| 117TH CONGRESS 2D SESSION | S. |
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To establish the American Worker Retirement Plan, improve the financial security of working Americans by facilitating the accumulation of wealth, and for other purposes.

IN THE SENATE OF THE UNITED STATES

| Mr. | HICKENLOOPER introduced the following | owing bill; | which | was 1 | read | twice | and |
|-----|---------------------------------------|-------------|-------|-------|------|-------|-----|
| | referred to the Committee or | 1 | | | | | |

A BILL

- To establish the American Worker Retirement Plan, improve the financial security of working Americans by facilitating the accumulation of wealth, 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; TABLE OF CONTENTS.
 - 4 (a) SHORT TITLE.—This Act may be cited as the
 - 5 "Retirement Savings for Americans Act of 2022".
 - 6 (b) Table of Contents for
 - 7 this Act is as follows:
 - Sec. 1. Short title; table of contents.
 - Sec. 2. Definitions.
 - Sec. 3. Relationship to Social Security.

Sec. 4. Government benefits.

TITLE I—THE AMERICAN WORKER RETIREMENT PLAN

- Sec. 101. The American Worker Retirement Fund.
- Sec. 102. Investment of American Worker Retirement Fund.
- Sec. 103. Eligibility.
- Sec. 104. Enrollment.
- Sec. 105. Contributions.
- Sec. 106. Distributions.
- Sec. 107. Accounts.
- Sec. 108. Tax treatment.
- Sec. 109. Spousal protections; survivor rights.

TITLE II—THE AMERICAN WORKER RETIREMENT PLAN INVESTMENT MANAGEMENT SYSTEM

- Sec. 201. The American Worker Retirement Investment Board.
- Sec. 202. The American Worker Retirement Plan Advisory Council.
- Sec. 203. Executive Director.
- Sec. 204. Investment policies and selection of asset managers.
- Sec. 205. Administrative provisions.
- Sec. 206. Fiduciary responsibilities; liability and penalties.
- Sec. 207. Bonding.
- Sec. 208. Investigative authority.
- Sec. 209. Exculpatory provisions; insurance.
- Sec. 210. Subpoena authority.

TITLE III—GOVERNMENT MATCH TAX CREDIT

Sec. 301. Government Match Tax Credit.

1 SEC. 2. DEFINITIONS.

- 2 As used in this Act, except as otherwise provided:
- 3 (1) ACCOUNT.—The term "account" means an
- 4 account established and maintained under section
- 5 107.
- 6 (2) BOARD.—The term "Board" means the
- 7 American Worker Retirement Investment Board es-
- 8 tablished under section 201.
- 9 (3) Business.—The term "business" means
- any entity, including any sole proprietor, partner-

| 1 | ship, limited liability company, or corporation, that |
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| 2 | engages in interstate commerce. |
| 3 | (4) Earnings.—The term "earnings", when |
| 4 | used with respect to the Fund, means the amount |
| 5 | of the gain realized or yield received from the invest- |
| 6 | ment of sums in such Fund. |
| 7 | (5) EXECUTIVE DIRECTOR.—The term "Execu- |
| 8 | tive Director" means the Executive Director ap- |
| 9 | pointed under section 203. |
| 10 | (6) Existing retirement plan.—The term |
| 11 | "existing retirement plan" means— |
| 12 | (A) an eligible retirement plan, as defined |
| 13 | in section $402(c)(8)(B)$ of the Internal Revenue |
| 14 | Code of 1986, including any defined benefit |
| 15 | plan; |
| 16 | (B) the Thrift Savings Plan established |
| 17 | under subchapter III of chapter 84 of title 5, |
| 18 | United States Code; and |
| 19 | (C) any other tax deferred employee retire- |
| 20 | ment plan determined by the Secretary of the |
| 21 | Treasury to be consistent with the purposes of |
| 22 | this Act. |
| 23 | (7) FORMER PARTICIPANT.—The term "former |
| 24 | participant" means a participant who has an ac- |

| 1 | count with the Fund and is no longer a qualifying |
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| 2 | worker. |
| 3 | (8) Fund.—The term "Fund" means the |
| 4 | American Worker Retirement Fund established |
| 5 | under section 101(a). |
| 6 | (9) INVESTMENT ADVISORY COUNCIL.—The |
| 7 | term "Investment Advisory Council" means the |
| 8 | council established under section 202. |
| 9 | (10) Loss.—The term "loss", as used with re- |
| 10 | spect to the Fund, includes the amount of any loss |
| 11 | resulting from the investment of sums in such Fund, |
| 12 | or from the breach of any responsibility, duty, or ob- |
| 13 | ligation under section 206. |
| 14 | (11) Net earnings.—The term "net earn- |
| 15 | ings" means the excess of earnings over losses. |
| 16 | (12) Net losses.—The term "net losses" |
| 17 | means the excess of losses over earnings. |
| 18 | (13) Participant.—The term "participant" |
| 19 | means any qualifying worker who is enrolled to par- |
| 20 | ticipate in the Fund under section 104(a) and has |
| 21 | not opted out of participation under section |
| 22 | 104(b)(3). |
| 23 | (14) Participating employer.—The term |
| 24 | "participating employer" means any business that— |
| 25 | (A) employs a qualifying worker; or |

| 1 | (B) contracts with an independent con- |
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| 2 | tractor who is a qualifying worker and opts to |
| 3 | enroll such independent contractor to partici- |
| 4 | pate in the Fund under section 104(a)(2). |
| 5 | (15) QUALIFYING WORKER.—The term "quali- |
| 6 | fying worker" means— |
| 7 | (A) an employee who— |
| 8 | (i) is employed by a business that has |
| 9 | not established an existing retirement plan |
| 10 | and does not provide an individual retire- |
| 11 | ment plan (as defined in section |
| 12 | 7701(a)(37) of the Internal Revenue Code |
| 13 | of 1986) with an automatic enrollment |
| 14 | payroll deduction arrangement; or |
| 15 | (ii) is not eligible to participate in any |
| 16 | such plan or arrangement established by |
| 17 | the business that employs the employee; or |
| 18 | (B) an independent contractor who— |
| 19 | (i) is self-employed; and |
| 20 | (ii) has not established an existing re- |
| 21 | tirement plan, and does not have an indi- |
| 22 | vidual retirement plan (as defined in sec- |
| 23 | tion 7701(a)(37) of the Internal Revenue |
| 24 | Code of 1986) with an automatic enroll- |
| 25 | ment payroll deduction arrangement. |

1 SEC. 3. RELATIONSHIP TO SOCIAL SECURITY.

- 2 Except as otherwise provided in this Act, the funds
- 3 payable under the Fund to participants and former par-
- 4 ticipants are in addition to the benefits payable under the
- 5 Social Security Act (42 U.S.C. 301 et seq.).

6 SEC. 4. GOVERNMENT BENEFITS.

- 7 The funds owned by an individual in an account and
- 8 any contribution made to such funds by a participant or
- 9 the Secretary of the Treasury shall not be taken into con-
- 10 sideration when determining the individual's eligibility for
- 11 any Federal public assistance benefit.

