H. R. 4050

To simplify and enhance qualified retirement plans, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

February 16, 2012

Mr. Neal 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 simplify and enhance qualified retirement plans, and for other purposes.

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

SECTION 1. SHORT TITLE; REFERENCE; TABLE OF CON-
tENTS.

(a) SHORT TITLE.—This Act may be cited as the “Retirement Plan Simplification and Enhancement Act of 2012”.

(b) AMENDMENT OF 1986 CODE.—Except as other-
wise expressly provided, whenever in this Act an amend-
ment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1986.

(c) Table of Contents.—The table of contents of this Act is as follows:

Sec. 1. Short title; reference; table of contents.

TITLE I—EXPANDING COVERAGE AND INCREASING RETIREMENT SAVINGS

Sec. 102. Qualified cash or deferred arrangements must allow long-term employees working more than 500 but less than 1,000 hours per year to participate.
Sec. 103. Separate application of top heavy rules to defined contribution plans covering part-time employees.

TITLE II—ENCOURAGING SMALL BUSINESSES TO ENTER AND REMAIN IN THE EMPLOYER RETIREMENT PLAN SYSTEM

Sec. 201. Enhancement of credit for small employer pension plan startup costs.
Sec. 202. Eliminating barriers to use of multiple employer plans.

TITLE III—PRESERVATION OF INCOME

Sec. 301. Study of application of spousal consent rules to defined contribution plans.
Sec. 302. Administration of joint and survivor annuity requirements.
Sec. 303. Availability of distribution options.
Sec. 304. Rollover of insurance contracts to IRAs.
Sec. 305. Portability of lifetime income options.

TITLE IV—SIMPLIFICATION AND CLARIFICATION OF QUALIFIED RETIREMENT PLAN RULES

Sec. 401. Exception from required distributions where aggregate retirement savings do not exceed $100,000.
Sec. 402. Alternative methods for electronic disclosure.
Sec. 403. Expansion of Employee Plans Compliance Resolution System.
Sec. 404. Use of forfeitures to fund safe harbor contributions.
Sec. 405. Substantial cessation of operations.
Sec. 406. Church plan clarification.
Sec. 407. Protecting older, longer service participants.
Sec. 408. Review and report to the Congress relating to reporting and disclosure requirements.
Sec. 409. Consolidation of defined contribution plan notices.
TITLE I—EXPANDING COVERAGE AND INCREASING RETIREMENT SAVINGS

SEC. 101. MODIFICATION OF AUTOMATIC ENROLLMENT SAFE HARBOR.

(a) In General.—

(1) Removal of 10 percent cap.—Clause (iii) of section 401(k)(13)(C) is amended by striking “, does not exceed 10 percent, and is at least” and inserting “and is”.

(2) Conforming amendments.—

(A) Subclause (I) of section 401(k)(13)(C)(iii) is amended by striking “3 percent” and inserting “at least 3 percent, but not greater than 10 percent,”.

(B) Subclause (II) of section 401(k)(13)(C)(iii) is amended by striking “4 percent” and inserting “at least 4 percent”.

(C) Subclause (III) of section 401(k)(13)(C)(iii) is amended by striking “5 percent” and inserting “at least 5 percent”.

(D) Subclause (IV) of section 401(k)(13)(C)(iii) is amended by striking “6 percent” and inserting “at least 6 percent”.

(b) Regulations.—Subparagraph (C) of section 401(k)(13) is amended by adding at the end thereof the following new clause:

“(v) Regulations.—

“(I) In general.—The Secretary may prescribe regulations that increase the percentages referenced in subclauses (I)–(IV) of clause (iii), except that no percentage may be increased by more than 8 percentage points and each such percentage may be increased by the same or different amounts or not increased. In determining whether and how to exercise this authority, the Secretary may consider all relevant factors, including—

“(aa) the extent to which such increases would directly result in more retirement savings by participants in arrangements described in this paragraph, resulting in higher level of retirement income for participants,

“(bb) the extent to which such increases would result in
more retirement savings by reason of communicating to employers and employees the importance of saving more than the percentages referenced in such subclauses (without regard to this clause),

“(cc) the extent to which increases that are too large could result in fewer employers adopting arrangements described in this paragraph for any reason, including the possible increase in employer cost due to increased matching contributions,

“(dd) the extent to which increases that are too large could result in more employees making elections described in clause (ii)(I), and

“(ee) the extent to which any such increases would increase administrative burdens and complexity, and how the increases can be structured to min-
imize such burdens and complexity.

“(II) CLARIFICATIONS.—Any such regulation shall clarify that—

“(aa) the percentages referenced in subclauses (I) through (IV) of clause (iii) are minimums,

“(bb) with respect to an arrangement, one or more of such percentages may be set at higher levels, except as provided in clause (iii)(I), and

“(cc) there need not be a uniform disparity between such higher levels and the levels referenced in subclauses (I)–(IV) of clause (iii).”.

(c) EFFECTIVE DATES.—

(1) SUBSECTION (a).—The amendments made by subsection (a) shall apply to plan years beginning after the date of the enactment of this Act.

(2) SUBSECTION (b).—Any regulations prescribed pursuant to the amendment made by subsection (b) shall apply to arrangements first established for plan years beginning at least six months
after publication of such regulations, or for such
later plan years determined under such regulations.

SEC. 102. QUALIFIED CASH OR DEFERRED ARRANGEMENTS
MUST ALLOW LONG-TERM EMPLOYEES
WORKING MORE THAN 500 BUT LESS THAN
1,000 HOURS PER YEAR TO PARTICIPATE.

(a) Participation Requirement.—

(1) In general.—Subparagraph (D) of section
401(k)(2) (defining qualified cash or deferred ar-
rangement) is amended to read as follows:

“(D) which does not require, as a condi-
tion of participation in the arrangement, that
an employee complete a period of service with
the employer (or employers) maintaining the
plan extending beyond the close of the earlier
of—

“(i) the period permitted under sec-
tion 410(a)(1) (determined without regard
to subparagraph (B)(i) thereof), or

“(ii) subject to the provisions of para-
graph (14), the first period of 3 consecu-
tive 12-month periods during each of which
the employee has at least 500 hours of
service.”.
(2) Special rules.—Section 401(k) (relating to cash or deferred arrangements), as amended by section 902 of the Pension Protection Act of 2006, is amended by adding at the end the following new paragraph:

“(14) Special rules for participation requirement for long-term, part-time workers.—For purposes of paragraph (2)(D)(ii)—

“(A) Age requirement must be met.—

Paragraph (2)(D)(ii) shall not apply to an employee unless the employee has met the requirement of section 410(a)(1)(A)(i) by the close of the last of the 12-month periods described in such paragraph.

“(B) Nondiscrimination and top-heavy rules not to apply.—

“(i) Nondiscrimination rules.—In the case of employees who are eligible to participate in the arrangement solely by reason of paragraph (2)(D)(ii)—

“(I) notwithstanding subsection (a)(4), an employer shall not be required to make nonelective or matching contributions on behalf of such employees even if such contributions
are made on behalf of other employees eligible to participate in the arrange-
ment, and

“(II) an employer may elect to exclude such employees from the appli-
cation of subsection (a)(4), paragraph (3), subsection (m)(2), and sec-
tion 410(b).

