

**AMENDMENT IN THE NATURE OF A SUBSTITUTE  
TO H.R. 5891  
OFFERED BY MR. MORELLE OF NEW YORK**

Strike all after the enacting clause and insert the following:

**1 SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

2 (a) SHORT TITLE.—This Act may be cited as the  
3 “Retirement Improvement and Savings Enhancement Act  
4 of 2021” or the “RISE Act”.

5 (b) TABLE OF CONTENTS.—The table of contents for  
6 this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Retirement savings lost and found.
- Sec. 3. Retirement plan modernization act.
- Sec. 4. Multiple employer 403(b) plans.
- Sec. 5. Small immediate financial incentives for contributing to a plan.
- Sec. 6. Performance benchmarks for asset allocation funds.
- Sec. 7. Pooled employer plans modification.
- Sec. 8. Review of pension risk transfer interpretive bulletin.
- Sec. 9. Review and report to congress relating to reporting and disclosure requirements.
- Sec. 10. Eliminating unnecessary plan requirements related to unenrolled participants.
- Sec. 11. Recovery of retirement plan overpayments.
- Sec. 12. Improving coverage for part-time workers.

**7 SEC. 2. RETIREMENT SAVINGS LOST AND FOUND.**

8 (a) IN GENERAL.—

9 (1) ESTABLISHMENT OF RETIREMENT SAVINGS  
10 LOST AND FOUND.—Part 5 of title I of the Em-  
11 ployee Retirement Income Security Act of 1974 (29

1 U.S.C. 1341 et seq.) is amended by adding at the  
2 end the following:

3 **“SEC. 522. RETIREMENT SAVINGS LOST AND FOUND.**

4 “(a) ESTABLISHMENT.—

5 “(1) IN GENERAL.—Not later than 2 years  
6 after the date of the enactment of this section, the  
7 Secretary of Labor, in consultation with the Sec-  
8 retary of the Treasury, shall establish an online  
9 searchable database (to be managed by the Depart-  
10 ment of Labor in accordance with this section) to be  
11 known as the ‘Retirement Savings Lost and Found’.  
12 The Retirement Savings Lost and Found shall—

13 “(A) allow an individual to search for in-  
14 formation that enables the individual to locate  
15 the administrator of any plan described in para-  
16 graph (2) with respect to which the individual  
17 is or was a participant or beneficiary, and pro-  
18 vide contact information for the administrator  
19 of any such plan;

20 “(B) allow the Department of Labor to as-  
21 sist such an individual in locating any such plan  
22 of the individual; and

23 “(C) allow the Department of Labor to  
24 make any necessary changes to contact infor-  
25 mation on record for the administrator based

1 on any changes to the plan due to merger or  
2 consolidation of the plan with any other plan,  
3 division of the plan into two or more plans,  
4 bankruptcy, termination, change in name of the  
5 plan, change in name or address of the admin-  
6 istrator, or other causes.

7 The Retirement Savings Lost and Found established  
8 under this paragraph shall include information re-  
9 ported under this section and other relevant infor-  
10 mation obtained by the Department of Labor.

11 “(2) PLANS DESCRIBED.—A plan described in  
12 this paragraph is a plan to which the vesting stand-  
13 ards of section 203 apply.

14 “(b) ADMINISTRATION.—The Retirement Savings  
15 Lost and Found established under subsection (a) shall  
16 provide individuals described in subsection (a)(1) only  
17 with the ability to search for information that enables the  
18 individual to locate the administrator and contact informa-  
19 tion for the administrator of any plan with respect to  
20 which the individual is or was a participant or beneficiary,  
21 sufficient to allow the individual to locate the individual’s  
22 plan in order to recover any benefit owing to the individual  
23 under the plan.

24 “(c) SAFEGUARDING PARTICIPANT PRIVACY AND SE-  
25 CURITY.—In establishing the Retirement Savings Lost

1 and Found under subsection (a), the Department of Labor  
2 shall take all necessary and proper precautions to ensure  
3 that individuals' plan information maintained by the Re-  
4 tirement Savings Lost and Found is protected.

5 “(d) DEFINITION OF ADMINISTRATOR.—For pur-  
6 poses of this section and section 523, the term ‘adminis-  
7 trator’ has the meaning given such term in section  
8 3(16)(A).

9 “(e) INFORMATION COLLECTION FROM PLANS.—Ef-  
10 fective with respect to plan years beginning after the sec-  
11 ond December 31 occurring after the date of the enact-  
12 ment of this subsection, the administrator of a plan to  
13 which the vesting standards of section 203 apply shall sub-  
14 mit to the Department of Labor, at such time and in such  
15 form and manner as is prescribed in regulations—

16 “(1) the information described in paragraphs  
17 (1) through (4) of section 6057(b) of the Internal  
18 Revenue Code of 1986;

19 “(2) the information described in subpara-  
20 graphs (A), (B), (E), and (F) of section 6057(a)(2)  
21 of the Internal Revenue Code of 1986; and

22 “(3) such other information as the Secretary of  
23 Labor may require.

24 “(f) INFORMATION COLLECTION FROM FEDERAL  
25 AGENCIES.—The Secretary of Labor is authorized to ac-

1 cess and receive information collected by other Federal  
2 agencies that may be necessary to perform work related  
3 to the Retirement Savings Lost and Found. Such nec-  
4 essary and appropriate information, which shall be fur-  
5 nished to the Secretary of Labor on request, includes in-  
6 formation covered by section 6103 of the Internal Revenue  
7 Code of 1986 and section 205(r) of the Social Security  
8 Act.

9 “(g) PROGRAM INTEGRITY AUDIT.—On an annual  
10 basis for each of the first 5 years beginning one year after  
11 the establishment of the database in subsection (a)(1) and  
12 every 5 years thereafter, the Inspector General of the De-  
13 partment of Labor shall conduct an audit of the adminis-  
14 tration of the Retirement Savings Lost and Found.”.

15 (3) CONFORMING AMENDMENT.—The table of  
16 contents for the Employee Retirement Income Secu-  
17 rity Act of 1974 (29 U.S.C. 1001 et seq.) is amend-  
18 ed by inserting after the matter relating to section  
19 521 the following:

“Sec. 522. Retirement Savings Lost and Found.”.