12 TITLE I—THE AMERICAN

13 **WORKER RETIREMENT PLAN**

- 14 SEC. 101. THE AMERICAN WORKER RETIREMENT FUND.
- 15 (a) Establishment.—There is established in the
- 16 Treasury of the United States the American Worker Re-
- 17 tirement Fund.
- 18 (b) Purposes.—The Fund shall consist of the sum
- 19 of all amounts contributed under sections 105 and 301,
- 20 increased by the total net earnings from investments of
- 21 the sums in the Fund or reduced by the total net losses
- 22 from investments of the Fund, and reduced by the total
- 23 amount of payments made from the Fund (including pay-
- 24 ments for administrative expenses under subsection (e)).
- (c) Investment.—The sums in the Fund shall re-
- 26 main available without fiscal year limitation—

| 1 | (1) to invest pursuant section 102; |
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| 2 | (2) to pay the administrative expenses of the |
| 3 | Fund under subsection (e); |
| 4 | (3) to make distributions as provided in section |
| 5 | 106; |
| 6 | (4) to make loans as authorized under section |
| 7 | 106(h); and |
| 8 | (5) to purchase insurance as provided in section |
| 9 | 209. |
| 10 | (d) Accounts.—Each participant shall have an ac- |
| 11 | count with the Fund. Amounts contributed by a partici- |
| 12 | pant under section 105 and by the Secretary of the Treas- |
| 13 | ury under section 25F of the Internal Revenue Code of |
| 14 | 1986 shall be deposited in the Fund and credited to the |
| 15 | participant's account in accordance with such procedures |
| 16 | as the Secretary of the Treasury may, in consultation with |
| 17 | the Executive Director, prescribe in regulation. |
| 18 | (e) Administrative Expenses.—Administrative |
| 19 | expenses (including expenses related to financial literacy |
| 20 | requirements under section 201(f)(5)) incurred to carry |
| 21 | out this Act shall be paid out of the net earnings of the |
| 22 | Fund, including earnings attributed to returned credit |
| 23 | amounts under section 25F(h) of the Internal Revenue |
| 24 | Code of 1986. |
| 25 | (f) Exclusive Benefit.— |

| 1 | (1) In general.—Subject to paragraphs (2) |
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| 2 | and (3) and subsection (e), sums in the Fund cred- |
| 3 | ited to the accounts of a participant or former par- |
| 4 | ticipant may not be used for, or diverted to, pur- |
| 5 | poses other than for the exclusive benefit of the par- |
| 6 | ticipant or former participant, or a beneficiary there- |
| 7 | of, except as otherwise provided by law. |
| 8 | (2) Assignment.—Except as provided in para- |
| 9 | graph (3), sums in the Fund may not be assigned |
| 10 | or alienated and are not subject to execution, levy, |
| 11 | attachment, garnishment, or other legal process. For |
| 12 | purposes of this paragraph, a loan made from the |
| 13 | Fund to a participant shall not be considered to be |
| 14 | an assignment or alienation. |
| 15 | (3) Legal obligations.—Moneys due or pay- |
| 16 | able from the Fund to any individual and, in the |
| 17 | case of an individual who is a participant or former |
| 18 | participant, the balance in the account of the partici- |
| 19 | pant or former participant shall be subject to— |
| 20 | (A) legal process for the enforcement of |
| 21 | the individual's legal obligation to provide child |
| 22 | support or make alimony payments as provided |
| 23 | in section 459 of the Social Security Act (42 |
| 24 | U.S.C. 659); |

| 1 | (B) an obligation of the Executive Director |
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| 2 | to make a payment to another person under |
| 3 | section 109; and |
| 4 | (C) any Federal tax levy under section |
| 5 | 6331 of the Internal Revenue Code of 1986. |
| 6 | For the purposes of this paragraph, an amount con- |
| 7 | tributed for the benefit of a participant or former |
| 8 | participant under section 25F of the Internal Rev- |
| 9 | enue Code of 1986 (including any earnings attrib- |
| 10 | utable thereto) shall be considered part of the bal- |
| 11 | ance in such participant or former participant's ac- |
| 12 | count. |
| 13 | (g) Non-appropriated Funds.—The sums in the |
| 14 | Fund shall not be appropriated for any purpose other than |
| 15 | the purposes specified in this section and may not be used |
| 16 | for any other purpose. |
| 17 | (h) Benefit to Participants.—All sums contrib- |
| 18 | uted to the Fund by a participant or the Secretary of the |
| 19 | Treasury for the benefit of such participant and all net |
| 20 | earnings in such Fund in trust for such participant shall |
| 21 | be the exclusive property of the participant. |
| 22 | (i) Nonforfeitable.—All the contributions made |
| 23 | under section 105 and section 25F of the Internal Rev- |
| 24 | enue Code of 1986 shall be fully nonforfeitable when |
| 25 | made, except as provided in section 25F(h) of such Code. |
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| 1 | SEC. 102. INVESTMENT OF AMERICAN WORKER RETIRE- |
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| 2 | MENT FUND. |
| 3 | (a) In General.—The Board shall establish the in- |
| 4 | vestment policies of the Fund and select the investment |
| 5 | funds, indexes, and other investment products that the |
| 6 | amounts in the Fund shall be invested in subject to the |
| 7 | following conditions: |
| 8 | (1) The Board shall provide for the following |
| 9 | investment options for participants: |
| 10 | (A) A Government Securities Investment |
| 11 | Fund under which sums in the Fund are in- |
| 12 | vested in— |
| 13 | (i) bonds issued or guaranteed by the |
| 14 | United States Government; and |
| 15 | (ii) bonds issued by Government-spon- |
| 16 | sored enterprises or Government corpora- |
| 17 | tions. |
| 18 | (B) A Fixed-Income Investment Fund |
| 19 | under which sums are in the Fund are invested |
| 20 | in— |
| 21 | (i) insurance contracts; |
| 22 | (ii) certificates of deposit; and |
| 23 | (iii) other instruments or obligations |
| 24 | selected by qualified professional asset |
| 25 | managers (as defined in section 8438(a)(8) |
| 26 | of title 5, United States Code), |

| 1 | which return the amount invested and pay in- |
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| 2 | terest, at a specific rate or rates, on that |
| 3 | amount during a specific period of time. |
| 4 | (C) A Common Stock Index Investment |
| 5 | Fund, as described in section 8438(b)(2) of |
| 6 | title 5, United States Code. |
| 7 | (D) A Small Capitalization Stock Index In- |
| 8 | vestment Fund, as described in section |
| 9 | 8438(b)(3) of title 5, United States Code. |
| 10 | (E) An International Stock Index Invest- |
| 11 | ment Fund, as described in section 8438(b)(4) |
| 12 | of title 5, United States Code. |
| 13 | (F) A Life-Cycle Investment Fund con- |
| 14 | sisting of target date asset allocation portfolios |
| 15 | (2) The Board may, in its discretion, provide |
| 16 | for other investment options for participants con- |
| 17 | sistent with the Board's fiduciary duty set forth in |
| 18 | sections 201 and 206. |
| 19 | (3) The Board shall consult with the Invest- |
| 20 | ment Advisory Council before authorizing additional |
| 21 | investment options for participants. |
| 22 | (b) Investments.— |
| 23 | (1) Investment selection.—The Executive |
| 24 | Director shall invest the sums available in the Fund |

for investment as provided in the selection made under subsection (c).