“(ii) TOP-HEAVY RULES.—An em-
ployer may elect to exclude all employees who are eligible to participate in a plan maintained by the employer solely by rea-
son of paragraph (2)(D)(ii) from the appli-
cation of the vesting and benefit require-
ments under subsections (b) and (c) of sec-
tion 416.

“(iii) VESTING.—For purposes of de-
termining whether an employee described in clause (i) has a nonforfeitable right to employer contributions (other than con-
tributions described in paragraph (3)(D)(i)) under the arrangement, each 12-month period for which the employee has at least 500 hours of service shall be treated as a year of service.
“(iv) Employees who become full-time employees.—This subpara-
graph shall cease to apply to any employee as of the first plan year beginning after the plan year in which the employee meets the requirements of section 410(a)(1)(A)(ii) without regard to para-
graph (2)(D)(ii).

“(C) Exception for employees under collectively bargained plans, etc.—Para-
graph (2)(D)(ii) shall not apply to employees described in section 410(b)(3).

“(D) Special rules.—

“(i) Time of participation.—The rules of section 410(a)(4) shall apply to an employee eligible to participate in an ar-
range ment solely by reason of paragraph (2)(D)(ii).

“(ii) 12-month periods.—12-month periods shall be determined in the same manner as under the last sentence of sec-
tion 410(a)(3)(A).”.

(b) Effective date.—The amendments made by this section shall apply to plan years beginning after De-
cember 31, 2012, except that, for purposes of section
SEC. 103. SEPARATE APPLICATION OF TOP HEAVY RULES TO DEFINED CONTRIBUTION PLANS COV-
ERING PART-TIME EMPLOYEES.

(a) In General.—Paragraph (2) of section 416(c) is amended by adding at the end the following:

“(C) Separate application to employees not meeting age and service requirements.—If employees not meeting the age or service requirements of section 410(a)(1) (without regard to subparagraph (B) thereof) are covered under a plan of the employer which meets the requirements of paragraphs (A) and (B) separately with respect to such employees, such employees may be excluded from consideration in determining whether any plan of the employer meets the requirements of subparagraphs (A) and (B).”.

(b) Effective Date.—The amendment made by subsection (a) shall apply to plan years beginning after the date of the enactment of this Act.
TITLE II—ENCOURAGING SMALL
BUSINESSES TO ENTER AND
REMAIN IN THE EMPLOYER
RETIREMENT PLAN SYSTEM

SEC. 201. ENHANCEMENT OF CREDIT FOR SMALL EMPLOYER PENSION PLAN STARTUP COSTS.

(a) IN GENERAL.—Section 45E(b)(1) is amended by striking “$500” and inserting “$1,500”.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to taxable years beginning after December 31, 2012.

SEC. 202. ELIMINATING BARRIERS TO USE OF MULTIPLE EMPLOYER PLANS.

By December 31, 2012, the Secretaries of the Treasury and Labor shall—

(1) prescribe administrative guidance establishing conditions under which an employer participating in a plan described in section 413(c) of the Internal Revenue Code of 1986 shall not have any liability under title I of the Employee Retirement Income Security Act of 1974 with respect to the acts or omissions of one or more other participating employers, which regulations may require that the portion of the plan attributable to such participating
employers be spun off to plans maintained by such employers,

(2) prescribe administrative guidance establishing conditions under which a plan described in section 413(c) of such Code may be treated as satisfying the qualification requirements of sections 401(a) and 413(c) of such Code despite the violation of such requirements by one or more participating employers, including requiring, if appropriate, that the portion of the plan attributable to such participating employers be spun off to plans maintained by such employers, and

(3) prescribe administrative guidance providing simplified means by which plans described in section 413(c) of such Code may satisfy the requirements of section 103 of the Employee Retirement Income Security Act of 1974.

TITLE III—PRESERVATION OF INCOME

SEC. 301. STUDY OF APPLICATION OF SPOUSAL CONSENT RULES TO DEFINED CONTRIBUTION PLANS.

(a) Study.—The Government Accountability Office shall conduct a study of the feasibility and desirability of extending the application of the requirements of section 205 of the Employee Retirement Income Security Act of
1974 and sections 401(a)(11) and 417 of the Internal Revenue Code of 1986 (relating to spousal consent requirements) to defined contribution plans to which such requirements do not apply. Such study shall include consideration of any modifications of such requirements that are necessary to apply such requirements to such plans.

(b) Report.—Not later than 1 year after the date of the enactment of this Act, the Government Accountability Office shall report the results of the study, together with any recommendations for legislative changes, 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.

SEC. 302. ADMINISTRATION OF JOINT AND SURVIVOR ANNUITY REQUIREMENTS.

(a) Amendments to the Employee Retirement Income Security Act of 1974.—

(1) In general.—Section 402(c) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1102(c)) is amended—

(A) in paragraph (2) by striking “or” at the end,

(B) in paragraph (3) by striking the period at the end and inserting “; or”, and
(C) by adding at the end the following new paragraph:

“(4) that a named fiduciary, or a fiduciary designated by a named fiduciary pursuant to a plan procedure described in section 405(c), may appoint an annuity administrator or administrators with responsibility for administration of an individual account plan in accordance with the requirements of section 205 and payment of any annuity required thereunder.”.

(2) Section 405 of such Act (29 U.S.C. 1105) is amended by adding at the end the following new subsection:

“(e) Annuity Administrator.—If an annuity administrator or administrators have been appointed under section 402(c)(4) and such entity acknowledges in writing that they are the annuity administrator, then neither the named fiduciary nor any appointing fiduciary shall be liable for any act or omission of the annuity administrator except to the extent that—

“(1) the fiduciary violated section 404(a)(1)—

“(A) with respect to such allocation or designation, or

“(B) in continuing the allocation or designation,
“(2) the fiduciary would otherwise be liable in accordance with subsection (a), or

“(3) the fiduciary is neither an insurance company nor approved to be an annuity administrator by the Secretary.”.

(b) Effective Date.—The amendments made by subsection (a) shall apply as of the date of enactment of this Act.

SEC. 303. AVAILABILITY OF DISTRIBUTION OPTIONS.

(a) Lifetime Income Investments.—By the date that is one year after the date of enactment of this Act, the Secretary of the Treasury shall issue final regulations under which it is clarified that any specified age or service condition (or combination of age and service conditions) with respect to a lifetime income investment (as defined in section 401(a)(38)(B)(ii)) under a defined contribution plan shall be disregarded in determining whether such lifetime income investment is currently available to an employee for purposes of Treasury Regulation section 1.401(a)(4)–4(b) (or any successor provision).

(b) Enforcement.—As of the date of enactment of this Act, the Secretary of the Treasury shall administer and enforce the law in accordance with subsection (a) with respect to plan years beginning before, on, or after the date of enactment of this Act.
(c) Effective Date.—This section shall take effect as of the date of enactment of this Act.

SEC. 304. ROLLOVER OF INSURANCE CONTRACTS TO IRAS.

