II

117TH CONGRESS
1ST SESSION

S. 1730

To increase portability of and access to retirement savings, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 20, 2021

Ms. WARREN (for herself and Mr. DAINES) introduced the following bill; which was read twice and referred to the Committee on Finance

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A BILL

To increase portability of and access to retirement savings, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Retirement Savings Lost and Found Act of 2021''.

SEC. 2. RETIREMENT SAVINGS LOST AND FOUND.

(a) RETIREMENT SAVINGS LOST AND FOUND.—

(1) ESTABLISHMENT.—

(A) IN GENERAL.—Not later than 3 years after the date of the enactment of this Act, the

Secretary of Labor, the Secretary of the Treasury, and the Secretary of Commerce, in cooperation, shall establish an online searchable database (to be managed by the Pension Benefit Guaranty Corporation in accordance with section 4051 of the Employee Retirement Income Security Act of 1974) to be known as the ''Retirement Savings Lost and Found''. The Retirement Savings Lost and Found shall—

(i) allow an individual to search for information that enables the individual to locate the plan administrator of any plans with respect to which the individual is or was a participant or beneficiary, and to provide contact information for the plan administrator of any plan described in subparagraph (B);

(ii) allow the corporation to assist such an individual in locating any plan of the individual; and

(iii) allow the corporation to make any necessary changes to contact information on record for the plan administrator based on any changes to the plan due to merger or consolidation of the plan with any other plan, division of the plan into two or more plans, bankruptcy, termination, change in name of the plan, change in name or address of the plan administrator, or other causes.

The Retirement Savings Lost and Found established under this subparagraph shall include information reported under section 4051 of the Employee Retirement Income Security Act of 1974 and other relevant information obtained by the Pension Benefit Guaranty Corporation.

(B) PLANS DESCRIBED.—A plan described in this subparagraph is a plan to which the vesting standards of section 203 of part 2 of subtitle B of title I of the Employee Retirement Income Security Act of 1974 apply.

(2) ADMINISTRATION.—The Retirement Savings Lost and Found established under paragraph (1) shall provide individuals described in paragraph (1)(A) only with the ability to view contact information for the plan administrator of any plan with respect to which the individual is or was a participant or beneficiary, sufficient to allow the individual to locate the individual's plan in order to recover any benefit owing to the individual under the plan.

(3) SAFEGUARDING PARTICIPANT PRIVACY AND SECURITY.—In establishing the Retirement Savings Lost and Found under paragraph (1), the Pension Benefit Guaranty Corporation, in consultation with the Secretary of Labor, the Secretary of the Treasury, and the Secretary of Commerce, shall take all necessary and proper precautions to ensure that individuals' plan information maintained by the Retirement Savings Lost and Found is protected and that persons other than the individual cannot fraudulently claim the benefits to which any individual is entitled, and to allow any individual to opt out of inclusion in the Retirement Savings Lost and Found at the election of the individual.

(b) OFFICE OF THE RETIREMENT SAVINGS LOST AND FOUND.—

(1) IN GENERAL.—Subtitle C of title IV of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1341 et seq.) is amended by adding at the end the following:

"SEC. 4051. OFFICE OF THE RETIREMENT SAVINGS LOST AND FOUND.

"(a) ESTABLISHMENT; RESPONSIBILITIES OF OFFICE.—

"(1) IN GENERAL.—Not later than 2 years after the date of the enactment of this section, the Secretary of Labor, the Secretary of the Treasury, and the Secretary of Commerce shall establish within the corporation an Office of the Retirement Savings Lost and Found (in this section referred to as the 'Office').

"(2) RESPONSIBILITIES OF OFFICE.—

"(A) IN GENERAL.—The Office shall—

"(i) carry out subsection (b) of this section;

"(ii) maintain the Retirement Savings Lost and Found established under section 2(a) of the Retirement Savings Lost and Found Act of 2021; and

"(iii) perform an annual audit of plan information contained in the Retirement Savings Lost and Found and ensure that such information is current and accurate.

"(B) OPTION TO CONTRACT.—

"(i) IN GENERAL.—Not later than 2 years after the date of enactment of this section, the corporation shall conduct an analysis of the cost effectiveness of contracting with a third party to carry out the responsibilities under subparagraph (A)(iii) and, upon a determination that such contracting would be more cost effective than carrying out such responsibilities within the Office, the corporation may enter into such contracts as merited by such analysis.

"(ii) REPORT.—The corporation shall report on the results of the analysis under clause (i) to the Committees on Finance and Health, Education, Labor, and Pensions of the Senate and the Committees on Ways and Means and Education and Labor of the House of Representatives.