- 3 (2) Default option.—If a selection has not 4 been made with respect to any sums available for in-5 vestment in the Fund, the Executive Director shall 6 invest such sums in an age-appropriate Life-Cycle 7 Investment Fund, as determined by the Executive
- 8 Director.
- 9 (c) Investment Selection.—As often as is prac-
- 10 tical, but not less than twice per year, a participant may
- 11 select the investment funds and options referred to in sub-
- 12 section (a) into which the amounts in the Fund credited
- 13 to the participant's accounts are to be invested or rein-
- 14 vested. A selection may be made under this subsection only
- 15 in accordance with regulations prescribed by the Executive
- 16 Director and within such period as the Executive Director
- 17 shall provide in such regulations, but in no event less fre-
- 18 quently than twice a year.
- 19 (d) Voting Rights.—Participants, former partici-
- 20 pants, the Board, and the Executive Director may not ex-
- 21 ercise voting rights associated with the ownership of secu-
- 22 rities by the Fund.
- (e) Reports.—The Board shall issue regular reports
- 24 (not less frequently than quarterly) to participants and
- 25 former participants on the performance of each investment

- 1 option selected under subsection (a), which shall include
- 2 personalized estimates of assets and income at retirement,
- 3 the additional assets and income at retirement a partici-
- 4 pant would have if the participant makes sufficient con-
- 5 tributions to receive the maximum amount of the Govern-
- 6 ment match tax credit under section 25F of the Internal
- 7 Revenue Code of 1986, and any other information the
- 8 Board determines may help participants make sound fi-
- 9 nancial decisions. The Board shall provide the reports re-
- 10 quired under this subsection by electronic delivery, except
- 11 that upon the request of a participant or former partici-
- 12 pant, reports shall be provided by mail to such individual.
- 13 SEC. 103. ELIGIBILITY.
- 14 (a) Eligibility.—A qualifying worker shall be eligi-
- 15 ble to participate in the Fund upon completion of the en-
- 16 rollment process set forth in section 104.
- 17 (b) Cessation of Eligibility.—A former partici-
- 18 pant shall not be eligible to contribute to the Fund under
- 19 section 105(a) but shall remain the owner of the funds
- 20 in the former participant's account with the Fund (and
- 21 any net earnings attributable to such funds) subject to the
- 22 withdrawal conditions established under section 106, and
- 23 may exercise investment decisions with respect to such ac-
- 24 count on the same basis as a participant.

1 SEC. 104. ENROLLMENT.

| (a) ENROLLMENT.— | ENROLLMENT.— |
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(1) In General.—The Secretary of the Treas-ury and the Executive Director shall jointly establish an enrollment process for participating employers to enroll qualifying workers to participate in the Fund that incorporates, to the extent practicable, such en-rollment and participant contributions under section 105(a) into Federal tax withholding forms and pay-ments.

(2) Independent contractors who are qualifying workers, the enrollment process shall allow businesses who have contracts with such qualifying workers to elect to enroll such qualifying workers to participate in the Fund.

(b) Auto-enrollment; Opt-out.—

(1) In General.—Each participating employer shall enroll each of its qualifying workers to participate in the Fund under subsection (a) unless such qualifying worker elects to opt out of participating pursuant to paragraph (3). A qualifying worker who is a sole proprietor or independent contractor shall enroll or elect to opt out of participating pursuant to paragraph (3).

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(2) AUTOMATIC CONTRIBUTION RATES.—Each qualifying worker enrolled under paragraph (1) shall be automatically enrolled to make contributions under section 105(a) at the default percentage of 3 percent of the qualifying worker's compensation from the employer for such period as shall be established by regulation under section 105(a)(3).

(3) Opt-out.—A qualifying worker may elect to opt out of participating in the Fund pursuant to procedures established jointly by the Secretary of the Treasury and the Executive Director as part of the regulations governing the enrollment process set forth in subsection (a). If a qualifying worker elects to opt out of participating in the Fund, such qualifying worker shall not be enrolled in subsequent years unless the qualifying worker elects to participate in the Fund. The Secretary of the Treasury and the Executive Director shall determine procedures to establish accounts for qualifying workers who elect to opt out of participating in the Fund who are determined to be eligible for automatic contributions or who would make contributions otherwise allowable by law outside the withholding process.

(c) Penalties.—

| 1 | (1) Penalty.—A participating employer who |
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| 2 | fails to enroll a qualifying worker pursuant to sub- |
| 3 | section (b) or fails to deposit in the Fund the |
| 4 | amount of a participant's contributions under sec- |
| 5 | tion 105(a) shall be subject to a penalty equal to the |
| 6 | applicable penalty percentage of the amount of the |
| 7 | contributions by the qualifying worker or partici- |
| 8 | pant, as the case may be, that the participating em- |
| 9 | ployer fails to deposit due to failure to enroll the |
| 10 | qualifying worker or otherwise deposit such funds. |
| 11 | The Secretary of the Treasury and the Executive |
| 12 | Director shall jointly prescribe regulations under |
| 13 | which a participating employer shall be required to |
| 14 | pay to the Fund amounts representing lost earnings |
| 15 | resulting from errors made by such participating |
| 16 | employer in carrying out this section. |
| 17 | (2) Applicable penalty percentage.—The |
| 18 | term "applicable penalty percentage" means— |
| 19 | (A) 2 percent if the failure is for not more |
| 20 | than 5 days; |
| 21 | (B) 5 percent if the failure is for more |
| 22 | than 5 days but not more than 15 days; and |
| 23 | (C) 10 percent if the failure is for more |
| 24 | than 15 days. |

| (3) Funds.—The Secretary of the Treasury |
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| shall credit to the Fund, out of any sums in the |
| Treasury not otherwise appropriated, the amount |
| determined by the Executive Director to be nec- |
| essary to carry out this section and section 105(d) |
| SEC. 105. CONTRIBUTIONS. |
| (a) Contributions by Participants.— |
| (1) In general.—Pursuant to the regulations |
| established under subsection (d), a participant may |
| make contributions to the participant's account with |
| the Fund in any pay period in an amount not to ex- |
| ceed the participant's compensation for such period |
| (2) Catch-up contributions.—Notwith- |
| standing the limitation under paragraph (1), a par- |
| ticipant may make such additional contributions to |
| the participant's account with the Fund as are per- |
| mitted by section 414(v) of the Internal Revenue |
| Code of 1986, and the regulations established under |
| subsection (d) consistent therewith. |
| (3) Contributions.—The Secretary of the |
| Treasury and the Executive Director shall jointly |
| prescribe regulations that establish a program of |
| regular contribution under which participants may— |
| (A) make contributions to their accounts |
| with the Fund under paragraph (1); |
| |

| 1 | (B) modify the amount contributed under |
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| 2 | such paragraph; or |
| 3 | (C) terminate such contributions. |
| 4 | (4) Election.—An election to make contribu- |
| 5 | tions under this subsection— |
| 6 | (A) may be made at any time; |
| 7 | (B) shall take effect on the earliest date |
| 8 | after the election that is administratively fea- |
| 9 | sible; and |
| 10 | (C) shall remain in effect until modified or |
| 11 | terminated. |
| 12 | (b) Contribution of Government Match Tax |
| 13 | CREDIT.—A participant's account shall receive contribu- |
| 14 | tions in the form of the Government Match Tax Credit |
| 15 | contributed by the Secretary of the Treasury under section |
| 16 | 25F of the Internal Revenue Code of 1986. |
| 17 | (c) Contribution Limits.—Notwithstanding any |
| 18 | other provision of this section, no contribution may be |
| 19 | made under this section for any year to the extent that |
| 20 | such contribution, when added to prior contributions for |
| 21 | such year, exceeds any limitation under section 219(b)(5) |
| 22 | of the Internal Revenue Code of 1986. Any contribution |
| 23 | made under section 25F of the Internal Revenue Code of |
| 24 | 1986 shall not be taken into account for purposes of the |
| 25 | preceding sentence. |

- 1 (d) Treatment as Roth Contributions.—Con-
- 2 tributions under subsection (a) shall not be excludable
- 3 from gross income and no deduction shall be allowed with
- 4 respect to such contributions under section 219 of the In-
- 5 ternal Revenue Code of 1986.
- 6 (e) REGULATIONS.—The amounts contributed to the
- 7 Fund by a participant under section 105(a) and on behalf
- 8 of a participant by the Secretary of the Treasury under
- 9 section 25F of the Internal Revenue Code of 1986 shall
- 10 be deposited in the Fund and credited to the participant's
- 11 account with the Fund pursuant to regulations jointly pre-
- 12 scribed by the Secretary of the Treasury and the Execu-
- 13 tive Director.