20 **SEC. 3. RETIREMENT PLAN MODERNIZATION ACT.**

21 Section 203(e)(1) of the Employee Retirement In-  
22 come Security Act of 1974 and sections 401(a)(31)(B)(ii)  
23 and 411(a)(11)(A) of the Internal Revenue Code of 1986  
24 and are each amended by striking “\$5,000” and inserting  
25 “\$7,000”.

1 **SEC. 4. MULTIPLE EMPLOYER 403(b) PLANS.**

2 (a) IN GENERAL.—Section 403(b) of the Internal  
3 Revenue Code of 1986 is amended by adding at the end  
4 the following new paragraph:

5 “(15) MULTIPLE EMPLOYER PLANS.—

6 “(A) IN GENERAL.—Except in the case of  
7 a church plan, this subsection shall not be  
8 treated as failing to apply to an annuity con-  
9 tract solely by reason of such contract being  
10 purchased under a plan maintained by more  
11 than 1 employer.

12 “(B) TREATMENT OF EMPLOYERS FAILING  
13 TO MEET REQUIREMENTS OF PLAN.—

14 “(i) IN GENERAL.—In the case of a  
15 plan maintained by more than 1 employer,  
16 this subsection shall not be treated as fail-  
17 ing to apply to an annuity contract held  
18 under such plan merely because of one or  
19 more employers failing to meet the require-  
20 ments of this subsection if such plan satis-  
21 fies rules similar to the rules of section  
22 413(e)(2) with respect to any such em-  
23 ployer failure.

24 “(ii) ADDITIONAL REQUIREMENTS IN  
25 CASE OF NON-GOVERNMENTAL PLANS.—A  
26 plan shall not be treated as meeting the re-

1 requirements of this subparagraph unless the  
2 plan meets the requirements of subpara-  
3 graph (A) or (B) of section 413(e)(1), ex-  
4 cept in the case of a multiple employer  
5 plan maintained solely by any of the fol-  
6 lowing: A State, a political subdivision of a  
7 State, or an agency or instrumentality of  
8 any one or more of the foregoing.”.

9 (b) ANNUAL REGISTRATION FOR 403(b) MULTIPLE  
10 EMPLOYER PLAN.—Section 6057 of the Internal Revenue  
11 Code of 1986 is amended by redesignating subsection (g)  
12 as subsection (h) and by inserting after subsection (f) the  
13 following new subsection:

14 “(g) 403(b) MULTIPLE EMPLOYER PLANS TREATED  
15 AS ONE PLAN.—In the case of annuity contracts to which  
16 this section applies and to which section 403(b) applies  
17 by reason of the plan under which such contracts are pur-  
18 chased meeting the requirements of paragraph (15) there-  
19 of, such plan shall be treated as a single plan for purposes  
20 of this section.”.

21 (c) ANNUAL INFORMATION RETURNS FOR 403(b)  
22 MULTIPLE EMPLOYER PLAN.—Section 6058 of the Inter-  
23 nal Revenue Code of 1986 is amended by redesignating  
24 subsection (f) as subsection (g) and by inserting after sub-  
25 section (e) the following new subsection:

1           “(f) 403(b) MULTIPLE EMPLOYER PLANS TREATED  
2 AS ONE PLAN.—In the case of annuity contracts to which  
3 this section applies and to which section 403(b) applies  
4 by reason of the plan under which such contracts are pur-  
5 chased meeting the requirements of paragraph (15) there-  
6 of, such plan shall be treated as a single plan for purposes  
7 of this section.”.

8           (d) AMENDMENTS TO EMPLOYEE RETIREMENT IN-  
9 COME SECURITY ACT OF 1974.—

10           (1) TREATED AS POOLED EMPLOYER PLAN.—

11           (A) IN GENERAL.—Section 3(43)(A) of the  
12 Employee Retirement Income Security Act of  
13 1974 is amended—

14           (i) in clause (ii), by striking “section  
15 501(a) of such Code or” and inserting  
16 “section 501(a) of such Code, a plan that  
17 consists of contracts described in section  
18 403(b) of such Code, or”; and

19           (ii) in the flush text at the end, by  
20 striking “the plan.” and inserting “the  
21 plan, but such term shall include any pro-  
22 gram (other than a governmental plan)  
23 maintained for the benefit of the employees  
24 of more than 1 employer that consists of  
25 contracts described in section 403(b) of



1           such Code and that meets the require-  
2           ments of subparagraph (A) or (B) of sec-  
3           tion 413(e)(1) of such Code.”.

4           (B) CONFORMING AMENDMENTS.—Sec-  
5           tions 3(43)(B)(v)(II) and 3(44)(A)(i)(I) of the  
6           Employee Retirement Income Security Act of  
7           1974 are each amended by striking “section  
8           401(a) of such Code or” and inserting “401(a)  
9           of such Code, a plan that consists of contracts  
10          described in section 403(b) of such Code, or”.

11          (2) FIDUCIARIES.—Section 3(43)(B)(ii) of the  
12          Employee Retirement Income Security Act of 1974  
13          is amended—

14               (A) by striking “trustees meeting the re-  
15               quirements of section 408(a)(2) of the Internal  
16               Revenue Code of 1986” and inserting “trustees  
17               (or other fiduciaries in the case of a plan that  
18               consists of contracts described in section 403(b)  
19               of the Internal Revenue Code of 1986) meeting  
20               the requirements of section 408(a)(2) of such  
21               Code”, and

22               (B) by striking “holding” and inserting  
23               “holding (or causing to be held under the terms  
24               of a plan consisting of such contracts)”.

1 (e) REGULATIONS RELATING TO PLAN TERMI-  
2 NATION.—The Secretary of the Treasury (or the Sec-  
3 retary’s designee) shall prescribe such regulations as may  
4 be necessary to clarify the treatment of a plan termination  
5 by an employer in the case of plans to which section  
6 403(b)(15) of the Internal Revenue Code of 1986 applies.