(a) In General.—Section 408(a)(3) is amended by inserting “other than insurance contracts that were rolled over to an IRA from a qualified retirement plan described in clause (iii), (iv), or (vi) of section 402(c)(8)(b) provided that such contracts provide only incidental death benefits taking into account both the IRA and the qualified retirement plan” after “contract”.

(b) Effective Date.—The amendment made by subsection (a) shall apply to years beginning after December 31, 2012.

SEC. 305. PORTABILITY OF LIFETIME INCOME OPTIONS.

(a) In General.—Subsection (a) of section 401 of the Internal Revenue Code of 1986 is amended by adding at the end thereof the following new paragraph:

“(38) Portability of lifetime income.—

“(A) In general.—A trust forming part of a defined contribution plan shall not be treated as failing to constitute a qualified trust under this section solely by reason of allowing—

“(i) qualified distributions of a lifetime income investment, or
“(ii) distributions of a lifetime income investment in the form of a qualified plan distribution annuity contract,
on or after the date that is 90 days prior to the date on which such lifetime income investment is no longer authorized to be held as an investment option under the plan except as may otherwise be provided by regulations.

“(B) Definitions.—For purposes of this subsection—

“(i) the term ‘qualified distribution’ means a direct trustee-to-trustee transfer to an eligible retirement plan (as defined in section 402(c)(8)(B)), as described in section 401(a)(31)(A),

“(ii) the term ‘lifetime income investment’ means an investment option that is designed to provide an employee with election rights—

“(I) that are not uniformly available with respect to other investment options under the plan, and

“(II) that are to a lifetime income feature available through a contract or other arrangement offered
under the plan or under another eligi-
able retirement plan (as defined in sec-
tion 402(c)(8)(B)) through a direct
trustee-to-trustee transfer to such
other eligible retirement plan under
section 401(a)(31)(A),
“(iii) the term ‘lifetime income fea-
ture’ means—
“(I) a feature that guarantees a
minimum level of income annually (or
more frequently) for at least the re-
mainder of the life of the employee or
the joint lives of the employee and the
employee’s designated beneficiary, or
“(II) an annuity payable on be-
half of the employee under which pay-
ments are made in substantially equal
periodic payments (not less frequently
than annually) over the life of the em-
ployee or the joint lives of the em-
ployee and the employee’s designated
beneficiary, taking into account the
rules of clause (iii) of section
401(a)(9)(I), and
“(iv) the term ‘qualified plan distribution annuity contract’ means an annuity contract purchased for a participant and distributed to the participant by a plan described in subparagraph (B) of section 402(c)(8) (without regard to clauses (i) and (ii) thereof).”.

(b) CASH OR DEFERRED ARRANGEMENT.—Clause (i) of section 401(k)(2)(B) of such Code is amended by striking “or” at the end of subclause (IV), by striking “and” at the end of subclause (V) and inserting “or”, and by adding at the end of clause (i) the following:

“(VI) with respect to amounts invested in a lifetime income investment (as defined in section 401(a)(38)(B)(ii)), the date that is 90 days prior to the date that such lifetime income investment may no longer be held as an investment option under the plan, provided that any distribution under this subclause must be in the form of a qualified distribution (as defined in section 401(a)(38)(B)(i)) or a qualified plan distribution annu-
ity contract (as defined in section 401(a)(38)(B)(iv)).”.

(c) Section 403(b) Plans.—

(1) Annuity Contracts.—Paragraph (11) of section 403 of such Code is amended by striking “or” at the end of subparagraph (B), by striking the period at the end of subparagraph (C), and by inserting “, or”, and by adding at the end of paragraph (11) the following:

“(D) with respect to amounts invested in a lifetime income investment (as defined in section 401(a)(38)(B)(ii)), the date that is 90 days prior to the date that such lifetime income investment may no longer be held as an investment option under the plan, provided that any distribution under this subparagraph must be in the form of a qualified distribution (as defined in section 401(a)(38)(B)(i)) or a qualified plan distribution annuity contract (as defined in section 401(a)(38)(B)(iv)).”.

(2) Custodial Accounts.—Clause (ii) of section 403(b)(7)(A) of such Code is amended to read as follows:

“(ii) under the custodial account, no such amounts may be paid or made avail-
able to any distributee (unless such amount is a distribution to which section 72(t)(2)(G) applies) before—

“(I) the employee dies,

“(II) the employee attains age 59½,

“(III) the employee has a severance from employment,

“(IV) the employee becomes disabled (within the meaning of section 72(m)(7)),

“(V) in the case of contributions made pursuant to a salary reduction agreement (within the meaning of section 3121(a)(5)(D)), the employee encounters financial hardship, or

“(VI) with respect to amounts invested in a lifetime income investment (as defined in section 401(a)(38)(B)(ii)), the date that is 90 days prior to the date that such lifetime income investment may no longer be held as an investment option under the plan, provided that any distribution under this subparagraph must be
in the form of a qualified distribution (as defined in section 401(a)(38)(B)(i)) or a qualified plan distribution annuity contract (as defined in section 401(a)(38)(B)(iv)).”.

(d) Eligible Deferred Compensation Plans.—

Subparagraph (A) of section 457(d)(1) of such Code is amended by striking “or” at the end of clause (ii), by inserting “or” at the end of clause (iii), and by adding at the end of subparagraph (A) the following:

“(iv) with respect to amounts invested in a lifetime income investment (as defined in section 401(a)(38)(B)(ii)), the date that is 90 days prior to the date that such lifetime income investment may no longer be held as an investment option under the plan, provided that any distribution under this subparagraph must be in the form of a qualified distribution (as defined in section 401(a)(38)(B)(i)) or a qualified plan distribution annuity contract (as defined in section 401(a)(38)(B)(iv)).”.

(e) Effective Date.—The amendments made by this section shall apply to plan years beginning after December 31, 2012.
TITLE IV—SIMPLIFICATION AND
CLARIFICATION OF QUALIFIED RETIREMENT PLAN RULES

SEC. 401. EXCEPTION FROM REQUIRED DISTRIBUTIONS WHERE AGGREGATE RETIREMENT SAVINGS DO NOT EXCEED $100,000.

(a) IN GENERAL.—Section 401(a)(9) (relating to required distributions) is amended by adding at the end the following new subparagraph:

“(J) Exception from required minimum distributions during life of employee or beneficiary where assets do not exceed $100,000.—

“(i) In general.—If, as of a measurement date, the aggregate balance to the credit of an employee under all applicable eligible retirement plans does not exceed $100,000, then the requirements of subparagraph (A) shall not apply to the employee during any succeeding calendar year. In addition, if, as of a measurement date, the aggregate balance to the credit of an employee under all applicable eligible retirement plans does not exceed $100,000,
then the requirements of subparagraph (B) shall not apply during any succeeding calendar year to the employee’s designated beneficiary with respect to the designated beneficiary’s interest in the balance to the credit of the deceased employee.

“(ii) Applicable Eligible Retirement Plan.—For purposes of this subparagraph, the term ‘applicable eligible retirement plan’ means an eligible retirement plan (as defined in section 402(c)(8)(B)) and any other plan, contract, or arrangement to which the requirements of section 401(a)(9) apply.