14 SEC. 106. DISTRIBUTIONS.

- 15 (a) FORMER PARTICIPANTS.—A former participant is
- 16 entitled to access the amounts in the former participant's
- 17 account as provided in this section. Amounts in the ac-
- 18 count of a former participant shall remain in the Fund
- 19 until distributed in accordance with subsection (b).
- 20 (b) Former Participant Withdrawal Op-
- 21 Tions.—Subject to section 109, a former participant is
- 22 entitled to and may elect to withdraw from the Fund the
- 23 balance of the former participant's account as—
- 24 (1) an annuity;
- 25 (2) a single payment;

| 1 | (3) 2 or more substantially equal payments to |
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| 2 | be made not less frequently than annually; or |
| 3 | (4) any combination of payments described in |
| 4 | paragraphs (1) through (3) as the Executive Direc- |
| 5 | tor may prescribe by regulation. |
| 6 | (c) Additional Former Participant With- |
| 7 | DRAWAL OPTIONS.— |
| 8 | (1) In general.—In addition to the right pro- |
| 9 | vided under subsection (b) to withdraw the balance |
| 10 | of the account, a former participant may make 1 or |
| 11 | more withdrawals of any amount in the same man- |
| 12 | ner as a single payment is made in accordance with |
| 13 | subsection (b)(2) from the former participant's ac- |
| 14 | count. |
| 15 | (2) Transfers to retirement plans.— |
| 16 | (A) IN GENERAL.—A former participant |
| 17 | may request that the amount withdrawn from |
| 18 | the Fund under paragraph (1) be transferred to |
| 19 | an existing retirement plan. |
| 20 | (B) Transfers.—The Executive Director |
| 21 | shall make each transfer directly to an existing |
| 22 | retirement plan identified by the former partici- |
| 23 | pant for whom the transfer is made. A transfer |
| 24 | shall not be made under the preceding sentence |
| 25 | until the Executive Director receives from the |

| 1 | former participant the information required by |
|----|---|
| 2 | the Executive Director specifically to identify |
| 3 | the existing retirement plan to which the trans- |
| 4 | fer is to be made. |
| 5 | (3) Limitations.—Withdrawals under this |
| 6 | subsection shall be subject to such other limitations |
| 7 | or conditions as the Executive Director may pre- |
| 8 | scribe by regulation. |
| 9 | (d) Payment of Annuities.—The Board shall pre- |
| 10 | scribe methods of payment of annuities under this Act |
| 11 | substantially similar to those provided for under section |
| 12 | 8434 of title 5, United States Code. |
| 13 | (e) Former Participant Changes to Elec- |
| 14 | TIONS.— |
| 15 | (1) In general.—Subject to section 109, a |
| 16 | former participant may change an election previously |
| 17 | made under this section, except that in the case of |
| 18 | an election to receive an annuity, a former partici- |
| 19 | pant may not change an election under this section |
| 20 | on or after the date on which an annuity contract |
| 21 | is purchased to provide for the annuity elected by |
| 22 | the former participant. |
| 23 | (2) Distributions made.—A former partici- |
| 24 | pant may not return a distribution once made pur- |
| 25 | suant to an election under this section. |

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(f) Survivor Rights.—

(1) IN GENERAL.—If a participant or a former participant dies without having made an election under subsection (b) or after having elected an annuity under subsection (b) but before making an election for payments to a survivor rights under section 8434 of title 5, United States Code, an amount equal to the value of that individual's account (as of death) shall, subject to any decree, order, or agreement referred to in section 109, be paid in a manner consistent with the requirements of section 109.

- (2)MAINTENANCE OF ACCOUNT.—Notwithstanding section 109, if a participant or former participant dies and has designated as sole or partial beneficiary the spouse of the participant or former participant at the time of death, or, if a participant or former participant dies with no designated beneficiary and is survived by a spouse, the spouse may maintain the portion of the participant or former participant's account to which the spouse is entitled in accordance with the following terms:
 - (A) Subject to the limitations of subparagraph (B), the spouse shall have the same withdrawal options under subsection (b) as a former participant.

| 1 | (B) The spouse may not make withdrawals |
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| 2 | under subsection (h) or (i). |
| 3 | (C) The spouse may not make contribu- |
| 4 | tions or transfers to the account. |
| 5 | (D) The account shall be disbursed upon |
| 6 | the death of the surviving spouse of the partici- |
| 7 | pant or former participant and shall not be |
| 8 | maintained by a beneficiary or surviving spouse |
| 9 | of the surviving spouse who inherited the ac- |
| 10 | count. |
| 11 | (3) Regulations.—The Executive Director |
| 12 | shall prescribe regulations to carry out this sub- |
| 13 | section. |
| 14 | (g) Small Balance Accounts.—Notwithstanding |
| 15 | subsection (b), if a former participant's account balance |
| 16 | is less than an amount that the Executive Director pre- |
| 17 | scribes by regulation, the Executive Director shall pay the |
| 18 | nonforfeitable account balance to the participant in a sin- |
| 19 | gle payment. The Executive Director may prescribe more |
| 20 | than 1 balance amount for payment under this subsection |
| 21 | based on age of the former participant. |
| 22 | (h) Loans.— |
| 23 | (1) In general.—A participant or former par- |
| 24 | ticipant may apply to the Board for permission to |
| 25 | borrow from the participant or former participant's |

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account an amount not exceeding the value of that portion of such account which is attributable to contributions made by the participant or former participant. Before a loan is issued, the Executive Director shall provide to the participant or former participant in writing with appropriate information concerning the cost of the loan relative to other sources of financing, as well as the lifetime cost of the loan, including the difference in interest rates between the funds offered by the Fund and any other effect of such loan on the participant or former participant's final account balance.

(2) Special rules.—

(A) IN GENERAL.—Loans under this subsection shall be available to all participant and former participants on a reasonably equivalent basis, and shall be subject to such other conditions as the Board may prescribe by regulation, which shall be as equivalent as practically possible to those provided for under the Thrift Savings Plan. The restrictions of section 206(c)(1) shall not apply to loans made under this subsection.

(B) LIMITATION BASED ON TAX TREAT-MENT.—A loan may not be made under this

| 1 | subsection to the extent that the loan would be |
|----|--|
| 2 | treated as a taxable distribution under section |
| 3 | 72(p) of the Internal Revenue Code of 1986. |
| 4 | (C) SPOUSAL PROTECTIONS.—A loan may |
| 5 | not be made under this subsection unless the |
| 6 | requirements of section 109 are satisfied. |
| 7 | (i) Voluntary Distributions.— |
| 8 | (1) In general.—A participant may apply, be- |
| 9 | fore becoming a former participant, to the Board for |
| 10 | permission to withdraw an amount from the partici- |
| 11 | pant's account based upon— |
| 12 | (A) the participant having attained age |
| 13 | $59\frac{1}{2}$; or |
| 14 | (B) financial hardship. |
| 15 | (2) Limitations.—A withdrawal under para- |
| 16 | graph (1)(B) shall be available only for an amount |
| 17 | not exceeding the value of that portion of such ac- |
| 18 | count which is attributable to contributions made by |
| 19 | the participant. Withdrawals under paragraph (1) |
| 20 | shall be subject to such other limitations or condi- |
| 21 | tions as the Executive Director may prescribe by |
| 22 | regulation, which shall be as equivalent as prac- |
| 23 | tically possible to those provided for under the |
| 24 | Thrift Savings Plan. |