7 (f) MODIFICATION OF MODEL PLAN LANGUAGE,  
8 ETC.—

9 (1) PLAN NOTIFICATIONS.—The Secretary of  
10 the Treasury (or the Secretary’s designee) shall  
11 modify the model plan language published under sec-  
12 tion 413(e)(5) of the Internal Revenue Code of 1986  
13 to include language that notifies participating em-  
14 ployers described in section 501(e)(3), and which are  
15 exempt from tax under section 501(a), that the plan  
16 is subject to the Employee Retirement Income Secu-  
17 rity Act of 1974 and that such employer is a plan  
18 sponsor with respect to its employees participating  
19 in the multiple employer plan and, as such, has cer-  
20 tain fiduciary duties with respect to the plan and to  
21 its employees.

22 (2) MODEL PLANS FOR MULTIPLE EMPLOYER  
23 403(b) NON-GOVERNMENTAL PLANS.—For plans to  
24 which section 403(b)(15)(A) of the Internal Revenue  
25 Code of 1986 applies (other than a plan maintained

1 for its employees by a State, a political subdivision  
2 of a State, or an agency or instrumentality of any  
3 one or more of the foregoing), the Secretary of the  
4 Treasury shall publish model plan language similar  
5 to model plan language published under section  
6 413(e)(5) of such Code.

7 (3) EDUCATIONAL OUTREACH TO EMPLOYERS  
8 EXEMPT FROM TAX.—The Secretary of the Treasury  
9 shall provide education and outreach to increase  
10 awareness to employers described in section  
11 501(c)(3) of the Internal Revenue Code of 1986,  
12 and which are exempt from tax under section 501(a)  
13 of such Code, that multiple employer plans are sub-  
14 ject to the Employee Retirement Income Security  
15 Act of 1974 and that such employer is a plan spon-  
16 sor with respect to its employees participating in the  
17 multiple employer plan and, as such, has certain fi-  
18 duciary duties with respect to the plan and to its  
19 employees.

20 (g) NO INFERENCE WITH RESPECT TO CHURCH  
21 PLANS.—Regarding any application of section 403(b) of  
22 the Internal Revenue Code of 1986 to an annuity contract  
23 purchased under a church plan (as defined in section  
24 414(e) of such Code) maintained by more than 1 em-  
25 ployer, or to any application of rules similar to section

1 413(e) of such Code to such a plan, no inference shall  
2 be made from section 403(b)(15)(A) of such Code (as  
3 added by this Act) not applying to such plans.

4 (h) EFFECTIVE DATE.—

5 (1) IN GENERAL.—The amendments made by  
6 this section shall apply to plan years beginning after  
7 December 31, 2021.

8 (2) RULE OF CONSTRUCTION.—Nothing in the  
9 amendments made by subsection (a) shall be con-  
10 strued as limiting the authority of the Secretary of  
11 the Treasury or the Secretary’s delegate (determined  
12 without regard to such amendment) to provide for  
13 the proper treatment of a failure to meet any re-  
14 quirement applicable under the Internal Revenue  
15 Code of 1986 with respect to one employer (and its  
16 employees) in the case of a plan to which section  
17 403(b)(15) of the Internal Revenue Code of 1986  
18 applies.

19 **SEC. 5. SMALL IMMEDIATE FINANCIAL INCENTIVES FOR**  
20 **CONTRIBUTING TO A PLAN.**

21 (a) IN GENERAL.—Subparagraph (A) of section  
22 401(k)(4) of the Internal Revenue Code of 1986 is amend-  
23 ed by inserting “(other than a de minimis financial incen-  
24 tive)” after “any other benefit”.

1 (b) SECTION 403(b) PLANS.—Subparagraph (A) of  
2 section 403(b)(12) of the Internal Revenue Code of 1986,  
3 is further amended by adding at the end the following:  
4 “A plan shall not fail to satisfy clause (ii) solely by reason  
5 of offering a de minimis financial incentive to employees  
6 to elect to have the employer make contributions pursuant  
7 to a salary reduction agreement.”.

8 (c) EXEMPTION FROM PROHIBITED TRANSACTION  
9 RULES.—Subsection (d) of section 4975 of the Internal  
10 Revenue Code of 1986 is amended by striking “or” at the  
11 end of paragraph (22), by striking the period at the end  
12 of paragraph (23) and inserting “, or”, and by adding at  
13 the end the following new paragraph:

14 “(24) the provision of a de minimis financial in-  
15 centive described in section 401(k)(4)(A) or  
16 403(b)(12)(A).”.

17 (d) AMENDMENT OF EMPLOYEE RETIREMENT IN-  
18 COME SECURITY ACT OF 1974.—Subsection (b) of section  
19 408 of the Employee Retirement Income Security Act of  
20 1974 (29 U.S.C. 1108(b)) is amended by adding at the  
21 end the following new paragraph:

22 “(21) The provision of a de minimis financial  
23 incentive described in section 401(k)(4)(A) or sec-  
24 tion 403(b)(12)(A) of the Internal Revenue Code of  
25 1986.”.

1 (e) EFFECTIVE DATE.—The amendments made by  
2 this section shall apply with respect to plan years begin-  
3 ning after the date of enactment of this Act.

4 **SEC. 6. PERFORMANCE BENCHMARKS FOR ASSET ALLOCA-**  
5 **TION FUNDS.**

6 (a) IN GENERAL.—Not later than 1 year after the  
7 date of enactment of this Act, the Secretary of Labor shall  
8 provide that, in the case of a designated investment alter-  
9 native that contains a mix of asset classes, the adminis-  
10 trator of a plan may, but is not required to, use a bench-  
11 mark that is a blend of different broad-based securities  
12 market indices if—

13 (1) the blend is reasonably representative of the  
14 asset class holdings of the designated investment al-  
15 ternative;

16 (2) for purposes of determining the blend's re-  
17 turns for 1-, 5-, and 10-calendar-year periods (or for  
18 the life of the alternative, if shorter), the blend is  
19 modified at least once per year to reflect changes in  
20 the asset class holdings of the designated investment  
21 alternative;

22 (3) the blend is furnished to participants and  
23 beneficiaries in a manner that is reasonably designed  
24 to be understandable; and

1           (4) each securities market index that is used for  
2           an associated asset class would separately satisfy the  
3           requirements of such regulation for such asset class.