“(iii) Special Rule for Benefits Paid as a Life Annuity from Defined Benefit Plan.—In determining the aggregate balance under clause (i), there shall not be taken into account the value of any benefits under a defined benefit plan that, on the measurement date, are being paid as a life annuity.

“(iv) Measurement Date.—

“(I) Initial Measurement Dates.—The initial measurement
date for an individual is the last day of the calendar year preceding the earlier of—

“(aa) the calendar year in which the employee attains age 70 1/2, or

“(bb) the calendar year in which the employee dies.

“(II) Subsequent Measurement Dates.—If, in a calendar year, an individual who is exempted from the requirements of this paragraph pursuant to clause (i) receives contributions, rollovers, or transfers of amounts, or accrues additional benefits under a defined benefit plan, that were not previously taken into account in applying this subparagraph, then the last day of that calendar year shall be a new measurement date and a new determination shall be made as to whether clause (i) applies.

“(v) Determining Value of Defined Benefit Plan Benefits.—The value of defined benefit plan benefits is de-
terminated in accordance with the applicable interest rate and applicable mortality rate assumptions under section 417(e), except that the value shall be equal to the amount of the single sum payment payable to the extent available under the plan.

“(vi) Phase-in of minimum distribution requirements.—For an individual whose aggregate balance exceeds the exemption level in clause (i) by less than $10,000, required minimum distribution requirements will phase in based on the ratio of—

“(I) the amount by which the aggregate balance exceeds the exemption level, to

“(II) $10,000.

“(vii) Cost of living adjustments.—The Secretary shall adjust annually the $100,000 amount specified in clause (i) for increases in the cost-of-living at the same time and in the same manner as adjustments under section 415(d); except that the base period shall be the calendar quarter beginning July 1, 2012, and
any increase which is not a multiple of $5,000 shall be rounded to the next lowest multiple of $5,000.’’

(b) Effective Date.—The amendment made by this section shall apply to initial measurement dates occurring on or after December 31, 2012.

SEC. 402. ALTERNATIVE METHODS FOR ELECTRONIC DISCLOSURE.

(a) Amendment to Employee Retirement Income Security Act of 1974.—Part 1 of subtitle B of title I of the Employee Retirement Income Security Act of 1974 is amended by adding at the end thereof the following new section:

“SEC. 112. ELECTRONIC COMMUNICATION OF PENSION PLAN INFORMATION.

“(a) In General.—In the case of any documents or materials that are required under this title to be furnished to a plan participant, beneficiary, or other individual with respect to a pension plan, such documents or materials shall be furnished in accordance with subsection (b) or (c). This section shall apply to documents or materials that are required to be furnished by operation of law or on individual request and to documents or materials described in paragraphs (2), (3), (4), and (5) of subsection (b). For purposes of this section—
“(1) the term ‘documents or materials’ shall include, without limitation, reports, statements, notices, notifications, and other information, and

“(2) the term ‘recipient’ shall mean all plan participants, beneficiaries, and any other persons entitled to documents under this title or regulations issued thereunder (including, but not limited to, ‘alternate payees’ within the meaning of section 206(d)(3) and ‘qualified beneficiaries’ within the meaning of section 607(3)).

“(b) WEBSITES.—Any documents or materials described in subsection (a) may be furnished to a recipient by posting it on one or more websites if—

“(1) Access.—Access to such documents or materials is available to such recipient on such website or websites on either a timely or continuous basis, as appropriate.

“(2) Notification of availability.—Such recipient has been furnished notification of the availability of such documents or materials on such website or websites and how such documents or materials can be accessed.

“(3) Free paper copy.—Such recipient has been apprised of his ability to request and obtain,
free of charge, a paper copy of such documents or materials.

“(4) TIMING AND FORM OF NOTIFICATIONS.— The notifications described in paragraphs (2) and (3) are—

“(A) written in a manner calculated to be understood by the average plan participant,

“(B) except in the case of notifications described in paragraph (5), furnished in advance of the date that the document or materials are required to be provided, and annually thereafter, and

“(C) furnished in a manner permitted under subsection (c).

“(5) ADDITIONAL NOTIFICATIONS.—

“(A) In the case of documents or materials described in subparagraph (B), the notifications described in paragraphs (2) and (3) must be provided within a reasonable period prior to the applicable date described in subparagraph (B)(ii).

“(B) Documents or materials are described in this subparagraph if they are described in subsection (a) and—
“(i) such documents or materials relate to an event or other occurrence that was not scheduled at the time of any prior notification,

“(ii) the documents or materials relate to a date by which such recipient should be aware of such event or occurrence, and

“(iii) the recipient would not have had any reason to know that such date exists and applies to him without the notification.

Documents or materials to which this requirement applies include, without limitation, notifications regarding a blackout period (as defined in section 101(i)(7)) and notifications regarding a change in the address of the website.

“(6) Definition of website.—For purposes of this section, the term ‘website’ shall include any electronic application, site, or other accessible means of storing and displaying data or information.

“(c) Paper or electronic communication.—

“(1) Use of paper or electronic communication.—Any documents or materials described in subsection (a) may be furnished to a recipient in the following manner described in subparagraph (A), (B), (C), (D), or (E) of this paragraph, as deter-
mined by the entity furnishing the documents or materials:

“(A) Such documents or materials may be furnished through the use of paper.

“(B) Such documents or materials may be furnished electronically to a recipient who—

“(i) has the ability to effectively access documents furnished in electronic form at any location where the participant is reasonably expected to perform his or her duties as an employee, and

“(ii) with respect to whom access to the employer’s or plan sponsor’s electronic information is an integral part of those duties.

“(C) Such documents or materials may be furnished electronically to a recipient who has affirmatively consented, in electronic or nonelectronic form, to receiving documents or materials through electronic media and has not withdrawn such consent.

“(D) Such documents or materials may be furnished electronically to a recipient who has the effective ability to access the electronic medium used and who has received notification
through the use of paper of his ability to re-
quest and obtain, free of charge, a paper copy
of such documents or materials.

“(E) Such documents or materials may be
furnished in any additional manner permitted
by the Secretary or the Secretary of the Treas-
ury, as applicable.

“(2) PROTECTIONS FOR RECIPIENTS.—Elec-
tronic communications described in paragraph (1)
(B), (C), or (D) shall only be permitted with respect
to a plan if appropriate and necessary measures
have been taken that are reasonably calculated to
ensure that the system for furnishing documents or
materials—

“(A) has safeguards to maximize the likeli-
hood of actual receipt of transmitted informa-
tion,

“(B) protects the confidentiality of a re-
cipient’s personal information,

“(C) is designed so that the electronically
delivered documents or materials are prepared
and furnished in a manner that is consistent
with the style, format, and content require-
ments applicable to the documents or materials,
“(D) if necessary, apprises each recipient of the significance of the documents or materials,

“(E) apprises each recipient of the ability to request and obtain a paper version of the electronically furnished documents or materials, and provides such paper version on request, and

“(F) to the extent required by identical regulations prescribed by the Secretary and the Secretary of the Treasury, facilitates the ability of a recipient who is an employee to make the request described in subparagraph (E) with respect to documents or materials that are required to be furnished to such recipient after his termination of employment.