| 1 | (3) Spousal protections.—A withdrawal |
|----|--|
| 2 | may not be made under this subsection unless the |
| 3 | requirements of section 109 are satisfied. |
| 4 | (j) Involuntary Distributions.— |
| 5 | (1) In general.—A participant shall receive a |
| 6 | distribution from the Fund if the participant's gross |
| 7 | income for a taxable year exceeds the dollar thresh- |
| 8 | old (as adjusted by the Secretary of the Treasury) |
| 9 | established under section $414(q)(1)(B)$ of the Inter- |
| 10 | nal Revenue Code of 1986. |
| 11 | (2) Amount of distribution.—The amount |
| 12 | of a distribution under paragraph (1) shall be equal |
| 13 | to the sum of such participant's contributions to the |
| 14 | Fund for the taxable year for which such distribu- |
| 15 | tion is required under paragraph (1), increased by |
| 16 | any gains attributable to such contributions, and de- |
| 17 | creased by any losses attributable to such contribu- |
| 18 | tions, any early withdrawal penalties, and any ex- |
| 19 | penses associated with make such distribution. |
| 20 | (3) Process for distribution.— |
| 21 | (A) NOTICE TO PARTICIPANT.—The Exec- |
| 22 | utive Director shall provide notice to a partici- |
| 23 | pant subject to a distribution under paragraph |
| 24 | (1) not later than 7 days after the Executive |
| 25 | Director determines that such participant is |

| 1 | subject to such distribution, based on informa- |
|----|---|
| 2 | tion regarding participants' gross income pro- |
| 3 | vided by the Secretary of the Treasury. |
| 4 | (B) METHOD OF DISTRIBUTION.—Not |
| 5 | later than 30 days after receiving notice under |
| 6 | subparagraph (A), a participant may elect to |
| 7 | direct that a distribution under paragraph (1) |
| 8 | be made— |
| 9 | (i) in the case of an eligible rollover |
| 10 | distribution (as defined in section 402(c) |
| 11 | of the Internal Revenue Code of 1986), to |
| 12 | an eligible retirement plan (as defined in |
| 13 | such section of such code); or |
| 14 | (ii) directly to such participant. |
| 15 | (C) DEFAULT ELECTION.—In the case of a |
| 16 | participant who fails to make an election within |
| 17 | the period described in subparagraph (B), the |
| 18 | Executive Director shall make the distribution |
| 19 | directly to such participant. |
| 20 | (4) Tax treatment of involuntary dis- |
| 21 | TRIBUTION.—A distribution made under paragraph |
| 22 | (1) directly to the participant under subparagraph |
| 23 | (B)(ii) or (C) shall be treated as an early distribu- |
| 24 | tion from a qualified retirement plan pursuant to |
| 25 | section 72(t) of the Internal Revenue Code of 1986 |

| 1 | to the extent such distribution does not consist of |
|----|---|
| 2 | participant contributions to the Fund. |
| 3 | (k) Treatment as Roth Distributions.—The |
| 4 | rules of sections 408(d) and 408A(d) of the Internal Rev- |
| 5 | enue Code of 1986 shall apply to distributions from the |
| 6 | Fund in the same manner as if such Fund were a Roth |
| 7 | IRA. For purposes of the preceding sentence, contribu- |
| 8 | tions made under section 25F of such Code shall be treat- |
| 9 | ed as employer contributions which were not includible in |
| 10 | gross income. |
| 11 | SEC. 107. ACCOUNTS. |
| 12 | (a) In General.—The Executive Director shall es- |
| 13 | tablish and maintain an account for each participant who |
| 14 | makes contributions under section 105(a), or for whom |
| 15 | contributions are made under section 25F of the Internal |
| 16 | Revenue Code of 1986, to the Fund. |
| 17 | (b) ACCOUNT BALANCES.—The balance in a partici- |
| 18 | pant's account is the excess of— |
| 19 | (1) the sum of— |
| 20 | (A) all contributions made to the Fund by |
| 21 | the participant under section 105(a); |
| 22 | (B) all contributions made to the Fund for |
| 23 | the benefit of the participant by the Secretary |
| 24 | of the Treasury under section 25F of the Inter- |
| 25 | nal Revenue Code of 1986; and |

| 1 | (C) the total amount of the allocations |
|----|--|
| 2 | made to and reduction made in the account |
| 3 | pursuant to subsection (c); over |
| 4 | (2) the amounts paid out of the Fund with re- |
| 5 | spect to such participant under this title. |
| 6 | (e) Allocation of Earnings and Losses.—Pur- |
| 7 | suant to regulation prescribed by the Executive Director, |
| 8 | the Executive Director shall allocate to each account an |
| 9 | amount equal to a pro rata share of the net earnings and |
| 10 | net losses from each investment of sums in the Fund at- |
| 11 | tributed to sums credited to such account, reduced by the |
| 12 | appropriate share of the administrative expenses paid out |
| 13 | of the net earnings under section 101(e) as determined |
| 14 | by the Executive Director. |
| 15 | SEC. 108. TAX TREATMENT. |
| 16 | Except as otherwise provided in this Act, for purposes |
| 17 | of the Internal Revenue Code of 1986, rules similar to |
| 18 | the rules that apply with respect to the Thrift Savings |
| 19 | Fund (including the rules of section 8440 of title 5, |
| 20 | United States Code) shall apply with respect to the Amer- |
| 21 | ican Worker Retirement Fund. |
| 22 | SEC. 109. SPOUSAL PROTECTIONS; SURVIVOR RIGHTS. |
| 23 | The provisions for spousal protections and court or- |
| | 1 1 |
| 24 | ders under section 8435 and 8467 of title 5, United States |

- 30 ernance of the Fund and to accounts of participants and former participants as such sections are applied with re-3 spect the Thrift Savings Plan and its accounts. The Executive Director shall issue regulations that establish spous-5 al protections and survivor rights with respect to partici-6 pants and former participants that are as equivalent as practically possible to those provided for under the Thrift 8 Savings Plan pursuant to chapter 84 of title 5, United States Code. 9 TITLE II—THE AMERICAN WORK-10 RETIREMENT **PLAN** ER IN-11 VESTMENT MANAGEMENT 12 **SYSTEM** 13 14 SEC. 201. THE AMERICAN WORKER RETIREMENT INVEST-15 MENT BOARD. 16 (a) Establishment.—There is established in the executive branch of the Government the American Worker 18 Retirement Investment Board. 19 (b) Composition.—The Board shall be composed 20 of— 21 (1) 3 members appointed by the President, of 22 whom 1 shall be designated by the President as 23 Chair; 24 (2) 1 member appointed by the President after
- 25 taking into consideration the recommendation made

| 1 | by the majority leader of the Senate in consultation |
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| 2 | with the minority leader of the Senate; and |
| 3 | (3) 1 member appointed by the President after |
| 4 | taking into consideration the recommendation made |
| 5 | by the Speaker of the House of Representatives in |
| 6 | consultation with the minority leader of the House |
| 7 | of Representatives. |
| 8 | (c) Senate Confirmation.—Appointments under |
| 9 | subsection (b) shall be made with the advice and consent |
| 10 | of the Senate. |
| 11 | (d) Qualifications.— |
| 12 | (1) IN GENERAL.—Members of the Board shall |
| 13 | have substantial experience, training, and expertise |
| 14 | in the management of financial investments and |
| 15 | pension benefit plans. |
| 16 | (2) DISQUALIFICATION.—No member of the |
| 17 | Board may be an officer or employee of the Federal |
| 18 | Government. |
| 19 | (e) TERMS; VACANCIES.— |
| 20 | (1) Terms.—A member of the Board shall be |
| 21 | appointed for a term of 4 years, except that of the |
| 22 | members first appointed under subsection (b)— |
| 23 | (A) the Chair shall be appointed for a term |
| 24 | of 4 years; |