4           (b) **STUDY.**—Not later than 3 years after the date  
5 of enactment of this Act, the Secretary of Labor shall de-  
6 liver a report to the Committees on Finance and Health,  
7 Education, Labor, and Pensions of the Senate and the  
8 Committees on Ways and Means and Education and  
9 Labor of the House of Representatives regarding the utili-  
10 zation, effectiveness, and participants’ understanding of  
11 the benchmarking requirements under this section.

12 **SEC. 7. POOLED EMPLOYER PLANS MODIFICATION.**

13           Section 3(43)(B)(ii) of the Employee Retirement In-  
14 come Security Act of 1974 (29 U.S.C. 1002(43)(B)(ii))  
15 is amended to read as follows:

16                   “(ii) designate a named fiduciary  
17                   (other than an employer in the plan) to be  
18                   responsible for collecting contributions to  
19                   the plan and require such fiduciary to im-  
20                   plement written contribution collection pro-  
21                   cedures that are reasonable, diligent, and  
22                   systematic;”.

1 **SEC. 8. REVIEW OF PENSION RISK TRANSFER INTERPRE-**  
2 **TIVE BULLETIN.**

3 Not later than 1 year after the date of enactment  
4 of this Act, the Secretary of Labor shall—

5 (1) review section 2509.95–1 of title 29, Code  
6 of Federal Regulations (relating to the fiduciary  
7 standards under the Employee Retirement Income  
8 Security Act of 1974 when selecting an annuity pro-  
9 vider for a defined benefit pension plan) to deter-  
10 mine whether amendments to such section are war-  
11 ranted; and

12 (2) report to Congress on the findings of such  
13 review, including an assessment of any risk to par-  
14 ticipants.

15 **SEC. 9. REVIEW AND REPORT TO CONGRESS RELATING TO**  
16 **REPORTING AND DISCLOSURE REQUIRE-**  
17 **MENTS.**

18 (a) **STUDY.**—As soon as practicable after the date of  
19 enactment of this Act, the Secretary of Labor, the Sec-  
20 retary of the Treasury, and the Director of the Pension  
21 Benefit Guaranty Corporation shall review the reporting  
22 and disclosure requirements as applicable to each such  
23 agency head, of—

24 (1) the Employee Retirement Income Security  
25 Act of 1974 applicable to pension plans (as defined  
26 in section 3(2) of such Act (29 U.S.C. 1002(2)); and



1           (2) the Internal Revenue Code of 1986 applica-  
2           ble to qualified retirement plans (as defined in sec-  
3           tion 4974(c) of such Code, without regard to para-  
4           graphs (4) and (5) of such section).

5           (b) REPORT.—

6           (1) IN GENERAL.—Not later than 2 years after  
7           the date of enactment of this Act, the Secretary of  
8           Labor, the Secretary of the Treasury, and the Direc-  
9           tor of the Pension Benefit Guaranty Corporation,  
10          jointly, and after consultation with a balanced group  
11          of participant and employer representatives, shall  
12          with respect to plans referenced in subsection (a) re-  
13          port on the effectiveness of the applicable reporting  
14          and disclosure requirements and make such rec-  
15          ommendations as may be appropriate to the Com-  
16          mittee on Education and Labor and the Committee  
17          on Ways and Means of the House of Representatives  
18          and the Committee on Health, Education, Labor,  
19          and Pensions and the Committee on Finance of the  
20          Senate to consolidate, simplify, standardize, and im-  
21          prove such requirements so as to simplify reporting  
22          for such plans and ensure that plans can furnish  
23          and participants and beneficiaries timely receive and  
24          better understand the information they need to mon-

1       itor their plans, plan for retirement, and obtain the  
2       benefits they have earned.

3           (2) ANALYSIS OF EFFECTIVENESS.—To assess  
4       the effectiveness of the applicable reporting and dis-  
5       closure requirements, the report shall include an  
6       analysis, based on plan data, of how participants  
7       and beneficiaries are providing preferred contact in-  
8       formation, the methods by which plan sponsors and  
9       plans are furnishing disclosures, and the rate at  
10      which participants and beneficiaries (grouped by key  
11      demographics) are receiving, accessing, under-  
12      standing, and retaining disclosures.

13           (3) COLLECTION OF INFORMATION.—The agen-  
14      cies shall conduct appropriate surveys and data col-  
15      lection to obtain any needed information.

16 **SEC. 10. ELIMINATING UNNECESSARY PLAN REQUIRE-**  
17 **MENTS RELATED TO UNENROLLED PARTICI-**  
18 **PANTS.**

19       (a) AMENDMENT OF EMPLOYEE RETIREMENT IN-  
20 COME SECURITY ACT OF 1974.—

21           (1) IN GENERAL.—Part 1 of subtitle B of sub-  
22      chapter I of the Employee Retirement Income Secu-  
23      rity Act of 1974 is amended by redesignating section  
24      111 as section 112 and by inserting after section  
25      110 the following new section:

1 **“SEC. 111. ELIMINATING UNNECESSARY PLAN REQUIRE-**  
2 **MENTS RELATED TO UNENROLLED PARTICI-**  
3 **PANTS.**

4 “(a) IN GENERAL.—Notwithstanding any other pro-  
5 vision of this title, with respect to any individual account  
6 plan, no disclosure, notice, or other plan document (other  
7 than the notices and documents described in paragraphs  
8 (1) and (2)) shall be required to be furnished under this  
9 title to any unenrolled participant if the unenrolled partici-  
10 pant receives—

11 “(1) an annual reminder notice of such partici-  
12 pant’s eligibility to participate in such plan and any  
13 applicable election deadlines under the plan; and

14 “(2) any document requested by such partici-  
15 pant that the participant would be entitled to receive  
16 notwithstanding this section.

