Retirement Savings Lost and Found in perpetuity.

(2) Plans described.—A plan described in this paragraph is a plan to which the vesting standards of section 203 of part 2 of subtitle B of title I of the Employee Retirement Income Security Act of 1974 apply.

(b) Administration.—The Retirement Savings Lost and Found established under subsection (a) shall provide individuals described in subsection (a)(1) only with the ability to view contact information for the plan administrator of any plan with respect to which the individual is a participant or beneficiary, sufficient to allow the individual to locate the individual’s plan.

(c) Current Information.—
(1) IN GENERAL.—Paragraph (2) of section 6057(a) of the Internal Revenue Code of 1986 is amended—

(A) in subparagraph (C)—

(i) by striking “during such plan year” in clause (i) and inserting “during the plan year immediately preceding such plan year”;

(ii) by adding “and” at the end of clause (i); and

(iii) by striking clause (iii);

(B) by redesignating subparagraph (E) as subparagraph (G);

(C) by striking “and” at the end of subparagraph (D); and

(D) by inserting after subparagraph (D) the following new subparagraphs:

“(E) the name and taxpayer identifying number of each participant or former participant in the plan—

“(i) who, during any previous plan year, was reported under subparagraph (C), and with respect to whom the benefits described in subparagraph (C)(ii) were fully paid during the plan year,
“(ii) with respect to whom any amount was distributed under section 401(a)(31)(B) during the plan year, or
“(iii) with respect to whom a deferred annuity contract was distributed during the plan year,
“(F) in the case of a participant or former participant to whom subparagraph (E) applies—
“(i) in the case of a participant described in clause (ii) thereof, the name and address of the designated trustee or issuer described in section 401(a)(31)(B)(i) and the account number of the individual retirement plan to which the amount was distributed, and
“(ii) in the case of a participant described in clause (iii) thereof, the name and address of the issuer of such annuity contract and the contract or certificate number, and”.

(2) Rules relating to direct trustee-to-trustee transfers.—

(A) In general.—Paragraph (6) of section 402(e) of such Code is amended—
(i) by striking “TRANSFERS.—Any” and inserting “TRANSFERS.—
“(A) IN GENERAL.—Any”; and
(ii) by adding at the end the following new subparagraph:
“(B) NOTIFICATION OF TRUSTEE.—In the case of a distribution under section 401(a)(31)(B), the plan administrator shall notify the designated trustee or issuer described in clause (i) thereof that the transfer is a mandatory distribution required by such section.”.

(B) PENALTY.—Subsection (i) of section 6652 of such Code is amended—
(i) by striking “TO RECIPIENTS” in the heading and inserting “OR NOTIFICATION”; 
(ii) by striking “402(f),” and inserting “402(f) or a notification as required by section 402(e)(6)(B),”; and 
(iii) by striking “such written explanation” and inserting “such written explanation or notification”.

(C) REPORTS.—Subsection (i) of section 408 of such Code is amended—
(i) by redesignating subparagraphs (A) and (B) of paragraph (2) as clauses (i) and (ii), respectively, and by moving such clauses 2 ems to the right;

(ii) by redesignating paragraphs (1) and (2) as subparagraphs (A) and (B), respectively, and by moving such subparagraphs 2 ems to the right;

(iii) by striking “as the Secretary prescribes” in subparagraph (B)(ii), as so redesignated, and all that follows through “a simple retirement account” and inserting “as the Secretary prescribes.