| 1 | (B) the members appointed under para- |
|----|--|
| 2 | graphs (2) and (3) of subsection (b) shall be |
| 3 | appointed for terms of 3 years; and |
| 4 | (C) the remaining members shall be ap- |
| 5 | pointed for terms of 2 years. |
| 6 | (2) Vacancies.— |
| 7 | (A) IN GENERAL.—A vacancy on the |
| 8 | Board shall be filled in the manner in which the |
| 9 | original appointment was made and shall be |
| 10 | subject to any conditions which applied with re- |
| 11 | spect to the original appointment. |
| 12 | (B) Term.—An individual chosen to fill a |
| 13 | vacancy shall be appointed for the unexpired |
| 14 | term of the member replaced. |
| 15 | (C) Expiration.—The term of any mem- |
| 16 | ber shall not expire before the date on which |
| 17 | the member's successor takes office. |
| 18 | (f) Board Duties.—The Board shall— |
| 19 | (1) establish policies for— |
| 20 | (A) the investment and management of the |
| 21 | Fund; and |
| 22 | (B) the administration of title I of this |
| 23 | Act; |
| 24 | (2) hire and set the compensation for the Exec- |
| 25 | utive Director; |

| 1 | (3) review the performance of investments made |
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| 2 | for the Fund; |
| 3 | (4) review and approve the budget of the |
| 4 | Board; and |
| 5 | (5) develop evidence-based financial literacy re- |
| 6 | quirements for participants in the Fund, including |
| 7 | requirements for financial literacy interventions to |
| 8 | occur prior to a participant— |
| 9 | (A) taking an early withdrawal from their |
| 10 | account at the Fund pursuant to section 106(i); |
| 11 | and |
| 12 | (B) taking a loan from such account pur- |
| 13 | suant to section 106(h). |
| 14 | (g) Board Authorities; Investment Limita- |
| 15 | TIONS.— |
| 16 | (1) In General.—The Board may— |
| 17 | (A) adopt, alter, and use a seal; |
| 18 | (B) except as provided in paragraph (2), |
| 19 | direct the Executive Director to take such ac- |
| 20 | tion as the Board considers appropriate to |
| 21 | carry out the provisions of this Act and the |
| 22 | policies of the Board; |
| 23 | (C) upon the concurring votes of 4 mem- |
| 24 | bers, remove the Executive Director from office |
| 25 | for good cause shown; and |

| 1 | (D) take such other action as may be nec- |
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| 2 | essary to carry out the functions of the Board. |
| 3 | (2) Exception.—Except in the case of invest- |
| 4 | ments under section 102(b)(2), the Board may not |
| 5 | direct the Executive Director to invest or to cause |
| 6 | to be invested any sums in the Fund in a specific |
| 7 | asset or to dispose of or cause to be disposed of any |
| 8 | specific asset of such Fund. |
| 9 | (h) BOARD RESPONSIBILITIES.—The members of the |
| 10 | Board shall discharge their responsibilities under this Act |
| 11 | solely in the interest of participants and beneficiaries. |
| 12 | (i) Budget.—The Board shall prepare and submit |
| 13 | to the President, and, at the same time, to the appropriate |
| 14 | committees of Congress, an annual budget of the expenses |
| 15 | and other items relating to the Board which shall be in- |
| 16 | cluded as a separate item in the budget required to be |
| 17 | transmitted to the Congress under section 1105 of title |
| 18 | 31, United States Code. |
| 19 | (j) LEGISLATIVE RECOMMENDATIONS.—The Board |
| 20 | may submit to the President, and, at the same time, shall |
| 21 | submit to each House of the Congress, any legislative rec- |
| 22 | ommendations of the Board relating to any of its functions |
| 23 | under this title. |

| 1 | SEC. 202. THE AMERICAN WORKER RETIREMENT PLAN AD- |
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| 2 | VISORY COUNCIL. |
| 3 | (a) Establishment.—The Board shall establish an |
| 4 | American Worker Retirement Plan Advisory Council. The |
| 5 | Council shall be composed of 7 members appointed by the |
| 6 | Chair of the Board in accordance with subsection (b). |
| 7 | (b) Appointment.—The Chair shall appoint 7 mem- |
| 8 | bers of the Council, of whom— |
| 9 | (1) 3 shall be appointed who have experience |
| 10 | managing investment funds; |
| 11 | (2) 2 shall be appointed who have experience |
| 12 | operating small businesses; and |
| 13 | (3) 2 shall be appointed who have experience |
| 14 | providing investment advice to small businesses and |
| 15 | low-income workers. |
| 16 | (e) Head of Council; Terms; Vacancies.— |
| 17 | (1) In General.—The Chair of the Board |
| 18 | shall designate 1 member of the Council to serve as |
| 19 | head of the Council. |
| 20 | (2) Term.—A member of the Council shall be |
| 21 | appointed for a term of 4 years. |
| 22 | (3) Vacancies.— |
| 23 | (A) In general.—A vacancy in the Coun- |
| 24 | cil shall be filled in the manner in which the |
| 25 | original appointment was made and shall be |

| 1 | subject to any conditions which applied with re- |
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| 2 | spect to the original appointment. |
| 3 | (B) Term.—An individual chosen to fill ϵ |
| 4 | vacancy shall be appointed for the unexpired |
| 5 | term of the member replaced. |
| 6 | (C) Expiration.—The term of any mem- |
| 7 | ber shall not expire before the date on which |
| 8 | the member's successor takes office. |
| 9 | (d) Majority Approval.—The Council shall act by |
| 10 | resolution of a majority of the members. |
| 11 | (e) Duties.—The Council shall— |
| 12 | (1) advise the Board and the Executive Direc- |
| 13 | tor on matters relating to— |
| 14 | (A) investment policies for the Fund; and |
| 15 | (B) the administration of title I of this |
| 16 | Act; and |
| 17 | (2) perform such other duties as the Board may |
| 18 | direct with respect to investment funds established |
| 19 | in accordance with title I. |
| 20 | SEC. 203. EXECUTIVE DIRECTOR. |
| 21 | (a) In General.— |
| 22 | (1) Appointment.—The Board shall appoint |
| 23 | without regard to the provisions of law governing |
| 24 | appointments in the competitive service, an Execu- |

| 1 | tive Director by action agreed to by a majority of |
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| 2 | the members of the Board. |
| 3 | (2) QUALIFICATIONS.—The Executive Director |
| 4 | shall have substantial experience, training, and ex- |
| 5 | pertise in the management of financial investments |
| 6 | and pension benefit plans. |
| 7 | (b) Duties.—The Executive Director shall— |
| 8 | (1) carry out the policies established by the |
| 9 | Board; |
| 10 | (2) invest and manage the Fund in accordance |
| 11 | with investment policies and other policies estab- |
| 12 | lished by the Board; |
| 13 | (3) administer the provisions of this Act; |
| 14 | (4) prescribe such regulations (other than regu- |
| 15 | lations relating to fiduciary responsibilities) as may |
| 16 | be necessary for the administration of this Act; |
| 17 | (5) meet from time to time with the Council |
| 18 | upon the request of the Council; and |
| 19 | (6) enforce the financial literary requirements |
| 20 | established by the Board pursuant to 201(f)(5). |
| 21 | (c) AUTHORITIES.—The Executive Director may— |
| 22 | (1) prescribe such regulations as may be nec- |
| 23 | essary to carry out the responsibilities of the Execu- |
| 24 | tive Director under this section, other than regula- |
| 25 | tions relating to fiduciary responsibilities; |