17 “(b) UNENROLLED PARTICIPANT.—For purposes of  
18 this section, the term ‘unenrolled participant’ means an  
19 employee who—

20 “(1) is eligible to participate in an individual  
21 account plan;

22 “(2) has received the summary plan description  
23 pursuant to section 104(b) and any other eligibility  
24 notices required to be furnished under this title in  
25 connection with such participant’s initial eligibility  
26 to participate in such plan;

1           “(3) is not participating in such plan;

2           “(4) does not have a balance in the plan; and

3           “(5) satisfies such other criteria as the Sec-  
4       retary of Labor may determine appropriate, as pre-  
5       scribed in guidance issued in consultation with the  
6       Secretary of Treasury.

7 For purposes of this section, any eligibility to participate  
8 in the plan following any period for which such employee  
9 was not eligible to participate shall be treated as initial  
10 eligibility.

11       “(c) ANNUAL REMINDER NOTICE.—For purposes of  
12 this section, the term ‘annual reminder notice’ means a  
13 notice provided in accordance with section 2520.104b-1  
14 of title 29, Code of Federal Regulations (or any successor  
15 regulation), which—

16           “(1) is furnished in connection with the annual  
17       open season election period with respect to the plan  
18       or, if there is no such period, is furnished within a  
19       reasonable period prior to the beginning of each plan  
20       year;

21           “(2) notifies the unenrolled participant of—

22                   “(A) the unenrolled participant’s eligibility  
23       to participate in the plan; and



1 unenrolled participant if the unenrolled participant  
2 receives—

3 “(A) an annual reminder notice of such  
4 participant’s eligibility to participate in such  
5 plan and any applicable election deadlines under  
6 the plan, and

7 “(B) any document requested by such par-  
8 ticipant that the participant would be entitled  
9 to receive notwithstanding this subsection.

10 “(2) UNENROLLED PARTICIPANT.—For pur-  
11 poses of this subsection, the term ‘unenrolled partici-  
12 pant’ means an employee who—

13 “(A) is eligible to participate in a defined  
14 contribution plan,

15 “(B) has received the summary plan de-  
16 scription pursuant to section 104(b) of the Em-  
17 ployee Retirement Income Security Act of 1974  
18 and any other eligibility notices in connection  
19 with such participant’s initial eligibility to par-  
20 ticipate in such plan,

21 “(C) is not participating in such plan,

22 “(D) does not have a balance in the plan,  
23 and

24 “(E) satisfies such other criteria as the  
25 Secretary of the Treasury may determine ap-

1           appropriate, as prescribed in guidance issued in  
2           consultation with the Secretary of Labor.

3           For purposes of this subsection, any eligibility to  
4           participate in the plan following any period for  
5           which such employee was not eligible to participate  
6           shall be treated as initial eligibility.

7           “(3) ANNUAL REMINDER NOTICE.—For pur-  
8           poses of this subsection, the term ‘annual reminder  
9           notice’ means the notice described in section 111(c)  
10          of the Employee Retirement Income Security Act of  
11          1974.”.

12          (c) EFFECTIVE DATE.—The amendments made by  
13          this section shall apply to plan years beginning after De-  
14          cember 31, 2021.

15       **SEC. 11. RECOVERY OF RETIREMENT PLAN OVERPAY-**  
16                               **MENTS.**

17          (a) OVERPAYMENTS UNDER ERISA.—Section 206 of  
18          the Employee Retirement Income Security Act of 1974  
19          (29 U.S.C. 1056) is amended by adding at the end the  
20          following new subsection:

21          “(h) SPECIAL RULES APPLICABLE TO BENEFIT  
22          OVERPAYMENTS.—

23               “(1) GENERAL RULE.—In the case of an inad-  
24          vertent benefit overpayment by any pension plan, the  
25          responsible plan fiduciary shall not be considered to

1       have failed to comply with the requirements of this  
2       title merely because such fiduciary determines, in  
3       the exercise of its fiduciary discretion, not to seek  
4       recovery of all or part of such overpayment from—

5               “(A) any participant or beneficiary,

6               “(B) any plan sponsor of, or contributing  
7       employer to—

8                       “(i) an individual account plan, pro-  
9                       vided that the amount needed to prevent or  
10                      restore any impermissible forfeiture from  
11                      any participant’s or beneficiary’s account  
12                      arising in connection with the overpayment  
13                      is, separately from and independently of  
14                      the overpayment, allocated to such account  
15                      pursuant to the nonforfeitability require-  
16                      ments of section 203 (for example, out of  
17                      the plan’s forfeiture account, additional  
18                      employer contributions, or recoveries from  
19                      those responsible for the overpayment), or

20                      “(ii) a defined benefit pension plan  
21                      subject to the funding rules in part 3 of  
22                      this subtitle B, unless the responsible plan  
23                      fiduciary determines, in the exercise of its  
24                      fiduciary discretion, that failure to recover  
25                      all or part of the overpayment faster than



1 required under such funding rules would  
2 materially affect the plan's ability to pay  
3 benefits due to other participants and  
4 beneficiaries, or

5 “(C) any fiduciary of the plan, other than  
6 a fiduciary (including a plan sponsor or contrib-  
7 uting employer acting in a fiduciary capacity)  
8 whose breach of its fiduciary duties resulted in  
9 such overpayment, provided that if the plan has  
10 established prudent procedures to prevent and  
11 minimize overpayment of benefits and the rel-  
12 evant plan fiduciaries have followed such proce-  
13 dures, an inadvertent benefit overpayment will  
14 not give rise to a breach of fiduciary duty.

15 “(2) REDUCTION IN FUTURE BENEFIT PAY-  
16 MENTS AND RECOVERY FROM RESPONSIBLE  
17 PARTY.—Paragraph (1) shall not fail to apply with  
18 respect to any inadvertent benefit overpayment  
19 merely because, after discovering such overpayment,  
20 the responsible plan fiduciary—

21 “(A) reduces future benefit payments to  
22 the correct amount provided for under the  
23 terms of the plan, or

24 “(B) seeks recovery from the person or  
25 persons responsible for the overpayment.

1           “(3) EMPLOYER FUNDING OBLIGATIONS.—  
2           Nothing in this subsection shall relieve an employer  
3           of any obligation imposed on it to make contribu-  
4           tions to a plan to meet the minimum funding stand-  
5           ards under part 3 of this subtitle B or to prevent  
6           or restore an impermissible forfeiture in accordance  
7           with section 203.