“(3) SIMPLE RETIREMENT ACCOUNTS.—In the case of a simple retirement account”;

(iv) by striking “REPORTS.—The trustee of” and inserting “REPORTS.—

“(1) IN GENERAL.—The trustee of”;

(v) by striking “under paragraph (2)” in paragraph (3), as redesignated by clause (iii), and inserting “under paragraph (1)(B)”;

(vi) by inserting after paragraph (1)(B)(ii), as redesignated by the pre-
ceeding clauses, the following new paragraph:

“(2) MANDATORY DISTRIBUTIONS.—In the case of an account, contract, or annuity to which a transfer under section 401(a)(31)(B) is made (including a transfer from the individual retirement plan to which the original transfer under such section was made to another individual retirement plan), the report required by this subsection for the year of the transfer shall—

“(A) identify such transfer as a mandatory distribution required by such section,

“(B) include the name, address, and taxpayer identifying number of the trustee or issuer of the individual retirement plan to which the amount is transferred, and

“(C) be filed with the Director of the Retirement Savings Lost and Found established under section 2(a) of the Retirement Savings Lost and Found Act of 2018 as well as with the Secretary.”.

(3) NOTIFICATION OF PARTICIPANTS UPON SEPARATION.—Subsection (e) of section 6057 of such Code is amended by inserting “, and a notice of the availability of the Retirement Savings Lost and
Found established under section 2(a) of the Retirement Savings Lost and Found Act of 2018” before
the period at the end of the second sentence.

(4) EFFECTIVE DATE.—The amendments made by this subsection shall apply to distributions made
in, and returns and reports relating to, years beginning after the second December 31 occurring after
the date of the enactment of this Act.

(d) COORDINATION WITH DISTRIBUTION REQUIREMENTS, FIDUCIARY DUTIES, etc.—

(1) AMENDMENT OF INTERNAL REVENUE CODE OF 1986.—Paragraph (9) of section 401(a) of the In-
ternal Revenue Code of 1986 is amended by adding at the end the following new subparagraph:

“(H) COORDINATION WITH RETIREMENT SAVINGS LOST AND FOUND.—

“(i) IN GENERAL.—With respect to any lost or missing participant of a plan, the plan shall not be treated as failing to satisfy the requirements of this paragraph or any other requirement of this title which cannot be satisfied due to the plan's inability to locate the participant.

“(ii) LOST OR MISSING PARTICIPANT.—For purposes of subclause (i), the
term ‘lost or missing participant’ means any employee or the beneficiary of an employee with respect to whom the plan administrator or other responsible party (including a plan service provider or trustee or issuer of an individual retirement plan receiving a transfer described in section 401(a)(31)(B)) has—

“(I) satisfied the requirements of section 6057(a),

“(II) made at least one unsuccessful attempt to contact the individual at the most recent address maintained for the individual in the records of the plan, by certified mail or other similar delivery service if the most recent address is a physical address, and by electronic mail or other electronic communication if the only address on record is an electronic address, and

“(III) has taken at least one (two, in the case of an individual for whom the plan records contain only an electronic address) of the addi-
tional measures described in clause (iii) to attempt to locate the individual.

“(iii) ADDITIONAL MEASURES.—The additional measures described in this clause are the following, when taken by a plan administrator or other responsible party:

“(I) Checked with the administrator of a related plan or checked the plan sponsor’s records for an updated address.

“(II) Made at least one unsuccessful attempt to contact the individual’s designated plan beneficiary, by the methods described in clause (ii)(II).

“(III) Performed at least one search using free electronic search tools.

“(IV) Attempted to locate the participant using a commercial locator service.

“(iv) CESSATION OF STATUS.—An individual shall cease to be treated as a lost
or missing participant during any period
the plan administrator has actual knowl-
dge of the individual’s whereabouts and
how to contact the individual, except that
the requirements of this paragraph and
any other requirement of this title which
cannot be satisfied if the plan is unable to
locate a participant shall be waived for the
180-day period beginning on the date the
plan administrator first had such actual
knowledge.

“(v) JOINT REGULATORY AUTHORITY.—Any temporary, proposed, or final
regulation or other guidance of general ap-
plicability under this subparagraph shall be
issued jointly by the Internal Revenue
Service, Department of the Treasury, the
Employee Benefits Security Administra-
tion, Department of Labor, and the Pen-
sion Benefit Guaranty Corporation.”.

