To amend the Internal Revenue Code of 1986 to provide for death and disability protection for loans from qualified employer plans.

IN THE HOUSE OF REPRESENTATIVES

DECEMBER 13, 2011

Mr. SESSIONS 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 amend the Internal Revenue Code of 1986 to provide for death and disability protection for loans from qualified employer plans.

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 “Retirement Savings
5 Security Act of 2011”.

H. R. 3656
SEC. 2. PARTICIPANT LOAN DEATH AND DISABILITY PROTECTION.

(a) QUALIFIED PARTICIPANT LOAN PROTECTION ARRANGEMENT.—Section 414 of the Internal Revenue Code of 1986 is amended by inserting at the end the following new subsection:

“(y) QUALIFIED PARTICIPANT LOAN PROTECTION ARRANGEMENT.—

“(1) IN GENERAL.—For purposes of this title, the term ‘qualified participant loan protection arrangement’ means an arrangement under which a participant or beneficiary who receives (directly or indirectly) any amount as a loan from an eligible retirement plan described in clause (iii), (iv), or (vi) of section 402(c)(8)(B) has the option to obtain protection against death and disability in the manner described in paragraph (2).

“(2) MANNER OF PROVIDING PROTECTION.—For purposes of paragraph (1)—

“(A) MANNER OF PROTECTION.—Protection against death and disability described in this paragraph is protection provided through—

“(i) a group insurance policy issued to the plan for the sole purpose of providing participant and beneficiary loan death and disability insurance, or
“(ii) a debt protection product in which debt protection is provided through appropriate commercial contractual liability insurance.

“(B) Cost of Debt Protection.—For purposes of subparagraph (A)(ii), a product shall not be treated as a debt protection product unless the cost of such product is allocated to the accounts of participants or beneficiaries with outstanding loans.

“(C) Reimbursement Requirement.—An arrangement shall not be treated as providing protection against death and disability for purposes of paragraph (1) unless under such arrangement—

“(i) the plan, upon death or disability of the participant or beneficiary, is required to cancel any outstanding loan balance, and

“(ii) such protection provides for payment to the plan of—

“(I) an amount equal to the outstanding loan balance of the participant or beneficiary, and
“(II) the amount taken into account under section 402(m)(1)(B).

“(D) ELECTION TO OPT OUT OF COVERAGE.—Protection against death and disability under a qualified participant loan protection arrangement shall apply unless a participant or beneficiary elects in writing to receive a loan without protection against participant death or disability. Any such election shall be irrevocable.

“(3) RATE OF INTEREST.—A loan described in paragraph (1) shall not be treated as failing to bear a reasonable rate of interest for purposes of any requirement of law solely because the rate of interest under the loan is reduced by the cost of the death and disability protection provided pursuant to this subsection, and such protection may be taken into account in determining whether a loan bears a reasonable rate of interest.

“(4) DEFINITIONS.—For purpose of this subsection—

“(A) DEBT PROTECTION PRODUCT.—The term ‘debt protection product’ means a loan term or contractual arrangement modifying loan terms under which a plan agrees to—
“(i) cancel all or part of a participant’s or beneficiary’s obligation to repay an extension of credit from that plan upon the occurrence of a specified event; and

“(ii) in the event of a participant’s or beneficiary’s death or disability, credit to the account of such participant or beneficiary of an additional amount equal to the amount taken into account under section 402(m)(1)(B).

Such loan term or contractual arrangement may be separate from or a part of other loan documents.

“(B) DISABILITY.—The term ‘disability’ means an impairment described in section 72(m)(7) that causes a participant to be disabled within the meaning of section 72(m)(7).

