

115TH CONGRESS
2D SESSION

S. 3436

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 12, 2018

Mrs. MURRAY (for herself, Ms. WARREN, Mrs. SHAHEEN, Ms. BALDWIN, Ms. HEITKAMP, Ms. HIRONO, Ms. STABENOW, Ms. CANTWELL, Ms. KLOBUCHAR, Ms. HASSAN, Ms. CORTEZ MASTO, Ms. DUCKWORTH, Ms. SMITH, Mrs. MCCASKILL, and Mrs. FEINSTEIN) 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.**

4 This Act may be cited as the “Women’s Pension Pro-
5 tection Act of 2018”.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

1 (1) Approximately 29 percent of households
2 headed by individuals aged 55 through 74 have no
3 defined benefit plan or retirement savings, according
4 to 2016 data from the Survey of Consumer Fi-
5 nances.

6 (2) Approximately 34 percent of the private sec-
7 tor workforce does not have access to a retirement
8 plan at the workplace, and only half of the workforce
9 actually participates in a retirement plan.

10 (3) Women's retirement preparedness often lags
11 significantly behind their male counterparts, result-
12 ing in the median retirement income for women in
13 2014 being just 54 percent of men's retirement in-
14 come.

15 (4) Women are 1.5 times as likely as men to
16 live in poverty after age 65.

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

21 (6) The cost impact on women who leave the
22 workforce early to become caregivers, in terms of
23 lost wages and Social Security benefits, equals
24 \$324,044 in lost retirement savings.

1 (7) Just one in 5 part-time workers who work
2 a full year are eligible for a retirement plan, and
3 women are almost twice as likely to work part-time
4 as men.

5 (8) While traditional defined benefit retirement
6 plans have spousal protections, defined contribution
7 retirement plans, which have become increasingly
8 common, currently provide no similar spousal protec-
9 tions.

10 (9) Every year more than 1,200,000 couples get
11 divorced in the United States. After the family
12 home, retirement savings are the largest asset that
13 must be divided at divorce.

14 (10) While fees and expenses associated with
15 retirement plans have been in decline, participants
16 have seen direct charges for processing qualified do-
17 mestic relations orders increase significantly.

18 **SEC. 3. INCREASING SPOUSAL PROTECTION UNDER DE-**
19 **FINED CONTRIBUTION PLANS.**

20 (a) IN GENERAL.—Part 2 of subtitle B of title I of
21 the Employee Retirement Income Security Act of 1974
22 (29 U.S.C. 1051 et seq.) is amended by inserting after
23 section 205 the following new section:

1 **“SEC. 205A. ADDITIONAL SPOUSAL CONSENT REQUIRE-**
2 **MENTS.**

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

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

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

14 “(1) any distribution that is—

15 “(A) a minimum required distribution de-
16 scribed in section 4974(b) of the Internal Rev-
17 enue Code of 1986;

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

22 “(C) made upon hardship of the partici-
23 pant; or

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

1 “(2) any distribution in the form of a qualified
2 joint and survivor annuity (as defined in section
3 205(d)(1)), a qualified optional survivor annuity (as
4 defined in section 205(d)(2)), a qualified preretire-
5 ment survivor annuity (as defined in section 205(e)),
6 or a series of substantially equal periodic payments
7 (not less frequently than annually) made for the
8 joint lives (or life expectancies) of the participant
9 and the participant’s spouse; or

10 “(3) in the case of a participant who does not
11 elect a form of benefit described in paragraph (2)
12 under the plan or who is participating in a plan that
13 does not provide such a form of benefit, any dis-
14 tribution of the participant’s entire nonforfeitable
15 accrued benefit if 50 percent of such accrued benefit
16 is transferred to an individual retirement plan (as
17 defined in section 7701(a)(37) of the Internal Rev-
18 enue Code of 1986) of the spouse of the participant.

19 A transfer described in paragraph (3) to an individual re-
20 tirement plan shall be treated in the same manner as a
21 transfer under section 408(d)(6) of the Internal Revenue
22 Code of 1986.

