

116TH CONGRESS
1ST SESSION

S. 975

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, Mr. BENNET, 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 Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

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

1 **SEC. 2. FINDINGS.**

2 Congress finds the following:

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

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

12 (3) Women's retirement preparedness often lags
13 significantly behind their male counterparts', result-
14 ing in the median retirement income for women in
15 2016 being just 58 percent of men's retirement in-
16 come.

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

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

23 (6) Because of the pay gap, women working
24 full-time, year-round typically lose \$403,440 over a
25 40-year career thereby requiring the average woman

1 to work almost a decade longer than her male coun-
2 terpart to make up that career wage gap.

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

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

12 (9) While traditional defined benefit retirement
13 plans have spousal protections, defined contribution
14 retirement plans, which have become increasingly
15 common, currently provide no similar spousal protec-
16 tions.

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

21 (11) While fees and expenses associated with
22 retirement plans have been in decline, participants
23 have seen direct charges for processing qualified do-
24 mestic relations orders increase significantly.

1 **SEC. 3. INCREASING SPOUSAL PROTECTION UNDER DE-**
 2 **FINED CONTRIBUTION PLANS.**

3 (a) IN GENERAL.—Part 2 of subtitle B of title I of
 4 the Employee Retirement Income Security Act of 1974
 5 (29 U.S.C. 1051 et seq.) is amended by inserting after
 6 section 205 the following new section:

7 **“SEC. 205A. ADDITIONAL SPOUSAL CONSENT REQUIRE-**
 8 **MENTS.**

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

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

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

20 “(1) any distribution that is—

21 “(A) a minimum required distribution de-
 22 scribed in section 4974(b) of the Internal Rev-
 23 enue Code of 1986;

24 “(B) a result of the use of the partici-
 25 pant’s accrued benefit as security for a loan, in-

1 including any distribution required by reason of a
2 failure to comply with the terms of such loan;

3 “(C) made upon hardship of the partici-
4 pant; or

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

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

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

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

5 “(d) EXCEPTIONS FOR CERTAIN ROLLOVER CON-
6 TRIBUTIONS.—Subsection (a) shall not apply to any dis-
7 tribution that is an eligible rollover distribution (as de-
8 fined in section 402(f)(2)(A) of the Internal Revenue Code
9 of 1986) made in the form of a direct trustee-to-trustee
10 transfer within the meaning of section 401(a)(31) of the
11 Internal Revenue Code of 1986—

12 “(1) to a plan to which this section or section
13 205 applies; or

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

17 “(A) the beneficiary of such plan is the
18 spouse of the participant, or the spousal con-
19 sent requirements of subsection (e) are met
20 with respect to any designation of 1 or more
21 other beneficiaries; and

22 “(B) the beneficiary of such plan (whether
23 the spouse or other beneficiary designated
24 under paragraph (1)) may not be changed un-
25 less—

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

4 “(ii) the spousal consent under sub-
5 paragraph (A) to the designation of a ben-
6 eficiary other than the spouse expressly
7 permits such designation to be changed
8 without the further consent of the spouse.

9 “(e) SPOUSAL CONSENT REQUIREMENTS.—

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

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

23 “(B) the spouse of the participant consents
24 in writing to the distribution or designation or
25 change of beneficiary;

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

4 “(D) the written consent under subpara-
5 graph (B)—

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

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

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

17 “(A) there is no spouse;

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

22 “(C) such consent cannot be obtained be-
23 cause—

24 “(i) the spouse cannot be located;

1 “(ii) due to exceptional circumstances,
2 requiring the participant to seek the
3 spouse’s consent would be inappropriate;
4 or

5 “(iii) of such other circumstances as
6 the Secretary of the Treasury may by reg-
7 ulations prescribe.

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

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

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

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

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

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

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

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

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

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

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

23 (a) IN GENERAL.—Section 202 of the Employee Re-
 24 tirement Income Security Act of 1974 (29 U.S.C. 1052)

1 is amended by adding at the end the following new sub-
2 section:

3 “(c) SPECIAL RULE FOR CERTAIN PART-TIME EM-
4 PLOYEES.—

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

15 “(A) the period permitted under subsection
16 (a)(1) (determined without regard to subpara-
17 graph (B)(i) thereof) and section 410(a)(1) of
18 such Code (determined without regard to sub-
19 paragraph (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 employees who are included in a unit of em-
5 ployees covered by an agreement which the Secretary
6 finds to be a collective bargaining agreement be-
7 tween employee representatives and 1 or more em-
8 ployers, if there is evidence that retirement benefits
9 were the subject of good faith bargaining between
10 such employee representatives and such employer or
11 employers.

12 “(3) COORDINATION WITH OTHER RULES.—In
13 the case of employees who are not highly com-
14 pensated employees (within the meaning of section
15 414(q) of the Internal Revenue Code of 1986) and
16 who are eligible to participate in the arrangement or
17 agreement solely by reason of paragraph (1)(B):

18 “(A) EXCLUSIONS.—An employer may
19 elect to exclude such employees from the deter-
20 mination of whether the plan that includes the
21 arrangement or agreement satisfies the require-
22 ments of subsections (a)(4), (k)(3), (k)(12),
23 (k)(13), (m)(2), (m)(11), and (m)(12) of sec-
24 tion 401 of such Code, section 410(b) of such
25 Code, and section 416 of such Code. If the em-

1 ployer so excludes such employees with respect
2 to the requirements of any such provision, such
3 employees shall be excluded with respect to the
4 requirements of all such provisions. This sub-
5 paragraph shall cease to apply to any employee
6 as of the first plan year beginning after the
7 plan year in which the employee completes 1
8 year of service (without regard to paragraph
9 (1)(B) of this subsection).