"(b) CERTAIN NON-RESPONSIVE PARTICIPANTS ENTITLED TO SMALL BENEFITS.—

"(1) GENERAL RULE.—

"(A) TRANSFER TO THE OFFICE OF THE RETIREMENT SAVINGS LOST AND FOUND.—The administrator of a plan that is not terminated and to which section 401(a)(31)(B) of the Internal Revenue Code of 1986 applies shall transfer to the Office the amount required to be transferred under section 401(a)(31)(B)(iv) of such Code for a non-responsive participant.

"(B) INFORMATION AND PAYMENT TO THE OFFICE.—Upon making a transfer under subparagraph (A), the plan administrator shall provide such information and certifications as the Office shall specify, including with respect to the transferred amount and the non-responsive participant.

"(C) INFORMATION REQUIREMENTS AFTER TRANSFER.—In the event that, after a transfer is made under subparagraph (A), the relevant non-responsive participant contacts the plan administrator or the plan administrator discovers information that may assist the Office in locating the non-responsive participant, the plan administrator shall notify and provide such information as the Office shall specify to the Office.

"(D) SEARCH AND PAYMENT BY THE OFFICE FOLLOWING TRANSFER.—The Office shall periodically, and upon receiving information described in subparagraph (C), conduct a search for the non-responsive participant for whom the Office has received a transfer under subparagraph (A). Upon location of a non-responsive participant who claims benefits, the Office shall make a single payment to the non-responsive participant in an amount equal to the sum of—

"(i) the amount transferred to the Office under subparagraph (A) for such participant; and

"(ii) the return on the investment attributable to such amount under section 4005(j)(3).

"(2) DEFINITION.—For purposes of this subsection, the term 'non-responsive participant' means a participant or beneficiary of a plan described in paragraph (1)(A)—

"(A) who is entitled to a benefit subject to a mandatory transfer under section 401(a)(31)(B)(iii) of the Internal Revenue Code of 1986; and

"(B) for whom the plan has satisfied the conditions in section 401(a)(31)(B)(iv) of such Code.

"(3) REGULATORY AUTHORITY.—The Office shall prescribe such regulations as are necessary to carry out the purposes of this section, including rules relating to the amount payable to the Office and the amount to be paid by the Office.

"(c) INFORMATION COLLECTION.—Within such period after the end of a plan year as the Office may by regulations prescribe, the administrator of a plan to which the vesting standards of section 203 apply shall submit the following information, and such other information as the corporation may require, to the corporation in such form as the corporation may require:

"(1) The information described in paragraphs (1) through (4) of section 6057(b) of the Internal Revenue Code of 1986.

"(2) The information described in subparagraphs (A), (B), (E), and (F) of section 6057(a)(2) of the Internal Revenue Code of 1986.

"(d) EFFECTIVE DATE.—The requirements of subsections (b) and (c) shall apply with respect to plan years beginning after the second December 31 occurring after the date of the enactment of this section.

"(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to carry out this section.".

(2) ESTABLISHMENT OF FUND FOR TRANSFERRED ASSETS.—Section 4005 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1305) is amended by adding at the end the following:

''(j)(1) A ninth fund shall be established for the payment of benefits under section 4051(b)(1)(D).

''(2) Such fund shall be credited with the appropriate—

''(A) amounts transferred to the Office of the Retirement Savings Lost and Found under section 4051(b)(1)(A); and

''(B) earnings on investments of the fund or on assets credited to the fund.

''(3) Whenever the corporation determines that the moneys of any fund are in excess of current needs, it may request the investment of such amounts as it determines advisable by the Secretary of the Treasury in obligations issued or guaranteed by the United States.''.

(3) CONFORMING AMENDMENT.—The table of contents for the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1001 et seq.) is amended by inserting after the matter relating to section 4050 the following:

''Sec. 4051. Certain non-responsive participants entitled to small benefits.''.

(c) MANDATORY TRANSFERS OF ROLLOVER DISTRIBUTIONS.—

(1) INVESTMENT OPTIONS.—

(A) IN GENERAL.—Subparagraph (B) of section 404(c)(3) of the Employee Retirement Income Security Act of 1974 (29 U.S.C.

1104(c)(3)) is amended by striking the period at the end and inserting ", and, to the extent the Secretary provides in guidance or regulations issued after the enactment of the Retirement Savings Lost and Found Act of 2021, is made to—

"(i) a target date or life cycle fund held under such account;

"(ii) as described in section 2550.404a–2 of title 29, Code of Federal Regulations, an investment product held under such account designed to preserve principal and provide a reasonable rate of return;

"(iii) the Office of the Retirement Savings Lost and Found in accordance with section 401(a)(31)(B)(iv) of the Internal Revenue Code of 1986 and section 2(c)(2)(A)(ii) of the Retirement Savings Lost and Found Act of 2021; or

"(iv) such other option as the Secretary may so provide.".