8           “(4) RECOUPMENT FROM PARTICIPANTS AND  
9           BENEFICIARIES.—If the responsible plan fiduciary,  
10          in the exercise of its fiduciary discretion, decides to  
11          seek recoupment from a participant or beneficiary of  
12          all or part of an inadvertent benefit overpayment  
13          made by the plan to such participant or beneficiary,  
14          it may do so, subject to the following conditions:

15                 “(A) No interest or other additional  
16                 amounts (such as collection costs or fees) are  
17                 sought on overpaid amounts for any period be-  
18                 fore or after the date of correction of such over-  
19                 payment.

20                 “(B) If the plan seeks to recoup past over-  
21                 payments of a non-decreasing periodic benefit  
22                 by reducing future benefit payments—

23                         “(i) the reduction ceases after the  
24                         plan has recovered the full dollar amount  
25                         of the overpayment,

1           “(ii) the amount recouped each cal-  
2           endar year does not exceed 10 percent of  
3           the full dollar amount of the overpayment,  
4           and

5           “(iii) future benefit payments are not  
6           reduced to below 90 percent of the periodic  
7           amount otherwise payable under the terms  
8           of the plan.

9           Alternatively, if the plan seeks to recoup past  
10          overpayments of a non-decreasing periodic ben-  
11          efit through one or more installment payments,  
12          the sum of such installment payments in any  
13          calendar year does not exceed the sum of the  
14          reductions that would be permitted in such year  
15          under the preceding sentence.

16          “(C) If the plan seeks to recoup past over-  
17          payments of a benefit other than a non-decreas-  
18          ing periodic benefit, the plan satisfies require-  
19          ments developed by the Secretary for purposes  
20          of this subparagraph.

21          “(D) Efforts to recoup overpayments are—  
22                  “(i) not accompanied by threats of  
23                  litigation, unless the responsible plan fidu-  
24                  ciary reasonably believes it could prevail in

1 a civil action brought in Federal or State  
2 court to recoup the overpayments, and

3 “(ii) not made through a collection  
4 agency or similar third party, unless the  
5 participant or beneficiary ignores or rejects  
6 efforts to recoup the overpayment following  
7 either a final judgment in Federal or State  
8 court or a settlement between the partici-  
9 pant or beneficiary and the plan, in either  
10 case authorizing such recoupment.

11 “(E) Recoupment of past overpayments to  
12 a participant is not sought from any beneficiary  
13 of the participant, including a spouse, surviving  
14 spouse, former spouse, or other beneficiary.

15 “(F) Recoupment may not be sought if the  
16 first overpayment occurred more than 3 years  
17 before the participant or beneficiary is first no-  
18 tified in writing of the error.

19 “(G) A participant or beneficiary from  
20 whom recoupment is sought is entitled to con-  
21 test all or part of the recoupment pursuant to  
22 the plan’s claims procedures.

23 “(H) In determining the amount of  
24 recoupment to seek, the responsible plan fidu-  
25 ciary may take into account the hardship that

1           recoupment likely would impose on the partici-  
2           pant or beneficiary.

3           “(5) EFFECT OF CULPABILITY.—Subpara-  
4           graphs (A) through (F) of paragraph (4) shall not  
5           apply to protect a participant or beneficiary who is  
6           culpable. For purposes of this paragraph, a partici-  
7           pant or beneficiary is culpable if the individual bears  
8           responsibility for the overpayment (such as through  
9           misrepresentations or omissions that led to the over-  
10          payment), or if the individual knew, or had good  
11          reason to know under the circumstances, that the  
12          benefit payment or payments were materially in ex-  
13          cess of the correct amount. Notwithstanding the pre-  
14          ceding sentence, an individual is not culpable merely  
15          because the individual believed the benefit payment  
16          or payments were or might be in excess of the cor-  
17          rect amount, if the individual raised that question  
18          with an authorized plan representative and was told  
19          the payment or payments were not in excess of the  
20          correct amount. With respect to a culpable partici-  
21          pant or beneficiary, efforts to recoup overpayments  
22          shall not be made through threats of litigation, un-  
23          less a lawyer for the plan could make the representa-  
24          tions required under Rule 11 of the Federal Rules

1 of Civil Procedure if the litigation were brought in  
2 Federal court.”.

3 (b) OVERPAYMENTS UNDER INTERNAL REVENUE  
4 CODE OF 1986.—

5 (1) QUALIFICATION REQUIREMENTS.—Section  
6 414 of the Internal Revenue Code of 1986, is fur-  
7 ther amended by adding at the end the following  
8 new subsection:

9 “(bb) SPECIAL RULES APPLICABLE TO BENEFIT  
10 OVERPAYMENTS.—

11 “(1) IN GENERAL.—A plan shall not fail to be  
12 treated as described in clause (i), (ii), (iii), or (iv)  
13 of section 219(g)(5)(A) (and shall not fail to be  
14 treated as satisfying the requirements of section  
15 401(a) or 403) merely because—

16 “(A) the plan fails to obtain payment from  
17 any participant, beneficiary, employer, plan  
18 sponsor, fiduciary, or other party on account of  
19 any inadvertent benefit overpayment made by  
20 the plan, or

21 “(B) the plan sponsor amends the plan to  
22 reduce past or future benefit payments to af-  
23 fected participants and beneficiaries in order to  
24 adjust for prior inadvertent benefit overpay-  
25 ments.

1           “(2) REDUCTION IN FUTURE BENEFIT PAY-  
2           MENTS AND RECOVERY FROM RESPONSIBLE  
3           PARTY.—Paragraph (1) shall not fail to apply to a  
4           plan merely because, after discovering a benefit over-  
5           payment, such plan—

6                   “(A) reduces future benefit payments to  
7                   the correct amount provided for under the  
8                   terms of the plan, or

9                   “(B) seeks recovery from the person or  
10                  persons responsible for such overpayment.

11           “(3) EMPLOYER FUNDING OBLIGATIONS.—  
12           Nothing in this subsection shall relieve an employer  
13           of any obligation imposed on it to make contribu-  
14           tions to a plan to meet the minimum funding stand-  
15           ards under sections 412 and 430 or to prevent or re-  
16           store an impermissible forfeiture in accordance with  
17           section 411.