(2) AMENDMENT OF EMPLOYEE RETIREMENT
INCOME SECURITY ACT OF 1974.—

(A) IN GENERAL.—Section 404 of the Em-
ployee Retirement Income Security Act of 1974
(29 U.S.C. 1104) is amended by adding at the end the following new subsection:

“(e) COORDINATION WITH RETIREMENT SAVINGS LOST AND FOUND.—

“(1) IN GENERAL.—With respect to any lost or missing participant of a plan, a fiduciary of the plan shall not be treated as failing to satisfy any requirement to search for or attempt to locate, or to provide any document or information to, such individual, or any other requirement of this title which cannot be satisfied due to the plan’s inability to locate the participant.

“(2) LOST OR MISSING PARTICIPANT.—For purposes of paragraph (1), the term ‘lost or missing participant’ means any participant or former participant, or the beneficiary of any such individual, with respect to whom the plan administrator or other responsible party (including a plan service provider or trustee or issuer of an individual retirement plan receiving a transfer described in section 401(a)(31)(B)) has—

“(A) satisfied the requirements of section 6057(a) of the Internal Revenue Code of 1986,

“(B) made at least one unsuccessful attempt to contact the individual at the most re-
cent address maintained for the individual in the records of the plan, by certified mail or other similar delivery service if the most recent address is a physical address, and by electronic mail or other electronic communication if the only address on record is an electronic address, and

“(C) has taken at least one (two, in the case of an individual for whom the plan records contain only an electronic address) of the additional measures described in paragraph (3) to attempt to locate the individual.

“(3) ADDITIONAL MEASURES.—The additional measures described in this paragraph are the following, when taken by a plan administrator or other responsible party:

“(A) Checked with the administrator of a related plan or checked the plan sponsor’s records for an updated address.

“(B) Made at least one unsuccessful attempt to contact the individual’s designated plan beneficiary, by the methods described in paragraph (2)(B).

“(C) Performed at least one search using free electronic search tools.
“(D) Attempted to locate the participant using a commercial locator service.

“(4) Cessation of Status.—An individual shall cease to be treated as a lost or missing participant during any period the plan administrator has actual knowledge of the individual’s whereabouts and how to contact the individual, except that the requirements described in paragraph (1) shall be waived for the 180-day period beginning on the date the plan administrator first had such actual knowledge.

“(5) Joint Regulatory Authority.—Any temporary, proposed, or final regulation or other guidance of general applicability under this subsection shall be issued jointly by the Internal Revenue Service, Department of the Treasury, the Employee Benefits Security Administration, Department of Labor, and the Pension Benefit Guaranty Corporation.”.

(B) Conforming Amendments.—Section 4050(a)(1) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1350(a)(1)) is amended—

(i) in subparagraph (B)—
(I) by striking “provides” and inserting “either—

“(i) provides”; 

(II) by striking the period at the end and inserting “; or”; and 

(III) by adding at the end the following new clause:

“(ii) satisfies the requirements of section 6057(a) of the Internal Revenue Code of 1986.”; and 

(ii) by adding at the end the following flush language:

“All temporary, proposed, or final regulation or other guidance of general applicability under this subsection shall be issued jointly by the Internal Revenue Service, Department of the Treasury, the Employee Benefits Security Administration, Department of Labor, and the Pension Benefit Guaranty Corporation.”.

(e) Requirement of Electronic Filing.—

(1) In General.—Paragraph (2) of section 6011(e) of the Internal Revenue Code of 1986 is amended—
(A) by redesignating subparagraphs (A) and (B) as clauses (i) and (ii), respectively, and by moving such clauses 2 ems to the right;

(B) by striking “the requirements of such regulations” and all that follows through “the Secretary shall require” and inserting “the requirements of such regulations.