(B) REGULATIONS.—Not later than 270 days after the date of the enactment of this Act, the Secretary of Labor shall promulgate regulations identifying the target date or life cycle funds, or specifying the characteristics of such a fund, that will be deemed to meet the requirements of section 404(c)(3)(B)(i) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1104(c)(3)(B)), as amended by subparagraph (A).

(2) EXPANSION OF CAP; AUTHORITY TO TRANSFER LESSER AMOUNTS.—

(A) CAP.—Sections 401(a)(31)(B)(ii) and 411(a)(11)(A) of the Internal Revenue Code of 1986 and section 203(e)(1) of the Employee Retirement Income Security Act of 1974 are each amended by striking "$5,000" and inserting "$6,000".

(B) DISTRIBUTION OF LARGER AMOUNTS TO INDIVIDUAL RETIREMENT PLANS ONLY.—Section 401(a)(31)(B)(i) of such Code is amended by adding at the end the following: "The Office of the Retirement Savings Lost and Found established by section 2 of the Retirement Savings Lost and Found Act of 2021 shall not be treated as a trustee or issuer which is eligible to receive such distributions.".

(C) LESSER AMOUNTS.—Section 401(a)(31)(B) of such Code is amended by adding at the end the following new clauses:

"(iii) TREATMENT OF LESSER AMOUNTS.—In the case of a trust which is part of an eligible plan, such trust shall not be a qualified trust under this section unless such plan provides that, if a participant in the plan separates from the service covered by the plan and the nonforfeitable accrued benefit described in clause (ii) is not in excess of $1,000, the plan administrator shall (either separately or as part of the notice under section 402(f)) notify the participant that the participant is entitled to such benefit or attempt to pay the benefit directly to the participant.

"(iv) TRANSFERS TO RETIREMENT SAVINGS LOST AND FOUND.—If, after a plan administrator takes the action required under clause (iii), the participant does not—

"(I) within 6 months of the notification under such clause, make an election under subparagraph (A) or elect to receive a distribution of the benefit directly, or

"(II) accept any direct payment made under such clause within 6 months of the attempted payment,

the plan administrator shall transfer the amount of such benefit to the Office of the Retirement Savings Lost and Found in accordance with section 4051(b) of the Employee Retirement Income Security Act of 1974.

"(v) INCOME TAX TREATMENT OF TRANSFERS TO RETIREMENT SAVINGS LOST AND FOUND.—For purposes of determining the income tax treatment of transfers to the Office of the Retirement Savings Lost and Found under clause (iv)—

"(I) such a transfer shall be treated as a transfer to an individual retirement plan under clause (i), and

"(II) the distribution of such amounts by the Office of the Retirement Savings Lost and Found shall be treated as a distribution from an individual retirement plan.".

(D) EFFECTIVE DATE.—The amendments made by this paragraph shall apply to vested benefits with respect to participants who separate from service connected to the plan in plan years beginning after the second December 31 occurring after the date of the enactment of this Act.

(d) BETTER REPORTING FOR MANDATORY TRANSFERS.—

(1) IN GENERAL.—Paragraph (2) of section 6057(a) of the Internal Revenue Code of 1986 is amended—

(A) in subparagraph (C)—

(i) by striking "during such plan year" in clause (i) and inserting "during the plan year immediately preceding such plan year";

(ii) by adding "and" at the end of clause (i); and

(iii) by striking clause (iii);

(B) by redesignating subparagraph (E) as subparagraph (G);

(C) by striking "and" at the end of subparagraph (D); and

(D) by inserting after subparagraph (D) the following new subparagraphs:

"(E) the name and taxpayer identifying number of each participant or former participant in the plan—

"(i) who, during the current plan year or any previous plan year, was reported under subparagraph (C), and with respect to whom the benefits described in subparagraph (C)(ii) were fully paid during the plan year,

"(ii) with respect to whom any amount was distributed under section 401(a)(31)(B) during the plan year, or

"(iii) with respect to whom a deferred annuity contract was distributed during the plan year,

"(F) in the case of a participant or former participant to whom subparagraph (E) applies—

"(i) in the case of a participant described in clause (ii) thereof, the name and address of the designated trustee or issuer described in section 401(a)(31)(B)(i) and the account number of the individual retirement plan to which the amount was distributed, and

"(ii) in the case of a participant described in clause (iii) thereof, the name and address of the issuer of such annuity contract and the contract or certificate number, and".

(2) RULES RELATING TO DIRECT TRUSTEE-TO-TRUSTEE TRANSFERS.—

(A) IN GENERAL.—Paragraph (6) of section 402(e) of such Code is amended—

(i) by striking "TRANSFERS.—Any" and inserting "TRANSFERS.—

"(A) IN GENERAL.—Any"; and

(ii) by adding at the end the following new subparagraph:

"(B) NOTIFICATION OF TRUSTEE.—In the case of a distribution under section 401(a)(31)(B), the plan administrator shall notify the designated trustee or issuer described in clause (i) thereof that the transfer is a mandatory distribution required by such section.".

