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

April 1, 2019

Mrs. Murray (for herself, Ms. Warren, Ms. Smith, Ms. Baldwin, Ms. Stabenow, Mrs. Shaheen, Ms. Klobuchar, Mr. Sanders, Mrs. Gillibrand, Mr. Kaine, Mrs. Feinstein, Ms. Cantwell, Ms. Cortez Masto, Ms. Hirono, Ms. Duckworth, Ms. Hassan, Ms. Harris, Mr. Merkley, Mr. Menendez, Ms. Rosen, Mr. Blumenthal, and Mr. Wyden) 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 Representatives of the United States of America in Congress assembled,

2 SECTION 1. SHORT TITLE.

3 This Act may be cited as the “Women’s Retirement Protection Act”.

SEC. 2. FINDINGS.

Congress finds the following:

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

(2) Just over one-third of the private sector workforce does not have access to a retirement plan at the workplace, and only half of the workforce actually participates in a retirement plan.

(3) Women’s retirement preparedness often lags significantly behind their male counterparts’, resulting in the median retirement income for women in 2016 being just 58 percent of men’s retirement income.

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

(5) Women make up 2/3 of low-wage workers, even though they comprise less than half of all workers, and low-wage workers are less likely than other workers to participate in a retirement plan at work.

(6) Because of the pay gap, women working full-time, year-round typically lose $403,440 over a 40-year career thereby requiring the average woman
to work almost a decade longer than her male counterpart to make up that career wage gap.

(7) Due to the lower lifetime wages stemming from unequal pay and caregiving duties, the average Social Security benefit for a woman age 65 or older is $14,044 a year, while men of the same age receive $18,173 a year, on average.

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

(9) While traditional defined benefit retirement plans have spousal protections, defined contribution retirement plans, which have become increasingly common, currently provide no similar spousal protections.

(10) Every year, more than 1,200,000 couples get divorced in the United States. After the family home, retirement savings tends to be the largest asset to be divided in a divorce.

(11) While fees and expenses associated with retirement plans have been in decline, participants have seen direct charges for processing qualified domestic relations orders increase significantly.
SEC. 3. INCREASING SPOUSAL PROTECTION UNDER DEFINED CONTRIBUTION PLANS.

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

“SEC. 205A. ADDITIONAL SPOUSAL CONSENT REQUIREMENTS.

“(a) In General.—Each individual account plan to which section 205 does not apply shall provide that, except as provided in subsections (c) and (d), no distribution may be made under the plan unless the spousal consent requirements of subsection (e) are met.

“(b) Coordination With Section 205.—Nothing in this section shall be construed to exempt an individual account plan from the requirements of paragraph (1)(C) or (2) of section 205(b) with respect to any participant.

“(c) Exceptions for Certain Distributions.—Subsection (a) shall not apply to—

“(1) any distribution that is—

“(A) a minimum required distribution described in section 4974(b) of the Internal Revenue Code of 1986;

“(B) a result of the use of the participant’s accrued benefit as security for a loan, in-
excluding any distribution required by reason of a failure to comply with the terms of such loan; “(C) made upon hardship of the participant; or “(D) permitted under section 203(e)(1) to be made without the consent of the participant; “(2) any distribution in the form of a qualified joint and survivor annuity (as defined in section 205(d)(1)), a qualified optional survivor annuity (as defined in section 205(d)(2)), a qualified preretirement survivor annuity (as defined in section 205(e)), or a series of substantially equal periodic payments (not less frequently than annually) made for the joint lives (or life expectancies) of the participant and the participant’s spouse; or “(3) in the case of a participant who does not elect a form of benefit described in paragraph (2) under the plan or who is participating in a plan that does not provide such a form of benefit, any distribution of the participant’s entire nonforfeitable accrued benefit if 50 percent of such accrued benefit is transferred to an individual retirement plan (as defined in section 7701(a)(37) of the Internal Revenue Code of 1986) of the spouse of the participant.
A transfer described in paragraph (3) to an individual retirement plan shall be treated in the same manner as a transfer under section 408(d)(6) of the Internal Revenue Code of 1986.