“(3) NOTIFICATIONS REGARDING CONSENT.—Electronic communications described in paragraph (1)(C) shall only be permitted with respect to a plan if recipients are provided with timely notifications with respect to—

“(A) the effect of the consent,

“(B) hardware and software requirements, and

“(C) changes in the hardware and software requirements.”.
(b) Amendment to Internal Revenue Code of 1986.—Section 414 of the Internal Revenue Code of 1986 is amended by adding at the end thereof the following new subsection:

“(y) Electronic Communication of Retirement Plan Information.—

“(1) In general.—In the case of any documents or materials that are required under this title to be furnished to a plan participant, beneficiary, or other individual with respect to a plan subject to this subchapter or to section 457, such documents or materials shall be furnished in accordance with paragraph (2) or (3). This subsection shall apply to documents or materials that are required to be furnished by operation of law or on individual request and to documents or materials described in subparagraphs (B), (C), (D), and (E) of paragraph (2). For purposes of this subsection—

“(A) the term ‘documents or materials’ shall include, without limitation, reports, statements, notices, notifications, and other information, and

“(B) the term ‘recipient’ shall mean all plan participants, beneficiaries, and any other persons entitled to documents under this sub-
chapter or section 457 or regulations issued thereunder (including, but not limited to, ‘alternate payees’ within the meaning of subsection (p)(8) and ‘qualified beneficiaries’ within the meaning of section 4980B(g)(1)).

“(2) WEBSITES.—Any documents or materials described in subsection (a) may be furnished to a recipient by posting it on one or more websites if—

“(A) ACCESS.—Access to such documents or materials is available to such recipient on such website or websites on either a timely or continuous basis, as appropriate.

“(B) NOTIFICATION OF AVAILABILITY.—Such recipient has been furnished notification of the availability of such documents or materials on such website or websites and how such documents or materials can be accessed.

“(C) FREE PAPER COPY.—Such recipient has been apprised of his ability to request and obtain, free of charge, a paper copy of such documents or materials.

“(D) TIMING AND FORM OF NOTIFICATIONS.—The notifications described in subparagraphs (B) and (C) are—
“(i) written in a manner calculated to be understood by the average plan participant,

“(ii) except in the case of notifications described in subparagraph (E), furnished in advance of the date that the document or materials are required to be provided, and annually thereafter, and

“(iii) furnished in a manner permitted under paragraph (3).

“(E) ADDITIONAL NOTIFICATIONS.—

“(i) In the case of documents or materials described in clause (ii), the notifications described in subparagraphs (B) and (C) must be provided within a reasonable period prior to the applicable date described in clause (ii)(II).

“(ii) Documents or materials are described in this subparagraph if they are described in subsection (a) and—

“(I) such documents or materials relate to an event or other occurrence that was not scheduled at the time of any prior notification,
“(II) the documents or materials relate to a date by which such recipient should be aware of such event or occurrence, and

“(III) the recipient would not have had any reason to know that such date exists and applies to him without the notification.

Documents or materials to which this requirement applies include, without limitation, notifications regarding a change in the address of the website.

“(F) Definition of Website.—For purposes of this subsection, the term ‘website’ shall include any electronic application, site, or other accessible means of storing and displaying data or information.

“(3) Paper or Electronic Communication.—

“(A) Use of Paper or Electronic Communication.—Any documents or materials described in paragraph (1) may be furnished to a recipient in the following manner described in clause (i), (ii), (iii), (iv), or (v) of this para-
graph, as determined by the entity furnishing
the documents or materials:

“(i) Such documents or materials may
be furnished through the use of paper.

“(ii) Such documents or materials
may be furnished electronically to a recipi-
ent who—

“(I) has the ability to effectively
access documents furnished in elec-
tronic form at any location where the
participant is reasonably expected to
perform his or her duties as an em-
ployee, and

“(II) with respect to whom ac-
cess to the employer’s or plan spon-
sor’s electronic information is an inte-
gral part of those duties.

“(iii) Such documents or materials
may be furnished electronically to a recipi-
ent who has affirmatively consented, in
electronic or nonelectronic form, to receiv-
ing documents or materials through elec-
tronic media and has not withdrawn such
consent.
“(iv) Such documents or materials may be furnished electronically to a recipient who has the effective ability to access the electronic medium used and who has received notification through the use of paper of his ability to request and obtain, free of charge, a paper copy of such documents or materials.

“(v) Such documents or materials may be furnished in any additional manner permitted by the Secretary or the Secretary of the Treasury, as applicable.

“(B) PROTECTIONS FOR RECIPIENTS.—Electronic communications described in subparagraph (A) (ii), (iii), or (iv) shall only be permitted with respect to a plan if appropriate and necessary measures have been taken that are reasonably calculated to ensure that the system for furnishing documents or materials—

“(i) has safeguards to maximize the likelihood of actual receipt of transmitted information,

“(ii) protects the confidentiality of a recipient’s personal information,
“(iii) is designed so that the electronically delivered documents or materials are prepared and furnished in a manner that is consistent with the style, format, and content requirements applicable to the documents or materials,

“(iv) if necessary, apprises each recipient of the significance of the documents or materials,

“(v) apprises each recipient of the ability to request and obtain a paper version of the electronically furnished documents or materials, and provides such paper version on request, and

“(vi) to the extent required by identical regulations prescribed by the Secretary and the Secretary of Labor, facilitates the ability of a recipient who is an employee to make the request described in clause (v) with respect to documents or materials that are required to be furnished to such recipient after his termination of employment.

“(C) Notifications regarding consent.—Electronic communications described in
subparagraph (A)(iii) shall only be permitted
with respect to a plan if recipients are provided
with timely notifications with respect to—
“(i) the effect of the consent,
“(ii) hardware and software require-
ments, and
“(iii) changes in the hardware and
software requirements.”.

(c) ASSURING COORDINATION.—The Secretary of the
Treasury and the Secretary of Labor shall ensure, through
the execution of an interagency memorandum of under-
standing among such Secretaries, that—

(1) regulations, rulings, and interpretations
issued by such Secretaries relating to the same mat-
ter over which such Secretaries have responsibility
under section 112 of Employee Retirement Income
Security Act of 1974 and 414(y) of the Internal
Revenue Code of 1986 are administered so as to
have the same effect at all times; and

(2) coordination of policies relating to enforcing
the same requirements through such Secretaries in
order to have a coordinated enforcement strategy
that avoids duplication of enforcement efforts and
assigns priorities in enforcement.
(d) EFFECTIVE DATE.—The amendments made by this section shall apply as of the date of enactment of this Act.

SEC. 403. EXPANSION OF EMPLOYEE PLANS COMPLIANCE RESOLUTION SYSTEM.

(a) IN GENERAL.—Not later than one year after the date of the enactment of this Act, the Secretary of the Treasury shall modify the Employee Plans Compliance Resolution System (as described in Revenue Procedure 2008–50) to achieve the results specified in the succeeding subsections of this section and to further facilitate corrections and compliance in such other means as the Secretary deems appropriate.