23 “(d) EXCEPTIONS FOR CERTAIN ROLLOVER CON-
24 TRIBUTIONS.—Subsection (a) shall not apply to any dis-
25 tribution that is an eligible rollover distribution (as de-

1 fined in section 402(f)(2)(A) of the Internal Revenue Code
2 of 1986) made in the form of a direct trustee-to-trustee
3 transfer within the meaning of section 401(a)(31) of the
4 Internal Revenue Code of 1986—

5 “(1) to a plan to which this section or section
6 205 applies; or

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

10 “(A) the beneficiary of such plan is the
11 spouse of the participant, or the spousal con-
12 sent requirements of subsection (e) are met
13 with respect to any designation of one or more
14 other beneficiaries; and

15 “(B) the beneficiary of such plan (whether
16 the spouse or other beneficiary designated
17 under paragraph (1)) may not be changed un-
18 less—

19 “(i) the spousal consent requirements
20 of subsection (e) are met with respect to
21 any such change; or

22 “(ii) the spousal consent under sub-
23 paragraph (A) to the designation of a ben-
24 eficiary other than the spouse expressly

1 permits such designation to be changed
2 without the further consent of the spouse.

3 “(e) SPOUSAL CONSENT REQUIREMENTS.—

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

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

17 “(B) the spouse of the participant consents
18 in writing to the distribution or designation or
19 change of beneficiary;

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

23 “(D) the written consent under subpara-
24 graph (B)—

1 “(i) acknowledges the effect of such
2 distribution or designation or change of
3 beneficiary; and

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

6 “(2) EXCEPTIONS UNDER SECTION 205(C)(2)(B)
7 TO APPLY.—The requirements of paragraph (1)
8 (other than subparagraph (A) thereof) shall not
9 apply with respect to any distribution or designation
10 or change of beneficiary if a participant establishes
11 to the satisfaction of the plan administrator that—

12 “(A) there is no spouse;

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

17 “(C) such consent cannot be obtained be-
18 cause—

19 “(i) the spouse cannot be located;

20 “(ii) due to exceptional circumstances,
21 requiring the participant to seek the
22 spouse’s consent would be inappropriate;
23 or

1 “(iii) of such other circumstances as
2 the Secretary of the Treasury may by reg-
3 ulations prescribe.

4 “(3) CONSENT LIMITED TO SPOUSE AND
5 EVENT.—Any written consent by a spouse under
6 paragraph (1), or the establishment by a participant
7 that an exception under paragraph (2) applies with
8 respect to a spouse, shall be effective only with re-
9 spect to that spouse and to the distribution or des-
10 ignation or change of beneficiary to which it relates.

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

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

16 “(B) such other period as the Secretary of
17 the Treasury may provide.

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

21 (b) CLERICAL AMENDMENT.—The table of sections
22 of part 2 of subtitle B of title I of the Employee Retirement
23 Income Security Act of 1974 is amended by insert-
24 ing after the item relating to section 205 the following
25 new item:

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

1 (c) RIGHT OF ACTION.—Section 502(a) of the Em-
 2 ployee Retirement Income Security Act of 1974 (29
 3 U.S.C. 1132) is amended by striking “or” at the end of
 4 paragraph (10), by striking the period at the end of para-
 5 graph (11) and inserting “; or”, and by adding at the end
 6 the following new paragraph:

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

10 (d) PARALLEL AMENDMENT TO SECTION 205.—Sec-
 11 tion 205(c)(2)(B) of the Employee Retirement Income Se-
 12 curity Act of 1974 (29 U.S.C. 1055(c)(2)(B)) is amended
 13 by inserting “, because due to exceptional circumstances
 14 requiring the participant to seek the spouse’s consent
 15 would be inappropriate” after “located”.

16 **SEC. 4. IMPROVING COVERAGE FOR LONG-TERM PART-**
 17 **TIME WORKERS.**

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

22 “(c) SPECIAL RULE FOR CERTAIN PART-TIME EM-
 23 PLOYEES.—

24 “(1) IN GENERAL.—A pension plan that in-
 25 cludes either a qualified cash or deferred arrange-

1 ment (as defined in section 401(k) of the Internal
2 Revenue Code of 1986) or a salary reduction agree-
3 ment (as described in section 403(b) of such Code)
4 shall not require, as a condition of participation in
5 the arrangement or agreement, that an employee
6 complete a period of service with the employer (or
7 employers) maintaining the plan extending beyond
8 the close of the earlier of—

9 “(A) the period permitted under subsection
10 (a)(1) (determined without regard to subpara-
11 graph (B)(i) thereof) and section 410(a)(1) of
12 such Code (determined without regard to sub-
13 paragraph (B)(i) thereof); or

14 “(B) the first 24-month period—

15 “(i) consisting of 2 consecutive 12-
16 month periods during each of which the
17 employee has at least 500 hours of service;
18 and

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

21 “(2) EXCEPTION.—Paragraph (1)(B) shall not
22 apply to employees who are included in a unit of em-
23 ployees covered by an agreement which the Secretary
24 finds to be a collective bargaining agreement be-
25 tween employee representatives and one or more em-

1 ployers, if there is evidence that retirement benefits
2 were the subject of good faith bargaining between
3 such employee representatives and such employer or
4 employers.