“(d) EXCEPTIONS FOR CERTAIN ROLLOVER CONTRIBUTIONS.—Subsection (a) shall not apply to any distribution that is an eligible rollover distribution (as defined in section 402(f)(2)(A) of the Internal Revenue Code of 1986) made in the form of a direct trustee-to-trustee transfer within the meaning of section 401(a)(31) of the Internal Revenue Code of 1986—

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

“(2) to an individual retirement plan (as defined in section 7701(a)(37) of the Internal Revenue Code of 1986) if—

“(A) the beneficiary of such plan is the spouse of the participant, or the spousal consent requirements of subsection (e) are met with respect to any designation of 1 or more other beneficiaries; and

“(B) the beneficiary of such plan (whether the spouse or other beneficiary designated under paragraph (1)) may not be changed unless—

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

“(ii) the spousal consent under subparagraph (A) to the designation of a beneficiary other than the spouse expressly permits such designation to be changed without the further consent of the spouse.

“(e) Spousal Consent Requirements.—

“(1) In general.—For purposes of this section, except as provided in paragraph (2), the spousal consent requirements of this subsection are met with respect to any distribution or any designation or change of beneficiary if—

“(A) the plan provides to each participant, within a reasonable period of time before such distribution or designation or change of beneficiary is made and consistent with such regulations as the Secretary of the Treasury may prescribe, a written explanation of the rights of the participant and the participant’s spouse under this section;

“(B) the spouse of the participant consents in writing to the distribution or designation or change of beneficiary;
“(C) in the case of a distribution, the written consent under subparagraph (B) is made during the consent period; and

“(D) the written consent under subparagraph (B)—

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

“(ii) is witnessed by a plan representative or a notary public.

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

“(A) there is no spouse;

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

“(C) such consent cannot be obtained because—

“(i) the spouse cannot be located;
“(ii) due to exceptional circumstances, requiring the participant to seek the spouse’s consent would be inappropriate; or

“(iii) of such other circumstances as the Secretary of the Treasury may by regulations prescribe.

“(3) CONSENT LIMITED TO SPOUSE AND EVENT.—Any written consent by a spouse under paragraph (1), or the establishment by a participant that an exception under paragraph (2) applies with respect to a spouse, shall be effective only with respect to that spouse and to the distribution or designation or change of beneficiary to which it relates.

“(4) CONSENT PERIOD.—For purposes of this subsection, the term ‘consent period’ means, with respect to any distribution—

“(A) the 90-day period immediately preceding the date of such distribution; or

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

“(f) DISCHARGE OF PLAN FROM LIABILITY.—Rules similar to the rules of section 205(e)(6) shall apply for purposes of this section.”.
(b) CLERICAL AMENDMENT.—The table of sections of part 2 of subtitle B of title I of the Employee Retirement Income Security Act of 1974 is amended by inserting after the item relating to section 205 the following new item:

"Sec. 205A. Additional spousal consent requirements."

(c) RIGHT OF ACTION.—Section 502(a) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1132) is amended by striking “or” at the end of paragraph (10), by striking the period at the end of paragraph (11) and inserting “; or”, and by adding at the end the following new paragraph:

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

(d) PARALLEL AMENDMENT TO SECTION 205.—Section 205(c)(2)(B) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1055(c)(2)(B)) is amended by inserting “, because due to exceptional circumstances requiring the participant to seek the spouse’s consent would be inappropriate” after “located”.

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

(a) IN GENERAL.—Section 202 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1052)
is amended by adding at the end the following new subsection:

“(c) Special Rule for Certain Part-Time Employees.—

“(1) In General.—A pension plan that includes either a qualified cash or deferred arrangement (as defined in section 401(k) of the Internal Revenue Code of 1986) or a salary reduction agreement (as described in section 403(b) of such Code) shall not require, as a condition of participation in the arrangement or agreement, that an employee complete a period of service with the employer (or employers) maintaining the plan extending beyond the close of the earlier of—

“(A) the period permitted under subsection (a)(1) (determined without regard to subparagraph (B)(i) thereof) and section 410(a)(1) of such Code (determined without regard to subparagraph (B)(i) thereof); or

“(B) the first 24-month period—

“(i) consisting of 2 consecutive 12-month periods during each of which the employee has at least 500 hours of service; and
“(ii) by the close of which the employee has attained the age of 21.

