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(Original Signature of Member)

115TH CONGRESS  
2D SESSION

**H. R.** \_\_\_\_\_

To amend the Employee Retirement Income Security Act of 1974 to provide for greater spousal protection under defined contribution plans, and for other purposes.

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**IN THE HOUSE OF REPRESENTATIVES**

Ms. SCHAKOWSKY (for herself, Ms. BONAMICI, and Mr. NORCROSS) introduced the following bill; which was referred to the Committee on

\_\_\_\_\_  
**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 Pension Pro-  
5       tection Act of 2018”.

6       **SEC. 2. FINDINGS.**

7       Congress finds the following:

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

6           (2) Approximately 34 percent of the private sec-  
7           tor workforce does not have access to a retirement  
8           plan at the workplace, and only half of the workforce  
9           actually participates in a retirement plan.

10          (3) Women's retirement preparedness often lags  
11          significantly behind their male counterparts, result-  
12          ing in the median retirement income for women in  
13          2014 being just 54 percent of men's retirement in-  
14          come.

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

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

21          (6) The cost impact on women who leave the  
22          workforce early to become caregivers, in terms of  
23          lost wages and Social Security benefits, equals  
24          \$324,044 in lost retirement savings.

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

5           (8) While traditional defined benefit retirement  
6           plans have spousal protections, defined contribution  
7           retirement plans, which have become increasingly  
8           common, currently provide no similar spousal protec-  
9           tions.

10          (9) Every year more than 1,200,000 couples get  
11          divorced in the United States. After the family  
12          home, retirement savings are the largest asset that  
13          must be divided at divorce.

14          (10) While fees and expenses associated with  
15          retirement plans have been in decline, participants  
16          have seen direct charges for processing qualified do-  
17          mestic relations orders increase significantly.

18   **SEC. 3. INCREASING SPOUSAL PROTECTION UNDER DE-**  
19                   **FINED CONTRIBUTION PLANS.**

20          (a) IN GENERAL.—Part 2 of subtitle B of title I of  
21          the Employee Retirement Income Security Act of 1974  
22          (29 U.S.C. 1051 et seq.) is amended by inserting after  
23          section 205 the following new section:

1   **“SEC. 205A. ADDITIONAL SPOUSAL CONSENT REQUIRE-**  
2                   **MENTS.**

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

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

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

14                  “(1) any distribution that is—

15                          “(A) a minimum required distribution de-  
16                          scribed in section 4974(b) of the Internal Rev-  
17                          enue Code of 1986;

18                          “(B) a result of the use of the partici-  
19                          pant’s accrued benefit as security for a loan, in-  
20                          cluding any distribution required by reason of a  
21                          failure to comply with the terms of such loan;

22                          “(C) made upon hardship of the partici-  
23                          pant; or

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

1           “(2) any distribution in the form of a qualified  
2       joint and survivor annuity (as defined in section  
3       205(d)(1)), a qualified optional survivor annuity (as  
4       defined in section 205(d)(2)), a qualified preretire-  
5       ment survivor annuity (as defined in section 205(e)),  
6       or a series of substantially equal periodic payments  
7       (not less frequently than annually) made for the  
8       joint lives (or life expectancies) of the participant  
9       and the participant’s spouse; or

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

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

23           “(d) EXCEPTIONS FOR CERTAIN ROLLOVER CON-  
24       TRIBUTIONS.—Subsection (a) shall not apply to any dis-  
25       tribution that is an eligible rollover distribution (as de-

1    fined in section 402(f)(2)(A) of the Internal Revenue Code  
2    of 1986) made in the form of a direct trustee-to-trustee  
3    transfer within the meaning of section 401(a)(31) of the  
4    Internal Revenue Code of 1986—

5           “(1) to a plan to which this section or section  
6           205 applies; or

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

10           “(A) the beneficiary of such plan is the  
11           spouse of the participant, or the spousal con-  
12           sent requirements of subsection (e) are met  
13           with respect to any designation of 1 or more  
14           other beneficiaries; and

15           “(B) the beneficiary of such plan (whether  
16           the spouse or other beneficiary designated  
17           under paragraph (1)) may not be changed un-  
18           less—

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

22           “(ii) the spousal consent under sub-  
23           paragraph (A) to the designation of a ben-  
24           eficiary other than the spouse expressly

1                   permits such designation to be changed  
2                   without the further consent of the spouse.