18           “(4) OBSERVANCE OF BENEFIT LIMITATIONS.—  
19           Notwithstanding paragraph (1), a plan to which  
20           paragraph (1) applies shall observe any limitations  
21           imposed on it by section 401(a)(17) or 415. The  
22           plan may enforce such limitations using any method  
23           approved by the Secretary of the Treasury for re-  
24           couping benefits previously paid or allocations pre-  
25           viously made in excess of such limitations.

1           “(5) COORDINATION WITH OTHER QUALIFICA-  
2           TION REQUIREMENTS.—The Secretary of the Treas-  
3           ury may issue regulations or other guidance of gen-  
4           eral applicability specifying how benefit overpay-  
5           ments and their recoupment or non-recoupment  
6           from a participant or beneficiary shall be taken into  
7           account for purposes of satisfying any requirement  
8           applicable to a plan to which paragraph (1) ap-  
9           plies.”.

10           (2) ROLLOVERS.—Section 402(c) of such Code  
11           is amended by adding at the end the following new  
12           paragraph:

13           “(12) In the case of an inadvertent benefit  
14           overpayment from a plan to which section  
15           414(bb)(1) applies that is transferred to an eligible  
16           retirement plan by or on behalf of a participant or  
17           beneficiary—

18           “(A) the portion of such overpayment with  
19           respect to which recoupment is not sought on  
20           behalf of the plan shall be treated as having  
21           been paid in an eligible rollover distribution if  
22           the payment would have been an eligible roll-  
23           over distribution but for being an overpayment,  
24           and



1           “(B) the portion of such overpayment with  
2           respect to which recoupment is sought on behalf  
3           of the plan shall be permitted to be returned to  
4           such plan and in such case shall be treated as  
5           an eligible rollover distribution transferred to  
6           such plan by the participant or beneficiary who  
7           received such overpayment (and the plans mak-  
8           ing and receiving such transfer shall be treated  
9           as permitting such transfer).

10          In any case in which recoupment is sought on behalf  
11          of the plan but is disputed by the participant or ben-  
12          eficiary who received such overpayment, such dispute  
13          shall be subject to the claims procedures of the plan  
14          that made such overpayment, such plan shall notify  
15          the plan receiving the rollover of such dispute, and  
16          the plan receiving the rollover shall retain such over-  
17          payment on behalf of the participant or beneficiary  
18          (and shall be entitled to treat such overpayment as  
19          plan assets) pending the outcome of such proce-  
20          dures.”.

21          (c) EFFECTIVE DATE.—The amendments made by  
22          this section shall apply as of the date of the enactment  
23          of this Act.

1 (d) CERTAIN ACTIONS BEFORE DATE OF ENACT-  
2 MENT.—Plans, fiduciaries, employers, and plan sponsors  
3 are entitled to rely on—

4 (1) a good faith interpretation of then existing  
5 administrative guidance for inadvertent benefit over-  
6 payment recoupments and recoveries that com-  
7 menced before the date of enactment of this Act,  
8 and

9 (2) determinations made before the date of en-  
10 actment of this Act by the responsible plan fidu-  
11 ciary, in the exercise of its fiduciary discretion, not  
12 to seek recoupment or recovery of all or part of an  
13 inadvertent benefit overpayment.

14 In the case of a benefit overpayment that occurred prior  
15 to the date of enactment of this Act, any installment pay-  
16 ments by the participant or beneficiary to the plan or any  
17 reduction in periodic benefit payments to the participant  
18 or beneficiary, which were made in recoupment of such  
19 overpayment and which commenced prior to such date,  
20 may continue after such date. Nothing in this subsection  
21 shall relieve a fiduciary from responsibility for an overpay-  
22 ment that resulted from a breach of its fiduciary duties.

23 **SEC. 12. IMPROVING COVERAGE FOR PART-TIME WORKERS.**

24 (a) AMENDMENT OF EMPLOYEE RETIREMENT IN-  
25 COME SECURITY ACT OF 1974.—

1           (1) IN GENERAL.—Section 202 of the Employee  
2           Retirement Income Security Act of 1974 (29 U.S.C.  
3           1052) is amended by adding at the end the following  
4           new subsection:

5           “(c) SPECIAL RULE FOR CERTAIN PART-TIME EM-  
6           PLOYEES.—

7           “(1) IN GENERAL.—A pension plan that in-  
8           cludes either a qualified cash or deferred arrange-  
9           ment (as defined in section 401(k) of the Internal  
10          Revenue Code of 1986) or a salary reduction agree-  
11          ment (as described in section 403(b) of such Code)  
12          shall not require, as a condition of participation in  
13          the arrangement or agreement, that an employee  
14          complete a period of service with the employer (or  
15          employers) maintaining the plan extending beyond  
16          the close of the earlier of—

17                  “(A) the period permitted under subsection  
18                  (a)(1) (determined without regard to subpara-  
19                  graph (B)(i) thereof); or

20                  “(B) the first 24-month period—

21                          “(i) consisting of 2 consecutive 12-  
22                          month periods during each of which the  
23                          employee has at least 500 hours of service;  
24                          and

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

3                   “(2) EXCEPTION.—Paragraph (1)(B) shall not  
4                   apply to any employee described in section 410(b)(3)  
5                   of the Internal Revenue Code of 1986.

6                   “(3) COORDINATION WITH OTHER RULES.—

7                   “(A) IN GENERAL.—In the case of employ-  
8                   ees who are eligible to participate in the ar-  
9                   rangement or agreement solely by reason of  
10                  paragraph (1)(B):

11                  “(i) EXCLUSIONS.—An employer may  
12                  elect to exclude such employees from the  
13                  application of subsections (a)(4), (k)(3),  
14                  (k)(12), (k)(13), (k)(15)(B)(i)(I), and  
15                  (m)(2) of section 401 of the Internal Rev-  
16                  enue Code of 1986 and section 410(b) of  
17                  such Code.

18                  “(ii) TIME OF PARTICIPATION.—The  
19                  rules of subsection (a)(4) shall apply to  
20                  such employees.