(b) LOAN ERROR.—

(1) In the case of plan loan errors for which corrections are specified under the voluntary compliance program, self-correction shall be made available by methods applicable to such loans through the voluntary compliance program.

(2) The Secretary of Labor shall treat any loan error corrected pursuant to paragraph (1) as meeting the requirements of the Voluntary Fiduciary Correction Program of the Department of Labor.

(c) 403(b) AND 457(b) PLAN CORRECTION.—The Secretary of the Treasury shall update the Employee
Plans Compliance Resolution System to provide the same type of comprehensive correction program that is available under such system to retirement plans qualified under section 401(a) of the Internal Revenue Code of 1986 to—

(1) plans maintained pursuant to section 403(b) of such Code, and

(2) plans maintained pursuant to section 457(b) of such Code by an employer described in section 457(e)(1)(A) of such Code.

(d) EPCRS FOR IRAS.—The Secretary of the Treasury shall expand the Employee Plans Compliance Resolution System to allow custodians of individual retirement plans to address inadvertent errors for which the owner of an individual retirement plan was not at fault, including (but not limited to)—

(1) waivers of the excise tax that would otherwise apply under section 4974 of the Internal Revenue Code of 1986,

(2) under the self-correction component of the Employee Plans Compliance Resolution System, waivers of the 60-day deadline for a rollover where the deadline is missed for reasons beyond the reasonable control of the account owner, and

(3) rules permitting a nonspouse beneficiary to return distributions to an inherited individual retire-
ment plan described in section 408(d)(3)(C) of the
Internal Revenue Code of 1986 in a case where, due
to an inadvertent error by a service provider, the
beneficiary had reason to believe that the distribu-
tion could be rolled over without inclusion in income
of any part of the distributed amount.

(e) Required Minimum Distribution Corrections.—The Secretary of the Treasury shall expand the
Employee Plans Compliance Resolution System to allow
plans to which such system applies and custodians of indi-
vidual retirement plans to self-correct, without an excise
tax, any inadvertent errors pursuant to which a distribu-
tion is made no more than 180 days after it was required
to be made.

(f) Automatic Feature Error Correction.—In
order to promote the adoption of automatic enrollment
and automatic escalation, the Secretary of the Treasury
shall modify the Employee Plans Compliance Resolution
System to establish specific correction methods for errors
in implementing automatic enrollment and automatic es-
calation features.

SEC. 404. USE OF FORFEITURES TO FUND SAFE HARBOR
CONTRIBUTIONS.

(a) In General.—Section 401(k) is amended by
adding at the end the following new paragraph:
“(14) A matching contribution or nonelective contribution described in paragraph (3)(D)(ii), sub-
paragraph (B) or (C) of paragraph (12), or para-
graph (13)(D) shall not fail to satisfy the definition
under such paragraph merely because the contribu-
tion is funded in whole or in part by forfeitures.”.

(b) EFFECTIVE DATE.—The amendment made by
subsection (a) shall apply to forfeitures allocated in ac-
cordance with section 401(k)(14) of the Internal Revenue
Code of 1986 (as amended by subsection (a)) before, on
or after the date of enactment of this Act.

SEC. 405. SUBSTANTIAL CESSION OF OPERATIONS.

(a) IN GENERAL.—Subsection (e) of section 4062 of
the Employee Retirement Income Security Act of 1974 is
amended by striking “If an employer” and inserting “(1)
IN GENERAL.—If an employer”, and by adding at the end
thereof the following new paragraph:

“(2) SUBSTANTIAL CESSATION OF OPER-
ATIONS.—An employer shall not be treated as hav-
ing a cessation described in paragraph (1) unless—

“(A) all operations at a facility in a loca-
tion are ceased and—

“(i) such cessation is reasonably ex-
pected to be permanent,
“(ii) no portion of such operations is moved to another facility at a different location,

“(iii) no portion of such operations is assumed or otherwise transferred to another employer, and

“(iv) no other operations are reasonably expected to be maintained at such facility, and

“(B) as a result of the cessation described in subparagraph (A), more than 20 percent of the employees of the employer have a termination of employment that is reasonably expected to be permanent. For purposes of this subparagraph, employees of the employer shall include all employees treated as employed by a single employer under sections 210(c) and (d).”.

(b) DIRECTION TO THE CORPORATION.—The Pension Benefit Guaranty Corporation shall not take any enforcement, administrative, or other actions pursuant to section 4062(e) of such Act that are inconsistent with subparagraph (A) of section 4062(e)(2) of such Act, as amended, without regard to whether such actions relate
to a cessation or other event that occurs before or after the date of enactment of this Act.

(c) Effective Date.—Subsection (b) and the amendment made by subsection (a) shall apply as of the date of enactment of this Act.

SEC. 406. CHURCH PLAN CLARIFICATION.

(a) Application of Controlled Group Rules to Church Plans.—

(1) In general.—Section 414(e) is amended—

(A) by striking “For purposes” and inserting the following:

“(1) In general.—For purposes”, and

(B) by adding at the end the following new paragraph:

“(2) Church Plans.—

“(A) General rule.—Except as provided in subparagraphs (B) and (C) below, for purposes of this subsection and subsection (m), an organization that is otherwise eligible to participate in a church plan as defined in subsection (e) shall not be aggregated with another such organization and treated as a single employer with such other organization unless—

“(i) one such organization provides directly or indirectly at least 80 percent of
the operating funds for the other organization during the preceding tax year of the recipient organization, and

“(ii) there is a degree of common management or supervision between the organizations.

For purposes of this subparagraph, a degree of common management or supervision exists only if the organization providing the operating funds is directly involved in the day-to-day operations of the other organization.

“(B) Nonqualified Church-controlled Organizations.—Notwithstanding the provisions of subparagraph (A), for purposes of this subsection and subsection (m), an organization that is a nonqualified church-controlled organization shall be aggregated with one or more other nonqualified church-controlled organizations, or with an organization that is not exempt from tax under section 501, and treated as a single employer with such other organizations, if at least 80 percent of the directors or trustees of such organizations are either representatives of, or directly or indirectly controlled by, the first organization. For
purposes of this subparagraph, a ‘nonqualified
church controlled organization’ shall mean a
church-controlled organization described in sec-
tion 501(c)(3) that is not a qualified church-
controlled organization described in section
3121(w)(3)(B).

“(C) PERMISSIVE AGGREGATION AMONG
CHURCH-RELATED ORGANIZATIONS.—Organiza-
tions described in subparagraph (A) may elect
to be treated as under common control for pur-
poses of this subsection. Such election shall be
made by the church or convention or association
of churches with which such organizations are
associated within the meaning of section
414(e)(3)(D), or by an organization determined
by such church or convention or association of
churches to be the appropriate organization for
making such election.

“(D) PERMISSIVE DISAGGREGATION OF
CHURCH-RELATED ORGANIZATIONS.—For pur-
poses of subparagraph (A) above, in the case of
a church plan (as defined in section 414(e)),
any employer may permissively disaggregate
those entities that are not churches (as defined
in section 403(b)(12)(B)) separately from those
entities that are churches, even if such entities maintain separate church plans.

