

119TH CONGRESS
1ST SESSION

S. _____

To amend the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code of 1986 regarding pension plans for independent workers, and for other purposes.

IN THE SENATE OF THE UNITED STATES

_____ introduced the following bill; which was read twice
and referred to the Committee on _____

A BILL

To amend the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code of 1986 regarding pension plans for independent workers, 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 “Independent Retire-
5 ment Fairness Act”.

1 **SEC. 2. POOLED EMPLOYER PLANS FOR INDEPENDENT**
2 **WORKERS.**

3 Section 3(43) of the Employee Retirement Income
4 Security Act of 1974 (29 U.S.C. 1002(43)) is amended
5 by adding at the end the following:

6 “(E) TREATMENT OF INDEPENDENT
7 WORKERS AS EMPLOYEES.—

8 “(i) IN GENERAL.—

9 “(I) INDEPENDENT WORKERS.—
10 For purposes of a pooled employer
11 plan, an independent worker may be
12 enrolled in the pooled employer plan
13 as if the independent worker were an
14 employee of an employer in the plan
15 and shall be considered a participant
16 for purposes of the plan.

17 “(II) TRADE ASSOCIATIONS.—
18 For purposes of a pooled employer
19 plan, a trade association may be in a
20 pooled employer plan as if the trade
21 organization were an employer and
22 may enroll an independent worker in
23 the plan in accordance with subclause
24 (I).

25 “(ii) DATA HARMONIZATION.—For
26 purposes of an independent worker who is

1 a participant in a pooled employer plan, an
2 employer of an independent worker or a
3 trade organization that enrolls an inde-
4 pendent worker may share data regarding
5 the independent worker with any person as
6 necessary to facilitate the establishment
7 and maintenance of the pooled employer
8 plan.

9 “(iii) RULE OF CONSTRUCTION RE-
10 GARDING EMPLOYMENT STATUS.—The sta-
11 tus of an independent worker as a partici-
12 pant in a pooled employer plan of an em-
13 ployer or a trade association and any con-
14 tributions made to such a pooled employer
15 plan by the employer on behalf of an inde-
16 pendent worker shall not be construed to
17 mean that the independent worker is an
18 employee of the employer or trade associa-
19 tion in the plan for purposes of any Fed-
20 eral, State, or local law.

21 “(iv) DEFINITIONS.—For purposes of
22 this subparagraph:

23 “(I) INDEPENDENT WORKER.—

24 The term ‘independent worker’ means
25 an individual who, with respect to an

1 employer, performs work for remuneration for the employer and is not
2 an employee of the employer.
3

4 “(II) TRADE ASSOCIATION.—The
5 term ‘trade association’ includes any
6 labor organization, worker cooperative,
7 employee organization, association of workers in related or unrelated
8 industries, or association of related
9 companies or contractors.”
10

11 **SEC. 3. SIMPLIFIED EMPLOYEE PENSIONS FOR INDE-**
12 **PENDENT WORKERS.**

13 (a) IN GENERAL.—Subsection (k) of section 408 of
14 the Internal Revenue Code of 1986 is amended by redesignating
15 paragraph (10) as paragraph (11) and by inserting
16 after paragraph (9) the following new paragraph:

17 “(10) INDEPENDENT WORKERS.—

18 “(A) IN GENERAL.—At the election of the
19 employer, an independent worker may be treated for purposes of this subsection in the same
20 manner as an employee, as provided in this
21 paragraph.
22

23 “(B) PARTICIPATION.—In the case of independent workers—
24

1 “(i) PARTICIPATION.—An employer
2 may elect to exclude such workers in ap-
3 plying paragraph (2).

4 “(ii) EMPLOYEES ELECTING.—Para-
5 graph (6)(A)(ii) shall not apply.

6 “(C) INDEPENDENT WORKERS TREATED
7 SEPARATELY.—For purposes of applying para-
8 graphs (3)(C), (5), and (6)(A)(iii), the employer
9 may elect to treat independent workers sepa-
10 rately from employees.

11 “(D) NOT COUNTED IN EMPLOYER SIZE.—
12 Independent workers shall not be taken into ac-
13 count as employees in applying paragraph
14 (6)(B).

15 “(E) CONTRIBUTION OF BONUSES.—Not-
16 withstanding paragraphs (3)(C) and (5), in the
17 case of any independent worker who is entitled
18 to receive a cash bonus from the employer, at
19 the election of the independent worker such
20 bonus may be contributed to the account or an-
21 nuity of the worker pursuant to the simplified
22 employee pension and not paid to the worker in
23 cash. Any bonus so contributed shall not be
24 taken into account in determining the percent-

1 age of compensation contributed with respect to
2 the worker.

3 “(F) DEPOSITS INTO SUSPENSION AC-
4 COUNT.—An account or annuity shall not fail to
5 be treated as a simplified employee pension
6 solely because the terms of the pension allow
7 the employer, at the election of the independent
8 worker, to deposit contributions into a suspen-
9 sion account instead of into the account or an-
10 nuity, if such contributions are either—

11 “(i) returned to the independent
12 worker in cash, or

13 “(ii) contributed into the account or
14 annuity pursuant to the terms of the pen-
15 sion,

16 within the same taxable year or not later than
17 the last date on which contributions may be
18 made for such taxable year. Amounts contrib-
19 uted to the account or annuity pursuant to the
20 preceding sentence shall be treated for purposes
21 of this subsection as if contributed directly to
22 such account or annuity, and amounts returned
23 to the independent worker in cash shall be
24 treated as never contributed under the sim-
25 plified employee pension.

1 “(G) DEFINITIONS.—For purposes of this
2 paragraph—

3 “(i) INDEPENDENT WORKER.—The
4 term ‘independent worker’ has the mean-
5 ing given the term in section 3(43)(E) of
6 the Employee Retirement Income Security
7 Act of 1974.