3           “(e) SPOUSAL CONSENT REQUIREMENTS.—

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

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

17                   “(B) the spouse of the participant consents  
18           in writing to the distribution or designation or  
19           change of beneficiary;

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

23                   “(D) the written consent under subpara-  
24           graph (B)—

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

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

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

12 “(A) there is no spouse;

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

17 “(C) such consent cannot be obtained be-  
18 cause—

19 “(i) the spouse cannot be located;

20 “(ii) due to exceptional circumstances,  
21 requiring the participant to seek the  
22 spouse’s consent would be inappropriate;  
23 or

1 “(iii) of such other circumstances as  
2 the Secretary of the Treasury may by reg-  
3 ulations prescribe.

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

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

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

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

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

21 (b) CLERICAL AMENDMENT.—The table of sections  
22 of part 2 of subtitle B of title I of the Employee Retire-  
23 ment Income Security Act of 1974 is amended by insert-  
24 ing after the item relating to section 205 the following  
25 new item:

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

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

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

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

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

18 (a) IN GENERAL.—Section 202 of the Employee Re-  
19 tirement Income Security Act of 1974 (29 U.S.C. 1052)  
20 is amended by adding at the end the following new sub-  
21 section:

22 “(c) SPECIAL RULE FOR CERTAIN PART-TIME EM-  
23 PLOYEES.—

24 “(1) IN GENERAL.—A pension plan that in-  
25 cludes either a qualified cash or deferred arrange-

1       ment (as defined in section 401(k) of the Internal  
2       Revenue Code of 1986) or a salary reduction agree-  
3       ment (as described in section 403(b) of such Code)  
4       shall not require, as a condition of participation in  
5       the arrangement or agreement, that an employee  
6       complete a period of service with the employer (or  
7       employers) maintaining the plan extending beyond  
8       the close of the earlier of—

9               “(A) the period permitted under subsection  
10              (a)(1) (determined without regard to subpara-  
11              graph (B)(i) thereof) and section 410(a)(1) of  
12              such Code (determined without regard to sub-  
13              paragraph (B)(i) thereof); or

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

15               “(i) consisting of 2 consecutive 12-  
16              month periods during each of which the  
17              employee has at least 500 hours of service;  
18              and

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

21             “(2) EXCEPTION.—Paragraph (1)(B) shall not  
22              apply to employees who are included in a unit of em-  
23              ployees covered by an agreement which the Secretary  
24              finds to be a collective bargaining agreement be-  
25              tween employee representatives and 1 or more em-

1        ployers, if there is evidence that retirement benefits  
2        were the subject of good faith bargaining between  
3        such employee representatives and such employer or  
4        employers.

5            “(3) COORDINATION WITH OTHER RULES.—In  
6        the case of employees who are not highly com-  
7        pensated employees (within the meaning of section  
8        414(q) of the Internal Revenue Code of 1986) and  
9        who are eligible to participate in the arrangement or  
10       agreement solely by reason of paragraph (1)(B):

11            “(A) EXCLUSIONS.—An employer may  
12        elect to exclude such employees from the deter-  
13        mination of whether the plan that includes the  
14        arrangement or agreement satisfies the require-  
15        ments of subsections (a)(4), (k)(3), (k)(12),  
16        (k)(13), (m)(2), (m)(11), and (m)(12) of sec-  
17        tion 401 of such Code, section 410(b) of such  
18        Code, and section 416 of such Code. If the em-  
19        ployer so excludes such employees with respect  
20        to the requirements of any such provision, such  
21        employees shall be excluded with respect to the  
22        requirements of all such provisions. This sub-  
23        paragraph shall cease to apply to any employee  
24        as of the first plan year beginning after the  
25        plan year in which the employee completes 1

1           year of service (without regard to paragraph  
2           (1)(B) of this subsection).

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

7           “(4) 12-MONTH PERIOD.—For purposes of this  
8           subsection, 12-month periods shall be determined in  
9           the same manner as under the last sentence of sub-  
10          section (a)(3)(A), except that 12-month periods be-  
11          ginning before January 1, 2019, shall not be taken  
12          into account.”.

13          (b) VESTING.—Section 203(b) of the Employee Re-  
14          tirement Income Security Act of 1974 (29 U.S.C.  
15          1053(a)) is amended by redesignating paragraph (4) as  
16          paragraph (5) and by inserting after paragraph (3) the  
17          following new paragraph:

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

24                 “(A) except as provided in subparagraph (B),  
25          each 12-month period for which the employee has at

1       least 500 hours of service shall be treated as a year  
2       of service; and

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

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

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

15       “(n) REQUIREMENTS RELATING TO PART-TIME EM-  
16 PLOYEES.—In the case of a plan that fails to permit par-  
17 ticipation as required by section 202(c), the Secretary may  
18 assess a civil penalty against the plan sponsor in an  
19 amount equal to \$10,000 per year per employee to whom  
20 such failure relates. The Secretary may, in the Secretary’s  
21 sole discretion, waive or reduce the penalty under this sub-  
22 section if the Secretary determines that the plan sponsor  
23 acted reasonably and in good faith.”.