5 “(3) COORDINATION WITH OTHER RULES.—In
6 the case of employees who are not highly com-
7 pensated employees (within the meaning of section
8 414(q) of the Internal Revenue Code of 1986) and
9 who are eligible to participate in the arrangement or
10 agreement solely by reason of paragraph (1)(B):

11 “(A) EXCLUSIONS.—An employer may
12 elect to exclude such employees from the deter-
13 mination of whether the plan that includes the
14 arrangement or agreement satisfies the require-
15 ments of subsections (a)(4), (k)(3), (k)(12),
16 (k)(13), (m)(2), (m)(11), and (m)(12) of sec-
17 tion 401 of such Code, section 410(b) of such
18 Code, and section 416 of such Code. If the em-
19 ployer so excludes such employees with respect
20 to the requirements of any such provision, such
21 employees shall be excluded with respect to the
22 requirements of all such provisions. This sub-
23 paragraph shall cease to apply to any employee
24 as of the first plan year beginning after the
25 plan year in which the employee completes 1

1 year of service (without regard to paragraph
2 (1)(B) of this subsection).

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

7 “(4) 12-MONTH PERIOD.—For purposes of this
8 subsection, 12-month periods shall be determined in
9 the same manner as under the last sentence of sub-
10 section (a)(3)(A), except that 12-month periods be-
11 ginning before January 1, 2019, shall not be taken
12 into account.”.

13 (b) VESTING.—Section 203(b) of the Employee Re-
14 tirement Income Security Act of 1974 (29 U.S.C.
15 1053(a)) is amended by redesignating paragraph (4) as
16 paragraph (5) and by inserting after paragraph (3) the
17 following new paragraph:

18 “(4) PART-TIME EMPLOYEES.—For purposes of de-
19 termining whether an employee who is eligible to partici-
20 pate in a qualified cash or deferred arrangement or a sal-
21 ary reduction agreement under a plan solely by reason of
22 section 202(e)(1)(B) has a nonforfeitable right to em-
23 ployer contributions—

24 “(A) except as provided in subparagraph (B),
25 each 12-month period for which the employee has at

1 least 500 hours of service shall be treated as a year
2 of service; and

3 “(B) 12-month periods occurring before the 24-
4 month period described in section 202(c)(1)(B) shall
5 not be treated as years of service.

6 For purposes of this paragraph, 12-month periods shall
7 be determined in the same manner as under the last sen-
8 tence of section 202(a)(3)(A), except that 12-month peri-
9 ods beginning before January 1, 2019, shall not be taken
10 into account.”.

11 (c) PENALTY.—Section 502 of the Employee Retire-
12 ment Income Security Act of 1974 (29 U.S.C. 1132) is
13 amended by adding at the end the following new sub-
14 section:

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

1 **SEC. 5. EFFECTIVE DATES.**

2 (a) INCREASING SPOUSAL PROTECTION UNDER DE-
3 FINED CONTRIBUTION PLANS.—Except as provided in
4 subsections (c) and (d), the amendments made by section
5 2 shall apply to distributions and rollover contributions
6 made in plan years beginning after the date that is 6
7 months after the date of the enactment of this Act.

8 (b) ENSURING COVERAGE FOR LONG-TERM PART-
9 TIME WORKERS.—Except as provided in subsections (c)
10 and (d), the amendments made by section 3 shall apply
11 to plan years beginning after December 31, 2018.

12 (c) COLLECTIVE BARGAINING AGREEMENTS.—In the
13 case of a plan maintained pursuant to one or more collec-
14 tive bargaining agreements between employee representa-
15 tives and one or more employers ratified before the date
16 of the enactment of this Act, the amendments made by
17 sections 2 and 3 shall not apply to distributions or rollover
18 contributions on behalf of employees covered by any such
19 agreement for plan years beginning before the earlier of—

20 (1) the later of—

21 (A) the date on which the last of such col-
22 lective bargaining agreements terminates (de-
23 termined without regard to any extension there-
24 of on or after such date of the enactment); or

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

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

3 (d) PROVISIONS RELATING TO PLAN AMEND-
4 MENTS.—

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

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

12 (A) IN GENERAL.—Paragraph (1) shall
13 apply to any amendment to any plan or annuity
14 contract which is made—

15 (i) pursuant to the amendments made
16 by section 2 or 3 or pursuant to any regu-
17 lation issued under either such section; and

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

22 In the case of a governmental plan (as defined
23 in section 414(d) of the Internal Revenue Code
24 of 1986), this subparagraph shall be applied by

1 substituting “5 years” for “3 years” in clause
2 (ii).