8 “(ii) SUSPENSION ACCOUNT.—The
9 term ‘suspension account’ has the meaning
10 given the term in section 5 of the Inde-
11 pendent Retirement Fairness Act.”.

12 (b) EFFECTIVE DATE.—The amendment made by
13 this section shall apply to taxable years beginning after
14 the date of the enactment of this Act.

15 **SEC. 4. SIMPLIFICATION OF AUDITING REQUIREMENTS**
16 **FOR GROUPS OF PLANS.**

17 Section 202 of the Setting Every Community Up for
18 Retirement Enhancement Act of 2019 (29 U.S.C. 6058
19 et seq.) is amended by—

20 (1) by striking “relate only” and inserting the
21 following:

22 “(A) relate only”; and

23 (2) by striking the period and inserting the fol-
24 lowing: “; and

1 “(B) be based on the same accounting
2 principles applicable to opinions with respect to
3 pooled employer plans (as defined in section
4 3(43) of such Act (29 U.S.C. 1002(43))), ex-
5 cept that such an opinion shall take into ac-
6 count the limitations on the use of the assets of
7 a plan to pay benefits and expenses only with
8 respect to such plan and shall take into account
9 that plans in a group of plans described in sub-
10 section (c) may have separate trusts.”.

11 **SEC. 5. SIMPLIFICATION OF AUDITING FOR POOLED EM-**
12 **PLOYER PLANS.**

13 (a) IN GENERAL.—Section 3(43) of the Employee
14 Retirement Income Security Act of 1974 (29 U.S.C.
15 1002(43)), as amended by section 2 of this Act, is further
16 amended by adding at the end the following:

17 “(F) AUDIT REQUIREMENT.—Any opinion
18 required by section 103(a)(3) with respect to a
19 pooled employer plan shall relate only to the
20 portions of such a plan attributable to a partici-
21 pating employer for which such an opinion
22 would be required if the participating employer
23 maintained such portion as a single-employer
24 plan separate from the pooled employer plan.”.

1 (b) EFFECTIVE DATE.—The amendment made by
2 this section shall apply to plan years beginning after the
3 date of enactment of this Act.

4 **SEC. 6. PILOT PROGRAMS FOR THE GIG ECONOMY.**

5 (a) IN GENERAL.—The Secretary of the Treasury
6 and the Secretary of Labor shall, in cooperation and after
7 reviewing a survey of relevant academic literature and con-
8 sulting with relevant companies, establish pilot programs
9 to encourage independent workers to save for retirement,
10 including—

11 (1) a program that allows an independent work-
12 er to round down any compensation paid to the inde-
13 pendent worker to the nearest whole dollar amount
14 and automatically contribute the amount of com-
15 pensation in excess of such whole dollar amount as
16 an elective employee contribution to a pooled em-
17 ployer plan in which the independent worker is en-
18 rolled, a solo 401(k) of the independent worker, or
19 a suspension account; and

20 (2) a program that allows an independent work-
21 er to designate an amount that will be automatically
22 deducted from the compensation paid to the inde-
23 pendent worker for, as selected by the independent
24 worker, each pay period or monthly, quarterly, semi-
25 annually, or annually and automatically contributed

1 as an elective employee contribution to a pooled em-
2 ployer plan in which the independent worker is en-
3 rolled, a solo 401(k) of the independent worker, or
4 a suspension account.

5 (b) COORDINATION WITH SAFE HARBOR PLAN
6 RULES.—As provided by the Secretary of the Treasury (or
7 such Secretary’s delegate), the pilot programs under sub-
8 section (a) may be conducted in or through the use of safe
9 harbor plans, and any such plan participating in such a
10 pilot program shall not be treated as failing to meet any
11 requirement applicable to such plan by reason of such par-
12 ticipation. For purposes of the preceding sentence, the
13 term “safe harbor plan” means any qualified cash or de-
14 ferred arrangement which meets the requirements of para-
15 graph (11), (12), (13), or (16) of section 401(k) of the
16 Internal Revenue Code of 1986.

17 (c) DEFINITIONS.—For purposes of this section:

18 (1) INDEPENDENT WORKER.—The term “inde-
19 pendent worker” has the meaning given the term in
20 section 3(43)(E) of the Employee Retirement In-
21 come Security Act of 1974 (29 U.S.C.
22 1002(43)(E)).

23 (2) POOLED EMPLOYER PLAN.—The term
24 “pooled employer plan” has the meaning given the

1 term in section 3(43) of the Employee Retirement
2 Income Security Act of 1974 (29 U.S.C. 1002(43)).

3 (3) SOLO 401(K).—The term “solo 401(k)”
4 means a qualified cash or deferred arrangement (as
5 defined in section 401(k)(2) of the Internal Revenue
6 Code of 1986) covering a single participant (or a
7 single participant and such individual’s spouse).

8 (4) SUSPENSION ACCOUNT.—The term “sus-
9 pension account” means an account that is estab-
10 lished and maintained on behalf of an independent
11 worker that—

12 (A) allows for the deposit of amounts by
13 the independent worker, including the amounts
14 described in paragraphs (1) and (2) of sub-
15 section (a);

16 (B) allows for the independent worker to
17 withdraw amounts deposited in the account
18 and—

19 (i) contribute such withdrawn
20 amounts to a pooled employer plan in
21 which the independent worker is enrolled;
22 or

23 (ii) contribute such withdrawn
24 amounts into a simplified employee pension

1 as provided under section 408(k)(10) of
2 the Internal Revenue Code of 1986; and
3 (C) provides that any amount remaining in
4 the account at the end of each year, after any
5 withdrawals under subparagraph (B), shall be
6 returned to the independent worker in a lump
7 sum.