“(E) ANTI-ABUSE RULE.—For purposes of subparagraphs (A) and (B), the anti-abuse rule in Treasury Regulation section 1.414(c)–5(f) shall apply.”.

(2) EFFECTIVE DATE.—The amendments made by this subsection shall apply to taxable years beginning before, on, or after the date of the enactment of this Act.

(b) APPLICATION OF CONTRIBUTION AND FUNDING LIMITATIONS TO 403(b) GRANDFATHERED DEFINED BENEFIT PLANS.—

(1) IN GENERAL.—Section 251(e)(5) of the Tax Equity and Fiscal Responsibility Act of 1982 (Public Law 97–248), is amended—

(A) by striking “403(b)(2)” and inserting “403(b)”, and

(B) by inserting before the period at the end the following: “, and shall be subject to the applicable limitations of section 415(b) of such Code as if it were a defined benefit plan under section 401(a) of such Code and not the limitations of section 415(c) of such Code (relating to limitation for defined contribution plans).”.

•HR 4050 IH
(2) Effective date.—The amendments made by this subsection shall apply as if included in the enactment of the Tax Equity and Fiscal Responsibility Act of 1982.

c) Automatic Enrollment by Church Plans.—

(1) In general.—This subsection shall supersede any law of a State which would directly or indirectly prohibit or restrict the inclusion in any church plan (as defined in this subsection) of an automatic contribution arrangement.

(2) Definition of automatic contribution arrangement.—For purposes of this subsection, the term “automatic contribution arrangement” means an arrangement—

(A) under which a participant may elect to have the plan sponsor make payments as contributions under the plan on behalf of the participant, or to the participant directly in cash, and

(B) under which a participant is treated as having elected to have the plan sponsor make such contributions in an amount equal to a uniform percentage of compensation provided under the plan until the participant specifically elects not to have such contributions made (or
specifically elects to have such contributions made at a different percentage).

(3) NOTICE REQUIREMENTS.—

(A) The plan administrator of an automatic contribution arrangement shall, within a reasonable period before such plan year, provide to each participant to whom the arrangement applies for such plan year notice of the participant’s rights and obligations under the arrangement which—

(i) is sufficiently accurate and comprehensive to apprise the participant of such rights and obligations, and

(ii) is written in a manner calculated to be understood by the average participant to whom the arrangement applies.

(B) A notice shall not be treated as meeting the requirements of subparagraph (A) with respect to a participant unless—

(i) the notice includes an explanation of the participant’s right under the arrangement not to have elective contributions made on the participant’s behalf (or to elect to have such contributions made at a different percentage),
(ii) the participant has a reasonable period of time, after receipt of the notice described in clause (i) and before the first elective contribution is made, to make such election, and

(iii) the notice explains how contributions made under the arrangement will be invested in the absence of any investment election by the participant.

(4) EFFECTIVE DATE.—This subsection shall take effect on the date of the enactment of this Act.

(d) ALLOW CERTAIN PLAN TRANSFERS AND MERGERS.—

(1) IN GENERAL.—Section 414 is amended by adding at the end the following new subsection:

“(z) CERTAIN PLAN TRANSFERS AND MERGERS.—

“(1) IN GENERAL.—Under rules prescribed by the Secretary, except as provided in paragraph (2), no amount shall be includible in gross income by reason of—

“(A) a transfer of all or a portion of the account balance of a participant or beneficiary, whether or not vested, from a plan described in section 401(a) or an annuity contract described in section 403(b), which is a church plan de-
scribed in section 414(e) to an annuity contract described in section 403(b), if such plan and annuity contract are both maintained by the same church or convention or association of churches,

“(B) a transfer of all or a portion of the account balance of a participant or beneficiary, whether or not vested, from an annuity contract described in section 403(b) to a plan described in section 401(a) or an annuity contract described in section 403(b), which is a church plan described in section 414(e), if such plan and annuity contract are both maintained by the same church or convention or association of churches, or

“(C) a merger of a plan described in section 401(a), or an annuity contract described in section 403(b), which is a church plan described in section 414(e) with an annuity contract described in section 403(b), if such plan and annuity contract are both maintained by the same church or convention or association of churches.

“(2) LIMITATION.—Paragraph (1) shall not apply to a transfer or merger unless the participant’s or beneficiary’s benefit immediately after the
transfer or merger is equal to or greater than the participant’s or beneficiary’s benefit immediately before the transfer or merger.

“(3) QUALIFICATION.—A plan or annuity contract shall not fail to be considered to be described in sections 401(a) or 403(b) merely because such plan or account engages in a transfer or merger described in this subsection.

“(4) DEFINITIONS.—For purposes of this subsection:

“(A) CHURCH.—The term ‘church’ includes an organization described in subparagraph (A) or (B)(ii) of subsection (e)(3).

“(B) ANNUITY CONTRACT.—The term ‘annuity contract’ includes a custodial account described in section 403(b)(7) and a retirement income account described in section 403(b)(9).”.

(2) EFFECTIVE DATE.—The amendment made by this subsection shall apply to transfers or mergers occurring after the date of the enactment of this Act.

(e) INVESTMENTS BY CHURCH PLANS IN COLLECTIVE TRUSTS.—

(1) IN GENERAL.—In the case of—
(A) a church plan (as defined in section 414(e) of the Internal Revenue Code 1986), including a plan described in section 401(a) of such Code and a retirement income account described in section 403(b)(9) of such Code, and

(B) an organization described in section 414(e)(3)(A) of such Code the principal purpose or function of which is the administration of such a plan or account,

the assets of such plan, account, or organization (including any assets otherwise permitted to be commingled for investment purposes with the assets of such a plan, account, or organization) may be invested in a group trust otherwise described in Internal Revenue Service Revenue Ruling 81–100 (as modified by Internal Revenue Service Revenue Rulings 2004–67 and 2011–1), or any subsequent revenue ruling that supersedes or modifies such revenue ruling, without adversely affecting the tax status of the group trust, such plan, account, or organization, or any other plan or trust that invests in the group trust.

(2) EFFECTIVE DATE.—This subsection shall apply to investments made after the date of the enactment of this Act.
SEC. 407. PROTECTING OLDER, LONGER SERVICE PARTICIPANTS.

(a) In General.—Paragraph (4) of section 401(a) of the Internal Revenue Code of 1986 is amended to read as follows:

“(4) Nondiscrimination.—

“(A) In General.—A trust shall not constitute a qualified trust under this section unless the contributions or benefits provided under the plan do not discriminate in favor of highly compensated employees (within the meaning of section 414(q)). For purposes of this paragraph, there shall be excluded from consideration employees described in section 410(b)(3) (A) and (C).

“(B) Protection of older, longer service participants in defined benefit plans.—

“(i)(I) A plan described in subclause (ii) shall not fail to satisfy this paragraph by reason of—

“(aa) the composition of the closed class of participants described in subclause (II), or

“(bb) the benefits, rights, or features provided to such closed class.
“(II) A plan is described in this subclause if—

“(aa) the plan provides benefits, rights, or features to a closed class of participants,

“(bb) such closed class and such benefits, rights, and features satisfy the requirements of subparagraph (A) as of the date that the class was closed, and

“(cc) after the date as of which the class was closed, any plan amendments that modify the closed class or of the benefits, rights, and features provided to such closed class satisfy subparagraph (A).