21                  “(B) TOP-HEAVY RULES.—An employer  
22                  may elect to exclude all employees who are eligi-  
23                  ble to participate in a plan maintained by the  
24                  employer solely by reason of paragraph (1)(B)  
25                  from the application of the vesting and benefit

1 requirements under subsections (b) and (c) of  
2 section 416 of the Internal Revenue Code of  
3 1986.

4 “(4) 12-MONTH PERIOD.—For purposes of this  
5 subsection, 12-month periods shall be determined in  
6 the same manner as under the last sentence of sub-  
7 section (a)(3)(A), except that 12-month periods be-  
8 ginning before January 1, 2021, shall not be taken  
9 into account.”

10 (2) VESTING.—Section 203(b) of the Employee  
11 Retirement Income Security Act of 1974 (29 U.S.C.  
12 1053(a)) is amended by redesignating paragraph (4)  
13 as paragraph (5) and by inserting after paragraph  
14 (3) the following new paragraph:

15 “(4) PART-TIME EMPLOYEES.—For purposes of  
16 determining whether an employee who is eligible to  
17 participate in a qualified cash or deferred arrange-  
18 ment or a salary reduction agreement under a plan  
19 solely by reason of section 202(c)(1)(B) has a non-  
20 forfeitable right to employer contributions—

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

1 “(B) paragraph (3) shall be applied by  
2 substituting ‘at least 500 hours of service’ for  
3 ‘more than 500 hours of service’ in subpara-  
4 graph (A) thereof; and

5 “(C) 12-month periods occurring before  
6 the 24-month period described in section  
7 202(c)(1)(B) shall not be treated as years of  
8 service.

9 For purposes of this paragraph, 12-month periods  
10 shall be determined in the same manner as under  
11 the last sentence of section 202(a)(3)(A), except that  
12 12-month periods beginning before January 1, 2021,  
13 shall not be taken into account.”.

14 (3) PRE-2021 SERVICE.—Section 112(b) of the  
15 Setting Every Community Up for Retirement En-  
16 hancement Act of 2019 (26 U.S.C. 401 note) is  
17 amended by striking “section 401(k)(2)(D)(ii)” and  
18 inserting “paragraphs (2)(D)(ii) and (15)(B)(iii) of  
19 section 401(k)”.

20 (b) CONFORMING AMENDMENTS TO INTERNAL REV-  
21 ENUE CODE OF 1986.—

22 (1) IN GENERAL.—Section 410(a) of the Inter-  
23 nal Revenue Code of 1986 is amended by adding at  
24 the end the following new paragraphs:

1           “(6) SPECIAL RULE FOR CERTAIN PART-TIME  
2       EMPLOYEES.—

3           “(A) IN GENERAL.—In the case of a plan  
4       that includes either a qualified cash or deferred  
5       arrangement (as defined in section 401(k)), a  
6       trust of which such plan is a part shall not con-  
7       stitute a qualified trust under section 401(a) if  
8       the plan requires, as a condition of participa-  
9       tion in the plan or arrangement, that an em-  
10      ployee complete a period of service with the em-  
11      ployer (or employers) maintaining the plan ex-  
12      tending beyond the close of the earlier of—

13           “(i) the period permitted under para-  
14      graph (1) (determined without regard to  
15      subparagraph (B)(i) thereof), or

16           “(ii) the first 24-month period—

17           “(I) consisting of 2 consecutive  
18      12-month periods during each of  
19      which the employee has at least 500  
20      hours of service, and

21           “(II) by the close of which the  
22      employee has attained the age of 21.

23           “(B) EXCEPTION.—Subparagraph (A)(ii)  
24      shall not apply to any employee described in  
25      section 410(b)(3).

1                   “(C) COORDINATION WITH OTHER  
2 RULES.—

3                   “(i) IN GENERAL.—In the case of em-  
4 ployees who are eligible to participate in  
5 the arrangement or agreement solely by  
6 reason of subparagraph (A)(ii)—

7                   “(I) EXCLUSIONS.—An employer  
8 may elect to exclude such employees  
9 from the application of subsection (b)  
10 and of subsections (a)(4), (k)(3),  
11 (k)(12), (k)(13), (k)(15)(B)(i)(I), and  
12 (m)(2) of section 401.

13                   “(II) TIME OF PARTICIPATION.—  
14 The rules of paragraph (4) shall apply  
15 to such employees.

16                   “(ii) TOP-HEAVY RULES.—An em-  
17 ployer may elect to exclude all employees  
18 who are eligible to participate in a plan  
19 maintained by the employer solely by rea-  
20 son of subparagraph (A)(ii) from the appli-  
21 cation of the vesting and benefit require-  
22 ments under subsections (b) and (c) of sec-  
23 tion 416.

24                   “(D) 12-MONTH PERIOD.—For purposes of  
25 this paragraph, 12-month periods shall be de-



1           terminated in the same manner as under the last  
2           sentence of paragraph (3)(A), except that 12-  
3           month periods beginning before January 1,  
4           2021, shall not be taken into account.”

5           (2) VESTING.—Section 410(a) of the Internal  
6           Revenue Code of 1986 is amended by adding at the  
7           end the following:

8           “(6) PART-TIME EMPLOYEES.—For purposes of  
9           determining whether an employee who is eligible to  
10          participate in a qualified cash or deferred arrange-  
11          ment or a salary reduction agreement under a plan  
12          solely by reason of paragraph (6)(A)(ii) has a non-  
13          forfeitable right to employer contributions—

14                 “(A) except as provided in subparagraph  
15                 (B), each 12-month period for which the em-  
16                 ployee has at least 500 hours of service shall be  
17                 treated as a year of service,

18                 “(B) section 411(a)(6) shall be applied by  
19                 substituting ‘at least 500 hours of service’ for  
20                 ‘more than 500 hours of service’ in subpara-  
21                 graph (A) thereof, and

22                 “(C) 12-month periods occurring before  
23                 the 24-month period described in paragraph  
24                 (6)(A)(ii) shall not be treated as years of serv-  
25                 ice.

1 For purposes of this paragraph, 12-month periods  
2 shall be determined in the same manner as under  
3 paragraph (6)(D).”.