“(5) SPECIAL RULE.—A debt protection product used in connection with a qualified participant loan protection arrangement shall not be treated as a swap (as defined by section 1a(47) of the Commodity Exchange Act (7 U.S.C. 1a(47))) or as a security-based swap (as defined by section 3(a)(68) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(68))).”.
(b) Deemed Distribution in Event of Death or Disability.—Paragraph (2) of section 72(p) of the Internal Revenue Code of 1986 is amended by redesignating subparagraph (D) as subparagraph (E) and by inserting after subparagraph (C) the following new subparagraph:

“(D) Qualified Participant Loan Protection Arrangement.—In the event of the death or disability of a participant or beneficiary, the amount of any outstanding loan to the participant or beneficiary that is cancelled pursuant to a group insurance policy or debt protection product that was made available under a qualified participant loan protection arrangement described in section 414(y) shall be—

“(i) paid to the plan and credited to the interest in the plan of the participant or beneficiary,

“(ii) deemed distributed to such participant or beneficiary (or his or her specified beneficiaries) on the date of such payment, and

“(iii) treated as an amount described in paragraph (1)(A) on the date of such
payment and not as an amount described
in section 61(a)(12).”.

(c) Exception to Income Inclusion Rules Relating to Purchase of Life Insurance Protection.—Subparagraph (B) of section 72(m)(3) of the Internal Revenue Code of 1986 is amended by adding at the end the following new sentence: “This subparagraph shall not apply to any amount that is a repayment of a loan to a participant or beneficiary by a plan described in subparagraph (A)(i) or a trust described in subparagraph (A)(ii), if that repayment is applied to the purchase of participant and beneficiary loan death and disability protection pursuant to a qualified participant loan protection arrangement described in section 414(y).”.

(d) Exclusion From Gross Income for Certain Distributions Pursuant to Cancelled Loan.—Section 402 of the Internal Revenue Code of 1986 (relating to the taxability of beneficiary of employees' trust) is amended by inserting at the end the following new subsection:

“(m) Certain Distributions Pursuant to Cancelled Loan.—

“(1) In general.—In the case of an employee to whom paragraph (2) applies (or the beneficiary of such employee), gross income of such employee (or
such beneficiary) does not include any distribution from the eligible retirement plan described in paragraph (2)(A) to the extent that—

“(A) such distribution is made on or before the day prescribed by law (including extensions of time) for filing such employee’s or beneficiary’s return for the taxable year in which such employee dies or becomes disabled, and

“(B) the aggregate amount of such distributions does not exceed the excess of—

“(i) the proceeds of the group insurance policy or debt protection product through which the protection described in paragraph (2)(B) is provided, over

“(ii) the amount of the deemed distribution described in paragraph (2)(D).

For purposes of clause (i), not more than 135 percent of the amount described in clause (ii) shall be taken into account.

“(2) APPLICATION.—This paragraph shall apply to an employee who—

“(A) receives a loan from an eligible retirement plan described in clause (iii), (iv) or (vi) of subsection (c)(8)(B),
“(B) obtains the protection described in section 414(y)(2) pursuant to a qualified partic-
ipant and beneficiary death and disability pro-
tection arrangement described in section 414(y) with respect to such loan,
“(C) dies or becomes disabled, and
“(D) is deemed to receive a distribution pursuant to section 72(p)(2)(D) following such
death or disability with respect to such loan.
“(3) DISTRIBUTION.—A distribution described in paragraph (1) shall be treated as not violating the
requirements of sections 401(k)(2), 403(b)(7)(A)(ii), and 403(b)(11).
“(4) OTHERWISE DISTRIBUTABLE AMOUNT.—A group insurance policy or debt protection product
may provide that the amount that would otherwise be distributable pursuant to this subsection may be
paid directly by the issuer of such group insurance policy or debt protection product to the employee.
Any such amount shall be treated as paid to the elig-
gible retirement plan and distributed to the em-
ployee pursuant to this subsection.”.
(e) EFFECTIVE DATE.—The amendments made by this section shall be take effect with respect to loans made
after the one year period beginning on the day after the date of enactment of this Act.

(f) Application of Fiduciary Standards Under Employee Retirement Income Security Act of 1974 With Respect to a Qualified Participant Loan Protection Arrangement.—No person that, as a fiduciary of an eligible retirement plan described in clause (iii), (iv) or (vi) of section 402(c)(8)(B) of the Internal Revenue Code of 1986, whether or not such person has adopted a qualified participant loan protection arrangement (as defined section 414(y) of such Code (added by subsection (a) of this section)), shall be deemed to have violated section 404 or 406 of the Employee Retirement Income Security Act of 1974 in connection with adopting or not adopting such an arrangement.