“(B) CERTAIN PARTNERSHIPS.—Notwithstanding subparagraph (A), the Secretary shall require”;

(C) by striking “REGULATIONS.—In prescribing” and inserting “REGULATIONS.—

“(A) IN GENERAL.—In prescribing”; and

(D) by adding at the end the following new subparagraph:

“(C) EXCEPTIONS.—Notwithstanding subparagraph (A), the Secretary shall require returns or reports required under—

“(i) sections 6057, 6058, and 6059, and

“(ii) sections 408(i), 6041, and 6047 to the extent such return or report relates to the tax treatment of a distribution from a plan, account, contract, or annuity,
to be filed on magnetic media, but only with re-
spect to persons who are required to file at
least 50 returns during the calendar year which
includes the first day of the plan year to which
such returns or reports relate.”.

(2) Effective Date.—The amendments made
by this subsection shall apply to returns and reports
relating to years beginning after the second Decem-
ber 31 occurring after the date of the enactment of
this Act.

(f) Safeguarding Participant Privacy and Se-
curity.—In establishing the Retirement Savings Lost
and Found under subsection (a), the Commissioner of So-
cial Security and the Secretary of the Treasury shall take
all necessary and proper precautions, including consulting
with the Secretary of Health and Human Services, to en-
sure that individuals’ plan information maintained by the
Retirement Savings Lost and Found is protected and that
persons other than the individual cannot fraudulently
claim the benefits to which any individual is entitled, and
to allow any individual to opt out of inclusion in the Lost
and Found at the election of the individual.

(g) Conforming Amendment.—Subparagraph (B)
of section 6103(l)(1) of the Internal Revenue Code of
1986 is amended by striking “responsibility under section
1131 of the Social Security Act and inserting “responsibilities under section 1131 of the Social Security Act and section 2(a)(1) of the Retirement Savings Lost and Found Act of 2018”.

(h) **Authorization of Appropriations.**—There are authorized to be appropriated such sums as may be necessary to carry out the purposes of this section.

**SEC. 3. MANDATORY TRANSFERS OF ROLLOVER DISTRIBUTIONS.**

(a) **Investment Options.**—

(1) **In general.**—Subparagraph (B) of section 404(c)(3) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1104(c)(3)) is amended by striking the period at the end and inserting “, and, to the extent the Secretary provides in guidance or regulations issued after the enactment of the Retirement Savings Lost and Found Act of 2018, is made to—

“(i) a target date or life cycle fund held under such account;

“(ii) as described in section 2550.404a–2 of title 29, Code of Federal Regulations, an investment product held under such account designed to preserve
principal and provide a reasonable rate of return;

“(iii) the Director of the Retirement Savings Lost and Found in accordance with section 4(b)(1) of the Retirement Savings Lost and Found Act of 2018 or an individual retirement account (as defined in section 408(a) of the Internal Revenue Code of 1986) established by the Secretary of the Treasury on behalf of the participant or beneficiary, but only if all applicable reporting requirements are met with respect to such transfer; or

“(iv) such other option as the Secretary may so provide.”.

(2) REGULATIONS.—Not later than 270 days after the date of the enactment of this Act, the Secretary of Labor shall promulgate regulations identifying the target date or life cycle funds, or specifying the characteristics of such a fund, that will be deemed to meet the requirements of section 404(c)(3)(B)(i) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1104(e)(3)(B)), as amended by paragraph (1).
(b) Expansion of Cap; Authority to Transfer Lesser Amounts.—

(1) Cap.—Sections 401(a)(31)(B)(ii) and 411(a)(11)(A) of the Internal Revenue Code of 1986 and section 203(e)(1) of the Employee Retirement Income Security Act of 1974 are each amended by striking "$5,000" and inserting "$6,000".