3 (B) CONDITIONS.—Subparagraph (A) shall
4 not apply to any amendment unless—

5 (i) the plan or contract is operated as
6 if such plan or contract amendment were
7 in effect for the period described in sub-
8 paragraph (C); and

9 (ii) such plan or contract amendment
10 applies retroactively for such period.

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

13 (i) beginning on the effective date
14 specified by the plan; and

15 (ii) ending on the date described in
16 subparagraph (A)(ii) (or, if earlier, the
17 date the plan or contract amendment is
18 adopted).

19 **SEC. 6. ACCESS TO INDEPENDENT CONSUMER INFORMA-**
20 **TION AND UNDERSTANDING.**

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

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

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

5 (b) REQUIRED LINK TO CONSUMER AWARENESS IN-
6 FORMATION.—In any offer for the sale, exchange, or other
7 transfer of a retirement financial product or service to a
8 consumer carried out by a financial product or service pro-
9 vider, such provider shall provide, in a manner consistent
10 with subsection (c), an easily accessible link to the website
11 of the Bureau of Consumer Financial Protection (CFPB)
12 at which the consumer may access information, literature,
13 guides, programs, tools, strategies, or any other resource
14 produced by the CFPB or other Federal agency relating
15 to retirement planning or later life economic security.

16 (c) DETERMINATION.—In order to ensure that the re-
17 quirement under subsection (b) is effectively carried out,
18 the Financial Literacy and Education Commission
19 (FLEC) shall determine and publish on its website the
20 appropriate link to the CFPB’s website for access to the
21 CFPB’s and other Federal agencies’ consumer education
22 materials, the preferred format of such link, and any ac-
23 companying description of the CFPB and the consumer
24 education materials associated with such link.

1 **SEC. 7. GRANTS TO PROMOTE FINANCIAL LITERACY FOR**
2 **WOMEN.**

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

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

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

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

22 (e) **USE OF FUNDS.**—An eligible entity that receives
23 a grant under this section shall use the grant funds to
24 develop and implement financial literacy education, and
25 related activities including outreach, awareness building,
26 and counseling to increase women’s knowledge of retire-

1 ment planning and consumer, economic, and personal fi-
2 nancial concepts.

3 (f) AUTHORIZATION OF APPROPRIATIONS.—There is
4 authorized to be appropriated to carry out this section
5 \$100,000,000 for fiscal year 2019 and each succeeding
6 fiscal year.

7 **SEC. 8. GRANTS TO ASSIST LOW-INCOME WOMEN AND VIC-**
8 **TIMS OF DOMESTIC VIOLENCE IN OBTAINING**
9 **QUALIFIED DOMESTIC RELATIONS ORDERS.**

10 (a) AUTHORIZATION OF GRANT AWARDS.—The Sec-
11 retary of Labor, acting through the Director of the Wom-
12 en’s Bureau in conjunction with the Assistant Secretary
13 of the Employee Benefits Security Administration, shall
14 award grants, on a competitive basis, to eligible entities
15 to enable such entities to assist low-income women and
16 victims of domestic violence in obtaining qualified domes-
17 tic relations orders and ensuring that those women actu-
18 ally obtain the benefits to which they are entitled through
19 those orders.

20 (b) DEFINITION OF ELIGIBLE ENTITY.—In this sec-
21 tion, the term “eligible entity” means a community-based
22 organization with proven experience and expertise in serv-
23 ing women and the financial and retirement needs of
24 women.

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

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

9 (e) USE OF FUNDS.—An eligible entity that receives
10 a grant under this section shall use the grant funds to
11 develop programs to offer help to low-income women or
12 victims of domestic violence who need assistance in pre-
13 paring, obtaining, and effectuating a qualified domestic re-
14 lations order.

15 (f) AUTHORIZATION OF APPROPRIATIONS.—There is
16 authorized to be appropriated to carry out this section
17 \$100,000,000 for fiscal year 2019 and each succeeding
18 fiscal year.

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