| 1 | (2) appoint such personnel as may be necessary |
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| 2 | to carry out the provisions of this Act; |
| 3 | (3) subject to approval by the Board, procure |
| 4 | the services of experts and consultants under section |
| 5 | 3109 of title 5, United States Code; |
| 6 | (4) make such payments out of sums in the |
| 7 | Fund as the Executive Director determines are nec- |
| 8 | essary to carry out the provisions of this Act and the |
| 9 | policies of the Board; |
| 10 | (5) pay the compensation, per diem, and travel |
| 11 | expenses of individuals appointed under paragraphs |
| 12 | (2), (3), and (7) of this subsection from the Fund; |
| 13 | (6) except as otherwise expressly prohibited by |
| 14 | law or the policies of the Board, delegate any of the |
| 15 | Executive Director's functions to such employees |
| 16 | under the Board as the Executive Director may des- |
| 17 | ignate and authorize such successive redelegations of |
| 18 | such functions to such employees under the Board |
| 19 | as the Executive Director may consider to be nec- |
| 20 | essary or appropriate; and |
| 21 | (7) take such other actions as are appropriate |
| 22 | to carry out the functions of the Executive Director. |
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| 1 | SEC. 204. INVESTMENT POLICIES AND SELECTION OF |
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| 2 | ASSET MANAGERS. |
| 3 | (a) Investment Policies.—The Board shall de- |
| 4 | velop investment policies under section 201(f)(1) which |
| 5 | provide for— |
| 6 | (1) prudent investments suitable for accumu- |
| 7 | lating funds for payment of retirement income; and |
| 8 | (2) low administrative costs. |
| 9 | (b) Asset Managers.—The Board shall select asset |
| 10 | managers to manage the Fund, subject to the following |
| 11 | conditions: |
| 12 | (1) The Board shall select a number of asset |
| 13 | managers necessary to ensure that no asset manager |
| 14 | shall be responsible for managing the greater of— |
| 15 | (A) $$500,000,000,000$; or |
| 16 | (B) 10 percent of the Fund's assets. |
| 17 | (2) The Board shall limit any contract with an |
| 18 | asset manager to a maximum of 5 years. |
| 19 | SEC. 205. ADMINISTRATIVE PROVISIONS. |
| 20 | (a) Board Meetings.—The Board shall meet— |
| 21 | (1) not less than once during each month; and |
| 22 | (2) at additional times at the call of the Chair. |
| 23 | (b) Board Governance.— |
| 24 | (1) In general.—Except as provided in sec- |
| 25 | tion 201(g)(1)(C), the Board shall perform the func- |

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| 1 | tions and exercise the powers of the Board on a ma- |
| 2 | jority vote of a quorum of the Board. |
| 3 | (2) Quorum.—3 members of the Board shal |
| 4 | constitute a quorum for the transaction of business |
| 5 | (3) EFFECT OF VACANCY.—A vacancy on the |
| 6 | Board shall not impair the authority of a quorum or |
| 7 | the Board to perform the functions and exercise the |
| 8 | power of the Board. |
| 9 | (c) Board Compensation.— |
| 10 | (1) In general.—Each member of the Board |
| 11 | shall be compensated at the daily rate of basic pay |
| 12 | for level IV of the Executive Schedule for each day |
| 13 | during which such member is engaged in performing |
| 14 | a function of the Board. |
| 15 | (2) PER DIEM, ETC.—A member of the Board |
| 16 | shall be paid travel, per diem, and other necessary |
| 17 | expenses while traveling away from such member's |
| 18 | home or regular place of business in the perform- |
| 19 | ance of the duties of the Board. |
| 20 | (3) Payment from fund.—Payments author- |
| 21 | ized under this subsection shall be paid from the |
| 2.2. | Fund as administrative expenses permitted under |

section 101(e).

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| 1 | SEC. 206. FIDUCIARY RESPONSIBILITIES; LIABILITY AND |
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| 2 | PENALTIES. |
| 3 | (a) Definitions.—For the purposes of this section: |
| 4 | (1) ACCOUNT.—The term "account" is not lim- |
| 5 | ited by the definition provided in section 2. |
| 6 | (2) ADEQUATE CONSIDERATION.—The term |
| 7 | "adequate consideration" means— |
| 8 | (A) in the case of a security for which |
| 9 | there is a generally recognized market— |
| 10 | (i) the price of the security prevailing |
| 11 | on a national securities exchange which is |
| 12 | registered under section 6 of the Securities |
| 13 | Exchange Act of 1934 (15 U.S.C. 78f); or |
| 14 | (ii) if the security is not traded on |
| 15 | such a national securities exchange, a price |
| 16 | not less favorable to the Fund than the of- |
| 17 | fering price for the security as established |
| 18 | by the current bid and asked prices quoted |
| 19 | by persons independent of the issuer and |
| 20 | of any party in interest; and |
| 21 | (B) in the case of an asset other than a se- |
| 22 | curity for which there is a generally recognized |
| 23 | market, the fair market value of the asset as |
| 24 | determined in good faith by a fiduciary or fidu- |
| 25 | ciaries in accordance with regulations pre- |
| 26 | scribed by the Secretary of Labor. |

| 1 | (3) FIDUCIARY.—The term "fiduciary" |
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| 2 | means— |
| 3 | (A) a member of the Board; |
| 4 | (B) the Executive Director; |
| 5 | (C) any person who has or exercises discre- |
| 6 | tionary authority or discretionary control over |
| 7 | the management or disposition of the assets of |
| 8 | the Fund; and |
| 9 | (D) any person who, with respect to the |
| 10 | Fund, is described in section 3(21)(A) of the |
| 11 | Employee Retirement Income Security Act of |
| 12 | 1974 (29 U.S.C. 1002(21)(A)). |
| 13 | (4) Party in interest.—The term "party in |
| 14 | interest" includes— |
| 15 | (A) any fiduciary; |
| 16 | (B) any counsel to a person who is a fidu- |
| 17 | ciary, with respect to the actions of such person |
| 18 | as a fiduciary; |
| 19 | (C) any participant; |
| 20 | (D) any person providing services to the |
| 21 | Board and, with respect to the actions of the |
| 22 | Executive Director as a fiduciary, any person |
| 23 | providing services to the Executive Director; |
| 24 | (E) a labor organization, the members of |
| 25 | which are participants; |

| 1 | (F) a spouse, sibling, ancestor, lineal de- |
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| 2 | scendant, or spouse of a lineal descendant of a |
| 3 | person described in subparagraph (A), (B), or |
| 4 | (D); |
| 5 | (G) a corporation, partnership, or trust or |
| 6 | estate of which, or in which, at least 50 percent |
| 7 | of— |
| 8 | (i) the combined voting power of all |
| 9 | classes of stock entitled to vote or the total |
| 10 | value of shares of all classes of stock of |
| 11 | such corporation, |
| 12 | (ii) the capital interest or profits in- |
| 13 | terest of such partnership, or |
| 14 | (iii) the beneficial interest of such |
| 15 | trust or estate, |
| 16 | is owned directly or indirectly or held by a per- |
| 17 | son described in subparagraph (A), (B), (D), or |
| 18 | $(\mathrm{E});$ |
| 19 | (H) an official (including a director) of, or |
| 20 | an individual employed by, a person described |
| 21 | in subparagraph (A), (B), (D), (E), or (G), or |
| 22 | an individual having powers or responsibilities |
| 23 | similar to those of such an official; |
| 24 | (I) a holder (directly or indirectly) of at |
| 25 | least 10 percent of the shares in a person de- |

| 1 | scribed in any subparagraph referred to in sub- |
|----|--|
| 2 | paragraph (H); and |
| 3 | (J) a person who, directly or indirectly, is |
| 4 | at least a 10 percent partner or joint venture |
| 5 | (measured in capital or profits) in a person de- |
| 6 | scribed in any subparagraph referred to in sub- |
| 7 | paragraph (H). |
| 8 | (b) Duties.—To the extent not inconsistent with the |
| 9 | provisions of this Act and the policies prescribed by the |
| 10 | Board, a fiduciary shall discharge the fiduciary's respon- |
| 11 | sibilities with respect to the Fund or applicable portion |
| 12 | thereof solely in the interest of the participants and bene- |
| 13 | ficiaries and— |
| 14 | (1) for the exclusive purpose of— |
| 15 | (A) providing benefits to participants and |
| 16 | their beneficiaries; and |
| 17 | (B) defraying reasonable expenses of ad- |
| 18 | ministering the Fund or applicable portions |
| 19 | thereof; |
| 20 | (2) with the care, skill, prudence, and diligence |
| 21 | under the circumstances then prevailing that a pru- |
| 22 | dent individual acting in a like capacity and familian |
| 23 | with such matters would use in the conduct of an |
| 24 | enterprise of a like character and with like objec- |
| 25 | tives; and |