(2) Lesser Amounts.—Subparagraph (B) of section 401(a)(31) of such Code is amended by adding at the end the following new clauses:

“(iii) Treatment of Lesser Amounts.—In the case of a trust which is part of an eligible plan, such trust shall not be a qualified trust under this section unless such plan provides that, if a participant in the plan separates from the service covered by the plan and the nonforfeitable accrued benefit described in clause (ii) is not in excess of $1,000, the plan administrator shall (either separately or as part of the notice under section 402(f)) notify the participant that the participant is entitled to such benefit or attempt to pay the benefit directly to the participant.
“(iv) Transfers to Retirement Savings Lost and Found or Treasury.—If, after a plan administrator takes the action required under clause (iii), the participant does not—

“(I) within 6 months of the notification under such clause, make an election under subparagraph (A) or elect to receive a distribution of the benefit directly, or

“(II) accept any direct payment made under such clause within 6 months of the attempted payment,

the plan administrator shall transfer the amount of such benefit to the Director of the Retirement Savings Lost and Found in accordance with section 4(b)(1) of the Retirement Savings Lost and Found Act of 2018 or to an individual retirement account (as defined in section 408(a)) established by the Secretary on behalf of the individual.

“(v) Income Tax Treatment of Transfers to Retirement Savings Lost and Found.—For purposes of deter-
mining the income tax treatment of transfers to the Director of the Retirement Savings Lost and Found under clause (iv)—

“(I) such a transfer shall be treated as a transfer to an individual retirement plan under clause (i), and

“(II) the distribution of such amounts by the Director of the Retirement Savings Lost and Found shall be treated as a distribution from an individual retirement plan.”.

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply to vested benefits with respect to participants who separate from service connected to the plan in plan years beginning after the second December 31 occurring after the date of the enactment of this Act.

(4) RULE OF CONSTRUCTION.—Nothing in this Act shall be interpreted to prohibit a plan administrator from transferring the accounts of missing participants to the Pension Benefit Guaranty Corporation pursuant to section 4050 of the Employee Retirement Income Security Act of 1974.
SEC. 4. OFFICE OF THE RETIREMENT SAVINGS LOST AND FOUND.

(a) IN GENERAL.—Not later than one year after the date of the enactment of this Act, the Commissioner of Social Security and the Secretary of the Treasury shall establish within the appropriate agency or subdivision thereof an Office of the Retirement Savings Lost and Found, to be administered by a Director of the Retirement Savings Lost and Found who (without regard to the agency or subdivision where such Office is established) shall report to both such Commissioner and such Secretary.

(b) RESPONSIBILITIES OF DIRECTOR.—

(1) IN GENERAL.—In addition to administering the Retirement Savings Lost and Found under section 2 and carrying out the duties described in subparagraphs (B) and (C) of section 2(a)(1), the Director of the Retirement Savings Lost and Found established under this section shall—

(A) perform an annual audit of plan information contained in the Retirement Savings Lost and Found and ensure that such information is current and accurate;

(B) invest any amount transferred under section 401(a)(31)(B)(iv) of the Internal Revenue Code of 1986 in United States Treasury securities;
(C) upon application filed by the participant or beneficiary in such form and manner as may be prescribed in regulations, pay to the participant or beneficiary the amount transferred (or the appropriate survivor benefit) either—

(i) in a single sum (plus interest); or

(ii) in such other form as is specified in regulations; and

(D) identify such amount as eligible to be paid into an eligible retirement plan described in section 402(c)(8)(B) of the Internal Revenue Code of 1986.

(2) OPTION TO CONTRACT.—The Director of the Retirement Savings Lost and Found shall conduct an analysis of the cost effectiveness of contracting with a third party to carry out the responsibilities under paragraph (1) and, if the Director determines that it would be more cost effective to do so than to carry out such responsibilities within the Office of the Retirement Savings Lost and Found, the Director shall report to the Committees on Finance and Health, Education, Labor, and Pensions of the Senate and the Committees on Ways and Means and Education and the Workforce of the
House of Representatives the intention to so contract.

(3) Option to prescribe protocols.—The Director of the Retirement Savings Lost and Found may establish protocols to assist participants originally treated as lost or missing in claiming their benefits under a plan.

(4) Coordination.—The Director of the Retirement Savings Lost and Found shall coordinate with the Pension Benefit Guaranty Corporation and other applicable agencies to integrate information and databases on lost, missing, and inactive participants.