

114TH CONGRESS  
1ST SESSION

**S.** \_\_\_\_\_

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 SENATE OF THE UNITED STATES

Mrs. MURRAY introduced the following bill; which was read twice and referred to the Committee on \_\_\_\_\_

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**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:

8 (1) Approximately 29 percent of households  
9 headed by individuals aged 55 through 74 have no

1 defined benefit plan or retirement savings, according  
2 to 2016 data from the Survey of Consumer Fi-  
3 nances.

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

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

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

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

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

23 (7) Just 1 in 5 part-time workers who work a  
24 full year are eligible for a retirement plan, and

1 women are almost twice as likely to work part-time  
2 as men.

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

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

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

16 **SEC. 3. INCREASING SPOUSAL PROTECTION UNDER DE-**  
17 **FINED CONTRIBUTION PLANS.**

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

22 **“SEC. 205A. ADDITIONAL SPOUSAL CONSENT REQUIRE-**  
23 **MENTS.**

24 “(a) IN GENERAL.—Each individual account plan to  
25 which section 205 does not apply shall provide that, except

1 as provided in subsections (c) and (d), no distribution may  
2 be made under the plan unless the spousal consent re-  
3 quirements of subsection (e) are met.

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

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

10 “(1) any distribution that is—

11 “(A) a minimum required distribution de-  
12 scribed in section 4974(b) of the Internal Rev-  
13 enue Code of 1986;

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

18 “(C) made upon hardship of the partici-  
19 pant; or

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

22 “(2) any distribution in the form of a qualified  
23 joint and survivor annuity (as defined in section  
24 205(d)(1)), a qualified optional survivor annuity (as  
25 defined in section 205(d)(2)), a qualified preretire-

1       ment survivor annuity (as defined in section 205(e)),  
2       or a series of substantially equal periodic payments  
3       (not less frequently than annually) made for the  
4       joint lives (or life expectancies) of the participant  
5       and the participant’s spouse; or

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

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

19       “(d) EXCEPTIONS FOR CERTAIN ROLLOVER CON-  
20 TRIBUTIONS.—Subsection (a) shall not apply to any dis-  
21 tribution that is an eligible rollover distribution (as de-  
22 fined in section 402(f)(2)(A) of the Internal Revenue Code  
23 of 1986) made in the form of a direct trustee-to-trustee  
24 transfer within the meaning of section 401(a)(31) of the  
25 Internal Revenue Code of 1986—

1           “(1) to a plan to which this section or section  
2           205 applies; or

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

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

11                  “(B) the beneficiary of such plan (whether  
12                  the spouse or other beneficiary designated  
13                  under paragraph (1)) may not be changed un-  
14                  less—

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

18                          “(ii) the spousal consent under sub-  
19                          paragraph (A) to the designation of a ben-  
20                          eficiary other than the spouse expressly  
21                          permits such designation to be changed  
22                          without the further consent of the spouse.

23           “(e) SPOUSAL CONSENT REQUIREMENTS.—

24                          “(1) IN GENERAL.—For purposes of this sec-  
25                          tion, except as provided in paragraph (2), the spous-

1 al consent requirements of this subsection are met  
2 with respect to any distribution or any designation  
3 or change of beneficiary if—

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

12 “(B) the spouse of the participant consents  
13 in writing to the distribution or designation or  
14 change of beneficiary;

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

18 “(D) the written consent under subpara-  
19 graph (B)—

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

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

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

7                     “(A) there is no spouse;

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

12                    “(C) such consent cannot be obtained be-  
13                    cause—

14                             “(i) the spouse cannot be located;

15                             “(ii) due to exceptional circumstances,  
16                             requiring the participant to seek the  
17                             spouse’s consent would be inappropriate;  
18                             or

19                             “(iii) of such other circumstances as  
20                             the Secretary of the Treasury may by reg-  
21                             ulations prescribe.

22           “(3) CONSENT LIMITED TO SPOUSE AND  
23           EVENT.—Any written consent by a spouse under  
24           paragraph (1), or the establishment by a participant  
25           that an exception under paragraph (2) applies with



1 respect to a spouse, shall be effective only with re-  
2 spect to that spouse and to the distribution or des-  
3 ignation or change of beneficiary to which it relates.

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

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

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

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

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

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

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

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

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

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

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

16           “(c) SPECIAL RULE FOR CERTAIN PART-TIME EM-  
17           PLOYEES.—

18           “(1) IN GENERAL.—A pension plan that in-  
19           cludes either a qualified cash or deferred arrange-  
20           ment (as defined in section 401(k) of the Internal  
21           Revenue Code of 1986) or a salary reduction agree-  
22           ment (as described in section 403(b) of such Code)  
23           shall not require, as a condition of participation in  
24           the arrangement or agreement, that an employee  
25           complete a period of service with the employer (or

1 employers) maintaining the plan extending beyond  
2 the close of the earlier of—

3 “(A) the period permitted under subsection  
4 (a)(1) (determined without regard to subpara-  
5 graph (B)(i) thereof) and section 410(a)(1) of  
6 such Code (determined without regard to sub-  
7 paragraph (B)(i) thereof); or

8 “(B) the first 24-month period—

9 “(i) consisting of 2 consecutive 12-  
10 month periods during each of which the  
11 employee has at least 500 hours of service;  
12 and

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

15 “(2) EXCEPTION.—Paragraph (1)(B) shall not  
16 apply to employees who are included in a unit of em-  
17 ployees covered by an agreement which the Secretary  
18 finds to be a collective bargaining agreement be-  
19 tween employee representatives and 1 or more em-  
20 ployers, if there is evidence that retirement benefits  
21 were the subject of good faith bargaining between  
22 such employee representatives and such employer or  
23 employers.