1 **SEC. 5. EFFECTIVE DATES.**

2 (a) INCREASING SPOUSAL PROTECTION UNDER DE-  
3 FINED CONTRIBUTION PLANS.—Except as provided in  
4 subsections (c) and (d), the amendments made by section  
5 2 shall apply to distributions and rollover contributions  
6 made in plan years beginning after the date that is 6  
7 months after the date of the enactment of this Act.

8 (b) ENSURING COVERAGE FOR LONG-TERM PART-  
9 TIME WORKERS.—Except as provided in subsections (c)  
10 and (d), the amendments made by section 3 shall apply  
11 to plan years beginning after December 31, 2018.

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

20 (1) the later of—

21 (A) the date on which the last of such col-  
22 lective bargaining agreements terminates (de-  
23 termined without regard to any extension there-  
24 of on or after such date of the enactment); or

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

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

3       (d) PROVISIONS RELATING TO PLAN AMEND-  
4       MENTS.—

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

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

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

15           (i) pursuant to the amendments made  
16       by section 2 or 3 or pursuant to any regu-  
17       lation issued under either such section; and

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

22       In the case of a governmental plan (as defined  
23       in section 414(d) of the Internal Revenue Code  
24       of 1986), this subparagraph shall be applied by

1 substituting “5 years” for “3 years” in clause  
2 (ii).

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

5 (i) the plan or contract is operated as  
6 if such plan or contract amendment were  
7 in effect for the period described in sub-  
8 paragraph (C); and

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

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

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

15 (ii) ending on the date described in  
16 subparagraph (A)(ii) (or, if earlier, the  
17 date the plan or contract amendment is  
18 adopted).

19 **SEC. 6. ACCESS TO INDEPENDENT CONSUMER INFORMA-**  
20 **TION AND UNDERSTANDING.**

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

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

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

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

16       (c) DETERMINATION.—In order to ensure that the re-  
17 quirement under subsection (b) is effectively carried out,  
18 the Financial Literacy and Education Commission  
19 (FLEC) shall determine and publish on its website the  
20 appropriate link to the CFPB’s website for access to the  
21 CFPB’s and other Federal agencies’ consumer education  
22 materials, the preferred format of such link, and any ac-  
23 companying description of the CFPB and the consumer  
24 education materials associated with such link.

1   **SEC. 7. GRANTS TO PROMOTE FINANCIAL LITERACY FOR**  
2                   **WOMEN.**

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

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

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

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

22          (e) **USE OF FUNDS.**—An eligible entity that receives  
23   a grant under this section shall use the grant funds to  
24   develop and implement financial literacy education, and  
25   related activities including outreach, awareness building,  
26   and counseling to increase women’s knowledge of retire-

1 ment planning and consumer, economic, and personal fi-  
2 nancial concepts.

3 (f) AUTHORIZATION OF APPROPRIATIONS.—There is  
4 authorized to be appropriated to carry out this section  
5 \$100,000,000 for fiscal year 2019 and each succeeding  
6 fiscal year.

7 **SEC. 8. GRANTS TO ASSIST LOW-INCOME WOMEN AND VIC-**  
8 **TIMS OF DOMESTIC VIOLENCE IN OBTAINING**  
9 **QUALIFIED DOMESTIC RELATIONS ORDERS.**

10 (a) AUTHORIZATION OF GRANT AWARDS.—The Sec-  
11 retary of Labor, acting through the Director of the Wom-  
12 en’s Bureau in conjunction with the Assistant Secretary  
13 of the Employee Benefits Security Administration, shall  
14 award grants, on a competitive basis, to eligible entities  
15 to enable such entities to assist low-income women and  
16 victims of domestic violence in obtaining qualified domes-  
17 tic relations orders and ensuring that those women actu-  
18 ally obtain the benefits to which they are entitled through  
19 those orders.

20 (b) DEFINITION OF ELIGIBLE ENTITY.—In this sec-  
21 tion, the term “eligible entity” means a community-based  
22 organization with proven experience and expertise in serv-  
23 ing women and the financial and retirement needs of  
24 women.

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

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

9       (e) USE OF FUNDS.—An eligible entity that receives  
10 a grant under this section shall use the grant funds to  
11 develop programs to offer help to low-income women or  
12 victims of domestic violence who need assistance in pre-  
13 paring, obtaining, and effectuating a qualified domestic re-  
14 lations order.

15       (f) AUTHORIZATION OF APPROPRIATIONS.—There is  
16 authorized to be appropriated to carry out this section  
17 \$100,000,000 for fiscal year 2019 and each succeeding  
18 fiscal year.