(B) PENALTY.—Subsection (i) of section 6652 of such Code is amended—

(i) by striking "TO RECIPIENTS" in the heading and inserting "OR NOTIFICATION";

(ii) by striking "402(f)," and inserting "402(f) or a notification as required by section 402(e)(6)(B),"; and

(iii) by striking "such written explanation" and inserting "such written explanation or notification".

(C) REPORTS.—Subsection (i) of section 408 of such Code is amended—

(i) by redesignating subparagraphs (A) and (B) of paragraph (2) as clauses (i) and (ii), respectively, and by moving such clauses 2 ems to the right;

(ii) by redesignating paragraphs (1) and (2) as subparagraphs (A) and (B), respectively, and by moving such subparagraphs 2 ems to the right; and

(iii) by striking "as the Secretary prescribes" in subparagraph (B)(ii), as so redesignated, and all that follows through "a simple retirement account" and inserting "as the Secretary prescribes.

"(3) SIMPLE RETIREMENT ACCOUNTS.—In the case of a simple retirement account";

(iv) by striking "REPORTS.—The trustee of" and inserting "REPORTS.—

"(1) IN GENERAL.—The trustee of";

(v) by striking "under paragraph (2)" in paragraph (3), as added by clause (iii), and inserting "under paragraph (1)(B)"; and

(vi) by inserting after paragraph (1)(B)(ii), as redesignated by the preceding clauses, the following new paragraph:

"(2) MANDATORY DISTRIBUTIONS.—In the case of an account, contract, or annuity to which a transfer under section 401(a)(31)(B) is made (including a transfer from the individual retirement plan to which the original transfer under such section was made to another individual retirement plan), the report required by this subsection for the year of the transfer and any year in which the information previously reported in subparagraph (B) changes shall—

"(A) identify such transfer as a mandatory distribution required by such section, "(B) include the name, address, and taxpayer identifying number of the trustee or issuer of the individual retirement plan to which the amount is transferred, and

"(C) be filed with the Pension Benefit Guaranty Corporation as well as with the Secretary.".

(3) NOTIFICATION OF PARTICIPANTS UPON SEPARATION.—Subsection (e) of section 6057 of such Code is amended by inserting ", and, with respect to any benefit of the individual subject to section 401(a)(31)(B), a notice of availability of, and the contact information for, the Retirement Savings Lost and Found established under section 2(a)(1) of the Retirement Savings Lost and Found Act of 2021" before the period at the end of the second sentence.

(4) EFFECTIVE DATE.—The amendments made by this paragraph shall apply to distributions made in, and returns and reports relating to, years beginning after the second December 31 occurring after the date of the enactment of this Act.

(e) REQUIREMENT OF ELECTRONIC FILING.—

(1) IN GENERAL.—Paragraph (2) of section 6011(e) of the Internal Revenue Code of 1986 is amended—

(A) by redesignating subparagraphs (A) and (B) as clauses (i) and (ii), respectively, and by moving such clauses 2 ems to the right;

(B) by striking ‘‘REGULATIONS.—In prescribing’’ and inserting ‘‘REGULATIONS.—

‘‘(A) IN GENERAL.—In prescribing’’; and

(C) by adding at the end the following new subparagraph:

‘‘(C) EXCEPTIONS.—Notwithstanding subparagraph (A), the Secretary shall require returns or reports required under—

‘‘(i) sections 6057, 6058, and 6059, and

‘‘(ii) sections 408(i), 6041, and 6047 to the extent such return or report relates to the tax treatment of a distribution from a plan, account, contract, or annuity,

to be filed on magnetic media, but only with respect to persons who are required to file at least 50 returns during the calendar year which includes the first day of the plan year to which such returns or reports relate.’’.

(2) EFFECTIVE DATE.—The amendments made by this paragraph shall apply to returns and reports relating to years beginning after the second December 31 occurring after the date of the enactment of this Act.

(f) RULEMAKING TO CLARIFY FIDUCIARY DUTIES.—

(1) REQUEST FOR INFORMATION.—Not later than 1 year after the date of enactment of this Act, the Secretary of Labor, in consultation with the Secretary of the Treasury, shall issue a request for information relating to the rulemaking described in paragraph (2).

(2) ISSUANCE OF FINAL RULE.—Not later than 3 years after such date, the Secretary of Labor, in consultation with the Secretary of the Treasury, shall issue a final rule that defines the following:

(A) The steps a plan sponsor must take to locate a deferred vested participant in order to meet its fiduciary duty under section 404 of the Employee Retirement Income Security Act of 1974 with respect to locating that participant.

(B) The ongoing practices and procedures a plan sponsor must institute in order to meet such fiduciary duty with respect to maintaining up-to-date contact information on deferred vested participants.

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