24 “(3) COORDINATION WITH OTHER RULES.—In  
25 the case of employees who are not highly com-

1        compensated employees (within the meaning of section  
2        414(q) of the Internal Revenue Code of 1986) and  
3        who are eligible to participate in the arrangement or  
4        agreement solely by reason of paragraph (1)(B):

5                “(A) EXCLUSIONS.—An employer may  
6                elect to exclude such employees from the deter-  
7                mination of whether the plan that includes the  
8                arrangement or agreement satisfies the require-  
9                ments of subsections (a)(4), (k)(3), (k)(12),  
10              (k)(13), (m)(2), (m)(11), and (m)(12) of sec-  
11              tion 401 of such Code, section 410(b) of such  
12              Code, and section 416 of such Code. If the em-  
13              ployer so excludes such employees with respect  
14              to the requirements of any such provision, such  
15              employees shall be excluded with respect to the  
16              requirements of all such provisions. This sub-  
17              paragraph shall cease to apply to any employee  
18              as of the first plan year beginning after the  
19              plan year in which the employee completes 1  
20              year of service (without regard to paragraph  
21              (1)(B) of this subsection).

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

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

7           (b) VESTING.—Section 203(b) of the Employee Re-  
8 tirement Income Security Act of 1974 (29 U.S.C.  
9 1053(a)) is amended by redesignating paragraph (4) as  
10 paragraph (5) and by inserting after paragraph (3) the  
11 following new paragraph:

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

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

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

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

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

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

19 **SEC. 5. EFFECTIVE DATES.**

20 (a) INCREASING SPOUSAL PROTECTION UNDER DE-  
21 FINED CONTRIBUTION PLANS.—Except as provided in  
22 subsections (c) and (d), the amendments made by section  
23 2 shall apply to distributions and rollover contributions  
24 made in plan years beginning after the date that is 6  
25 months after the date of the enactment of this Act.

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

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

13 (1) the later of—

14 (A) the date on which the last of such col-  
15 lective bargaining agreements terminates (de-  
16 termined without regard to any extension there-  
17 of on or after such date of the enactment); or

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

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

22 (d) PROVISIONS RELATING TO PLAN AMEND-  
23 MENTS.—

24 (1) IN GENERAL.—If this paragraph applies to  
25 any plan or contract amendment, such plan or con-

1 tract shall be treated as being operated in accord-  
2 ance with the terms of the plan during the period  
3 described in paragraph (2)(C).

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

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

9 (i) pursuant to the amendments made  
10 by section 2 or 3 or pursuant to any regu-  
11 lation issued under either such section; and

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

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

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

23 (i) the plan or contract is operated as  
24 if such plan or contract amendment were



1 in effect for the period described in sub-  
2 paragraph (C); and

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

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

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

9 (ii) ending on the date described in  
10 subparagraph (A)(ii) (or, if earlier, the  
11 date the plan or contract amendment is  
12 adopted).

13 **SEC. 6. ACCESS TO INDEPENDENT CONSUMER INFORMA-**  
14 **TION AND UNDERSTANDING.**

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

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

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

24 (b) REQUIRED LINK TO CONSUMER AWARENESS IN-  
25 FORMATION.—In any offer for the sale, exchange, or other

1 transfer of a retirement financial product or service to a  
2 consumer carried out by a financial product or service pro-  
3 vider, such provider shall provide, in a manner consistent  
4 with subsection (c), an easily accessible link to the website  
5 of the Bureau of Consumer Financial Protection (CFPB)  
6 at which the consumer may access information, literature,  
7 guides, programs, tools, strategies, or any other resource  
8 produced by the CFPB or other Federal agency relating  
9 to retirement planning or later life economic security.

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

19 **SEC. 7. GRANTS TO PROMOTE FINANCIAL LITERACY FOR**  
20 **WOMEN.**

21 (a) AUTHORIZATION OF GRANT AWARDS.—The Sec-  
22 retary of Labor, acting through the Director of the Wom-  
23 en’s Bureau, shall award grants on a competitive basis to  
24 eligible entities to enable such entities to improve the fi-  
25 nancial literacy of women who are working age or in re-

1 tirement, to increase the likelihood of the women realizing  
2 a secure and stable retirement.

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

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

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

15 (e) USE OF FUNDS.—An eligible entity that receives  
16 a grant under this section shall use the grant funds to  
17 develop and implement financial literacy education, and  
18 related activities including outreach, awareness building,  
19 and counseling to increase women’s knowledge of retire-  
20 ment planning and consumer, economic, and personal fi-  
21 nancial concepts.

22 (f) AUTHORIZATION OF APPROPRIATIONS.—There is  
23 authorized to be appropriated to carry out this section  
24 \$100,000,000 for fiscal year 2019 and each succeeding  
25 fiscal year.

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

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

14 (b) **DEFINITION OF ELIGIBLE ENTITY.**—In this sec-  
15 tion, the term “eligible entity” means a community-based  
16 organization with proven experience and expertise in serv-  
17 ing women and the financial and retirement needs of  
18 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 the Sec-  
23 retary of Labor may require.

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

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

7           (f) AUTHORIZATION OF APPROPRIATIONS.—There is  
8 authorized to be appropriated to carry out this section  
9 \$100,000,000 for fiscal year 2019 and each succeeding  
10 fiscal year.