“(ii)(I) A defined contribution plan described in subclause (II) shall not fail to satisfy this paragraph by reason of—

“(aa) the composition of the closed class of participants described in subclause (II), or

“(bb) the allocations, benefits, rights, or features provided to such closed class.
“(II) A defined contribution plan is described in this subclause if—

“(aa) the plan provides make-whole contributions to a closed class of participants whose defined benefit plan accruals have been reduced or eliminated,

“(bb) the benefits, rights, and features provided to such closed class satisfy the requirements of subparagraph (A) as of the date that the class of participants was closed, taking into account only such closed class,

“(cc) such closed class of participants satisfies section 410(b)(2)(A)(i) as of the date that the class of participants was closed, and

“(dd) after the date as of which the class was closed, any plan amendments that modify the closed class or the allocations, benefits, rights, and features provided to such closed class satisfy section 401(a)(4).

“(C) MAKE-WHOLE CONTRIBUTIONS.—For purposes of this paragraph, the term ‘make-
whole contributions’ means allocations for each employee in the class that are reasonably calculated, in a consistent manner, to replace some or all of the retirement benefits that the employee would have received under the defined benefit plan and any other plan or arrangement if the employee had continued to benefit at the same level under such defined benefit plan and such other plan or arrangement.

“(D) RULES.—The Secretary may prescribe rules designed to prevent abuse of the plan designs otherwise permitted by reason of subparagraph (B). Such rules shall be directed towards abuses under which the defined benefit plan was established within a specified period prior to the date that—

“(i) the class of participants described in paragraphs (1) and (2)(A) is closed, or

“(ii) the defined benefit plan accruals have been reduced or eliminated, in the case of the make-whole contributions described in paragraph (2).”.

(b) PARTICIPATION REQUIREMENTS.—Paragraph (26) of section 401(a) of the Internal Revenue Code of
1986 is amended by adding at the end the following new subparagraph:

“(I) PROTECTED PARTICIPANTS.—A plan described in this subparagraph shall be deemed to satisfy the requirements of subparagraph (A). A plan is described in this paragraph if—

“(i) the plan is amended to—

“(I) cease all benefit accruals, or

“(II) provide future benefit accruals only to a closed class of participants, and

“(ii) the plan satisfies subparagraph (A) (without regard to this subparagraph) as of the effective date of the amendment.

The Secretary may prescribe such rules as are necessary or appropriate to fulfill the purposes of this subparagraph, including prevention of abuse of this subparagraph in the case of plans established within a specific period prior to the effective date of the amendment.”.

(e) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act, without regard to whether any plan modifications referenced in such amendments are adopted or effective before, on, or after such date of enactment.
SEC. 408. REVIEW AND REPORT TO THE CONGRESS RELATING TO REPORTING AND DISCLOSURE REQUIREMENTS.

(a) STUDY.—As soon as practicable after the date of the enactment of this Act, the Secretary of Labor, the Secretary of the Treasury, and the Pension Benefit Guaranty Corporation shall review the reporting and disclosure requirements of—

(1) title I of the Employee Retirement Income Security Act of 1974 applicable to pension plans (as defined in section 3(2) of such Act), and

(2) the Internal Revenue Code of 1986 applicable to qualified retirement plans (as defined in section 4974(c) of such Code without regard to paragraphs (4) and (5) thereof).

(b) REPORT.—Not later than 18 months after the date of the enactment of this Act, the Secretary of Labor, the Secretary of the Treasury, and the Pension Benefit Guaranty Corporation, jointly, shall make such recommendations as may be appropriate to the appropriate committees of the Congress to consolidate, simplify, standardize, and improve the applicable reporting and disclosure requirements so as to simplify reporting for plans referenced to in subsection (a) and ensure that needed understandable information is provided to participants and beneficiaries of such plans.
SEC. 409. CONSOLIDATION OF DEFINED CONTRIBUTION PLAN NOTICES.

(a) In General.—

(1) Not later than 18 months after the date of the enactment of this Act, the Secretary of Labor and the Secretary of the Treasury shall adopt final regulations providing that a plan may, but is not required to, consolidate two or more of the notices required under sections 404(c)(5)(B) and 514(e)(3) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1144(e)(3)), sections 401(k)(12)(D), 401(k)(13)(E), and 414(w)(4) of the Internal Revenue Code of 1986, and section 2550.404a–5 of title 29, Code of Federal Regulations (29 C.F.R. 2550.404a–5) into a single notice or, to the extent provided by such regulations, consolidate such notices with the summary plan description or summary of material modifications described in section 104(b) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1024(b)), so long as the combined notice, summary plan description or summary of material modifications includes the required content, clearly identifies the issues addressed therein, and is provided at the time and with the frequency required for each such notice.
(2) The Secretary of Labor and the Secretary of the Treasury may include in such regulations rules to ensure that, to the extent such notices are consolidated with the summary plan description or summary of material modifications, the presentation, placement, or prominence of the information in such notices shall not have the effect of failing to inform participants and beneficiaries regarding the information in such notices.

(b) Provision of Annual Notices Without Regard to Plan Year.—

(1) Clause (i) of section 404(c)(5)(B) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1104(c)(5)(B)) is amended—

(A) in subclause (I) by striking “within a reasonable period of time before each plan year,” and inserting “within a reasonable period before the arrangement described in subparagraph (A) applies to such participant or beneficiary, and thereafter at least once within any 12-month period (without regard to the plan year) during which such arrangement applies,”, and

(B) in subclause (II) by striking “and before the beginning of the plan year”. 

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(2) Subparagraph (A) of section 514(e)(3) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1144(e)(3)(A)) is amended by striking “, within a reasonable period before such plan year, provide to each participant to whom the arrangement applies for such plan year” and inserting “, within a reasonable period before the arrangement applies to a participant or beneficiary, and thereafter at least once within any 12-month period (without regard to the plan year) during which such arrangement applies, provide”.

(3) Clause (i) of section 401(k)(13)(E) of the Internal Revenue Code of 1986 is amended by striking “, within a reasonable period before each plan year, each employee eligible to participate in the arrangement for such year receives” and inserting “each employee eligible to participate in the arrangement receives, within a reasonable period before the employee becomes eligible, and thereafter within a reasonable period before each plan year during which such arrangement applies, ”.

(4) Subparagraph (D) of section 401(k)(12) of the Internal Revenue Code of 1986 is amended by striking “, within a reasonable period before any year, given written notice” and inserting “given
written notice, within a reasonable period before the employee becomes eligible, and thereafter within a reasonable period before each plan year during which such arrangement applies.”

(5) Subparagraph (A) of section 414(w)(4) of the Internal Revenue Code of 1986 is amended by striking “, within a reasonable period before each plan year, give to each employee to whom an arrangement described in paragraph (3) applies for such plan year” and inserting “, within a reasonable period before an arrangement described in paragraph (3) applies to an employee, and thereafter at least once within any 12-month period (without regard to the plan year) during which such arrangement applies, give to each such employee”. 