“(2) Exception.—Paragraph (1)(B) shall not apply to employees who are included in a unit of employees covered by an agreement which the Secretary finds to be a collective bargaining agreement between employee representatives and 1 or more employers, if there is evidence that retirement benefits were the subject of good faith bargaining between such employee representatives and such employer or employers.

“(3) Coordination with other rules.—In the case of employees who are not highly compensated employees (within the meaning of section 414(q) of the Internal Revenue Code of 1986) and who are eligible to participate in the arrangement or agreement solely by reason of paragraph (1)(B):

“(A) Exclusions.—An employer may elect to exclude such employees from the determination of whether the plan that includes the arrangement or agreement satisfies the requirements of subsections (a)(4), (k)(3), (k)(12), (k)(13), (m)(2), (m)(11), and (m)(12) of section 401 of such Code, section 410(b) of such Code, and section 416 of such Code. If the em-
ployer so excludes such employees with respect
to the requirements of any such provision, such
employees shall be excluded with respect to the
requirements of all such provisions. This sub-
paragraph shall cease to apply to any employee
as of the first plan year beginning after the
plan year in which the employee completes 1
year of service (without regard to paragraph
(1)(B) of this subsection).

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

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

(b) VESTING.—Section 203(b) of the Employee Re-
1053(a)) is amended by redesignating paragraph (4) as
paragraph (5) and by inserting after paragraph (3) the
following new paragraph:
“(4) PART-TIME EMPLOYEES.—For purposes of determining whether an employee who is eligible to participate in a qualified cash or deferred arrangement or a salary reduction agreement under a plan solely by reason of section 202(c)(1)(B) has a nonforfeitable right to employer contributions—

“(A) except as provided in subparagraph (B), each 12-month period for which the employee has at least 500 hours of service shall be treated as a year of service; and

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

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

(c) PENALTY.—Section 502 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1132) is amended by adding at the end the following new subsection:

“(n) REQUIREMENTS RELATING TO PART-TIME EMPLOYEES.—In the case of a plan that fails to permit participation as required by section 202(c), the Secretary may
assess a civil penalty against the plan sponsor in an amount equal to $10,000 per year per employee to whom such failure relates. The Secretary may, in the Secretary’s sole discretion, waive or reduce the penalty under this subsection if the Secretary determines that the plan sponsor acted reasonably and in good faith.”.

SEC. 5. EFFECTIVE DATES.

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

(b) ENSURING COVERAGE FOR LONG-TERM PART-TIME WORKERS.—Except as provided in subsections (c) and (d), the amendments made by section 3 shall apply to plan years beginning after December 31, 2019.

(c) COLLECTIVE BARGAINING AGREEMENTS.—In the case of a plan maintained pursuant to one or more collective bargaining agreements between employee representatives and one or more employers ratified before the date of the enactment of this Act, the amendments made by sections 2 and 3 shall not apply to distributions or rollover contributions on behalf of employees covered by any such agreement for plan years beginning before the earlier of—
(1) the later of—

(A) the date on which the last of such collective bargaining agreements terminates (determined without regard to any extension thereof on or after such date of the enactment); or

(B) the day after the date specified in subsection (a) or (b), whichever is applicable; or

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

(d) PROVISIONS RELATING TO PLAN AMENDMENTS.—

(1) IN GENERAL.—If this paragraph applies to any plan or contract amendment, such plan or contract shall be treated as being operated in accordance with the terms of the plan during the period described in paragraph (2)(C).

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

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

(i) pursuant to the amendments made by section 2 or 3 or pursuant to any regulation issued under either such section; and
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(ii) on or before the last day of the first plan year beginning on or after the date that is 3 years after the applicable day described in subsection (e)(1)(B).

In the case of a governmental plan (as defined in section 414(d) of the Internal Revenue Code of 1986), this subparagraph shall be applied by substituting “5 years” for “3 years” in clause (ii).