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

14 “(4) 12-MONTH PERIOD.—For purposes of this
15 subsection, 12-month periods shall be determined in
16 the same manner as under the last sentence of sub-
17 section (a)(3)(A), except that 12-month periods be-
18 ginning before January 1, 2019, shall not be taken
19 into account.”.

20 (b) VESTING.—Section 203(b) of the Employee Re-
21 tirement Income Security Act of 1974 (29 U.S.C.
22 1053(a)) is amended by redesignating paragraph (4) as
23 paragraph (5) and by inserting after paragraph (3) the
24 following new paragraph:

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

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

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

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

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

23 “(n) REQUIREMENTS RELATING TO PART-TIME EM-
24 PLOYEES.—In the case of a plan that fails to permit par-
25 ticipation as required by section 202(c), the Secretary may

1 assess a civil penalty against the plan sponsor in an
2 amount equal to \$10,000 per year per employee to whom
3 such failure relates. The Secretary may, in the Secretary's
4 sole discretion, waive or reduce the penalty under this sub-
5 section if the Secretary determines that the plan sponsor
6 acted reasonably and in good faith.”.

7 **SEC. 5. EFFECTIVE DATES.**

8 (a) INCREASING SPOUSAL PROTECTION UNDER DE-
9 FINED CONTRIBUTION PLANS.—Except as provided in
10 subsections (c) and (d), the amendments made by section
11 2 shall apply to distributions and rollover contributions
12 made in plan years beginning after the date that is 6
13 months after the date of the enactment of this Act.

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

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

1 (1) the later of—

2 (A) the date on which the last of such col-
 3 lective bargaining agreements terminates (de-
 4 termined without regard to any extension there-
 5 of on or after such date of the enactment); or

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

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

10 (d) PROVISIONS RELATING TO PLAN AMEND-
 11 MENTS.—

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

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

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

22 (i) pursuant to the amendments made
 23 by section 2 or 3 or pursuant to any regu-
 24 lation issued under either such section; and

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

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

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

12 (i) the plan or contract is operated as
13 if such plan or contract amendment were
14 in effect for the period described in sub-
15 paragraph (C); and

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

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

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

22 (ii) ending on the date described in
23 subparagraph (A)(ii) (or, if earlier, the
24 date the plan or contract amendment is
25 adopted).

1 **SEC. 6. ACCESS TO INDEPENDENT CONSUMER INFORMA-**
2 **TION AND UNDERSTANDING.**

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

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

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

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

23 (c) DETERMINATION.—In order to ensure that the re-
24 quirement under subsection (b) is effectively carried out,
25 the Financial Literacy and Education Commission
26 (FLEC) shall determine and publish on its website the

1 appropriate link to the CFPB’s website for access to the
2 CFPB’s and other Federal agencies’ consumer education
3 materials, the preferred format of such link, and any ac-
4 companying description of the CFPB and the consumer
5 education materials associated with such link.

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

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

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

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

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

4 (e) USE OF FUNDS.—An eligible entity that receives
5 a grant under this section shall use the grant funds to
6 develop and implement financial literacy education, and
7 related activities including outreach, awareness building,
8 and counseling to increase women’s knowledge of retire-
9 ment planning and consumer, economic, and personal fi-
10 nancial concepts.

11 (f) AUTHORIZATION OF APPROPRIATIONS.—There is
12 authorized to be appropriated to carry out this section
13 \$100,000,000 for fiscal year 2020 and each succeeding
14 fiscal year.

15 **SEC. 8. GRANTS TO ASSIST LOW-INCOME WOMEN AND SUR-**
16 **VIVORS OF DOMESTIC VIOLENCE IN OBTAIN-**
17 **ING QUALIFIED DOMESTIC RELATIONS OR-**
18 **DERS.**

19 (a) AUTHORIZATION OF GRANT AWARDS.—The Sec-
20 retary of Labor, acting through the Director of the Wom-
21 en’s Bureau in conjunction with the Assistant Secretary
22 of the Employee Benefits Security Administration, shall
23 award grants, on a competitive basis, to eligible entities
24 to enable such entities to assist low-income women and
25 survivors of domestic violence in obtaining qualified do-

1 mestic relations orders and ensuring that those women ac-
2 tually obtain the benefits to which they are entitled
3 through those orders.

4 (b) DEFINITION OF ELIGIBLE ENTITY.—In this sec-
5 tion, the term “eligible entity” means a community-based
6 organization with proven experience and expertise in serv-
7 ing women and the financial and retirement needs of
8 women.

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

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

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

23 (f) AUTHORIZATION OF APPROPRIATIONS.—There is
24 authorized to be appropriated to carry out this section

- 1 \$100,000,000 for fiscal year 2020 and each succeeding
- 2 fiscal year.

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