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

(i) the plan or contract is operated as if such plan or contract amendment were in effect for the period described in subparagraph (C); and

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

(C) PERIOD DESCRIBED.—The period described in this subparagraph is the period—

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

(ii) ending on the date described in subparagraph (A)(ii) (or, if earlier, the date the plan or contract amendment is adopted).
SEC. 6. ACCESS TO INDEPENDENT CONSUMER INFORMATION AND UNDERSTANDING.

(a) Definitions.—As used in this section—

(1) the term “consumer” means any person who purchases or acquires any goods, products, services, or credit related to the retirement or later life economic security of the consumer; and

(2) the term “financial product or service provider” means any person who engages in the business of providing any retirement financial product or service to any consumer.

(b) Required Link to Consumer Awareness Information.—In any offer for the sale, exchange, or other transfer of a retirement financial product or service to a consumer carried out by a financial product or service provider, such provider shall provide, in a manner consistent with subsection (c), an easily accessible link to the website of the Bureau of Consumer Financial Protection (CFPB) at which the consumer may access information, literature, guides, programs, tools, strategies, or any other resource produced by the CFPB or other Federal agency relating to retirement planning or later life economic security.

(c) Determination.—In order to ensure that the requirement under subsection (b) is effectively carried out, the Financial Literacy and Education Commission (FLEC) shall determine and publish on its website the
appropriate link to the CFPB’s website for access to the
CFPB’s and other Federal agencies’ consumer education
materials, the preferred format of such link, and any ac-
companying description of the CFPB and the consumer
education materials associated with such link.

SEC. 7. GRANTS TO PROMOTE FINANCIAL LITERACY FOR
WOMEN.

(a) Authorization of Grant Awards.—The Sec-
retary of Labor, acting through the Director of the Wom-
en’s Bureau, shall award grants on a competitive basis to
eligible entities to enable such entities to improve the fi-
nancial literacy of women who are working age or in re-
tirement, to increase the likelihood of the women realizing
a secure and stable retirement.

(b) Definition of Eligible Entity.—In this sec-
tion, the term ‘‘eligible entity’’ means a community-based
organization with proven experience and expertise in serv-
ing working-age or retired women.

(c) Application.—An eligible entity that desires to
receive a grant under this section shall submit an applica-
tion to the Secretary of Labor at such time, in such man-
ner, and accompanied by such information as such Sec-
retary may require.
(d) Minimum Grant Amount.—The Secretary of Labor shall award grants under this section in amounts of not less than $250,000.

(e) Use of Funds.—An eligible entity that receives a grant under this section shall use the grant funds to develop and implement financial literacy education, and related activities including outreach, awareness building, and counseling to increase women’s knowledge of retirement planning and consumer, economic, and personal financial concepts.

(f) Authorization of Appropriations.—There is authorized to be appropriated to carry out this section $100,000,000 for fiscal year 2020 and each succeeding fiscal year.

SEC. 8. GRANTS TO ASSIST LOW-INCOME WOMEN AND SURVIVORS OF DOMESTIC VIOLENCE IN OBTAINING QUALIFIED DOMESTIC RELATIONS ORDERS.

(a) Authorization of Grant Awards.—The Secretary of Labor, acting through the Director of the Women’s Bureau in conjunction with the Assistant Secretary of the Employee Benefits Security Administration, shall award grants, on a competitive basis, to eligible entities to enable such entities to assist low-income women and survivors of domestic violence in obtaining qualified do-
mestic relations orders and ensuring that those women ac-
tually obtain the benefits to which they are entitled
through those orders.

(b) Definition of Eligible Entity.—In this sec-
tion, the term “eligible entity” means a community-based
organization with proven experience and expertise in serv-
ing women and the financial and retirement needs of
women.

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

(d) Minimum Grant Amount.—The Secretary of
Labor shall award grants under this section in amounts
of not less than $250,000.

(e) Use of Funds.—An eligible entity that receives
a grant under this section shall use the grant funds to
develop programs to offer help to low-income women or
survivors of domestic violence who need assistance in pre-
paring, obtaining, and effectuating a qualified domestic re-
lations order.

(f) Authorization of Appropriations.—There is
authorized to be appropriated to carry out this section
$100,000,000 for fiscal year 2020 and each succeeding fiscal year.