| 1 | (3) to the extent permitted by section 102, by |
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| 2 | diversifying the investments of the Fund or applica- |
| 3 | ble portions thereof so as to minimize the risk of |
| 4 | large losses, unless under the circumstances it is |
| 5 | clearly prudent not to do so. |
| 6 | (c) Ownership Jurisdictions.—No fiduciary may |
| 7 | maintain the indicia of ownership of any assets of the |
| 8 | Fund outside the jurisdiction of the district courts of the |
| 9 | United States. |
| 10 | (d) Transactions.— |
| 11 | (1) Prohibited transactions.—A fiduciary |
| 12 | shall not permit the Fund to engage in any of the |
| 13 | following transactions, except in exchange for ade- |
| 14 | quate consideration: |
| 15 | (A) A transfer of any assets of the Fund |
| 16 | to any person the fiduciary knows or should |
| 17 | know to be a party in interest or the use of |
| 18 | such assets by any such persons. |
| 19 | (B) An acquisition of any property from or |
| 20 | sale of any property to the Fund by any person |
| 21 | the fiduciary knows or should know to be a |
| 22 | party in interest. |
| 23 | (C) A transfer or exchange of services be- |
| 24 | tween the Fund and any person the fiduciary |
| 25 | knows or should know to be a party in interest. |

| 1 | (2) Prohibited actions.—Notwithstanding |
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| 2 | paragraph (1), a fiduciary with respect to the Fund |
| 3 | shall not— |
| 4 | (A) deal with any assets of the Fund in |
| 5 | the fiduciary's own interest or for the fidu- |
| 6 | ciary's own account; |
| 7 | (B) act, in an individual capacity or any |
| 8 | other capacity, in any transaction involving the |
| 9 | Fund on behalf of a party, or representing a |
| 10 | party, whose interests are adverse to the inter- |
| 11 | ests of the Fund or the interests of its partici- |
| 12 | pants or beneficiaries; or |
| 13 | (C) receive any consideration of the fidu- |
| 14 | ciary's own personal account from any party |
| 15 | dealing with sums credited to the Fund in con- |
| 16 | nection with a transaction involving assets of |
| 17 | the Fund. |
| 18 | (3) Secretary of Labor.— |
| 19 | (A) IN GENERAL.—The Secretary of Labor |
| 20 | may, in accordance with procedures which the |
| 21 | Secretary of Labor shall by regulation pre- |
| 22 | scribe, grant a conditional or unconditional ex- |
| 23 | emption of any fiduciary or transaction, or class |
| 24 | of fiduciaries or transactions, from all or any of |
| 25 | the restrictions imposed by paragraph (2). An |

| 1 | exemption granted under this subparagraph |
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| 2 | shall not relieve a fiduciary from any other ap- |
| 3 | plicable provision of this Act. |
| 4 | (B) Conditions.—The Secretary of Labor |
| 5 | may not grant an exemption under subpara- |
| 6 | graph (A) unless the Secretary of Labor finds |
| 7 | that such exemption is— |
| 8 | (i) administratively feasible; |
| 9 | (ii) in the interests of the Fund and |
| 10 | its participants; and |
| 11 | (iii) protective of the rights of partici- |
| 12 | pants and beneficiaries of such Fund. |
| 13 | (C) Notice.—An exemption under sub- |
| 14 | paragraph (A) may not be granted unless— |
| 15 | (i) notice of the proposed exemption is |
| 16 | published in the Federal Register; |
| 17 | (ii) interested persons are given an |
| 18 | opportunity to present views; and |
| 19 | (iii) the Secretary of Labor affords an |
| 20 | opportunity for a hearing and makes a de- |
| 21 | termination on the record with respect to |
| 22 | the respective requirements of clauses (i) |
| 23 | (ii), and (iii) of subparagraph (B). |
| 24 | (D) APPLICATION OF ERISA FIDUCIARY |
| 25 | EXEMPTIONS.—Notwithstanding subparagraph |

| (C), the Secretary of Labor may determine that |
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| an exemption granted for any class of fidu- |
| ciaries or transactions under section 408(a) of |
| the Employee Retirement Income Security Act |
| of 1974 (29 U.S.C. 1108(a)) shall, upon publi- |
| cation of notice in the Federal Register under |
| this subparagraph, constitute an exemption |
| from the application of paragraph (2). |
| (e) Nonapplication.—This section does not pro- |
| hibit any fiduciary from— |
| (1) receiving any benefit which the fiduciary is |
| entitled to receive under this Act as a participant, |
| former participant, or beneficiary; |
| (2) receiving any reasonable compensation au- |
| thorized by this Act for services rendered, or for re- |
| imbursement of expenses properly and actually in- |
| curred, in the performance of the fiduciary's duties |
| under this Act; or |
| (3) serving as a fiduciary in addition to being |
| an officer, employee, agent, or other representative |
| of a party in interest. |
| (f) Liability.— |
| |
| (1) In general.—Any fiduciary that breaches |
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Fund resulting from each such breach or violation and to restore to such Fund any profits made by the fiduciary through use of assets of such Fund by the fiduciary, and, except as provided in paragraphs (3) and (4), shall be subject to such other equitable or remedial relief as a court considers appropriate. A fiduciary may be removed for a breach referred to in the preceding sentence.

(2) CIVIL PENALTIES.—The Secretary of Labor may assess a civil penalty against a party in interest with respect to each transaction prohibited by subsection (d) which is engaged in by the party in interest. The amount of such penalty shall be equal to 5 percent of the amount involved in each such transaction (as defined in section 4975(f)(4) of the Internal Revenue Code of 1986) for each year or part thereof during which the prohibited transaction continues, except that, if the transaction is not corrected (in such manner as the Secretary of Labor shall prescribe by regulation consistent with section 4975(f)(5) of such Code) within 90 days after the date the Secretary of Labor transmits notice to the party in interest (or such longer period as the Secretary of Labor may permit), such penalty may be

| 1 | in the amount of not more than 100 percent of the |
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| 2 | amount involved. |
| 3 | (3) Special rules.— |
| 4 | (A) IN GENERAL.—A fiduciary shall not be |
| 5 | liable under paragraph (1)— |
| 6 | (i) with respect to a breach of fidu- |
| 7 | ciary duty under subsection (b) committed |
| 8 | before becoming a fiduciary or after ceas- |
| 9 | ing to be a fiduciary; |
| 10 | (ii) for providing for the automatic |
| 11 | enrollment of a participant in accordance |
| 12 | with section 104; |
| 13 | (iii) for enrolling a participant or ben- |
| 14 | eficiary in a default investment fund or op- |
| 15 | tion in accordance with section 104; or |
| 16 | (iv) for allowing a participant or bene- |
| 17 | ficiary to invest through the mutual fund |
| 18 | window or for establishing restrictions ap- |
| 19 | plicable to participants' or beneficiaries' |
| 20 | ability to invest through the mutual fund |
| 21 | window. |
| 22 | (B) Joint and Several Liability.—A fi- |
| 23 | duciary shall be jointly and severally liable |
| 24 | under paragraph (1) for a breach of fiduciary |

| 1 | duty under subsection (b) by another fiduciary |
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| 2 | only if— |
| 3 | (i) the fiduciary participates know- |
| 4 | ingly in, or knowingly undertakes to con- |
| 5 | ceal, an act or omission of such other fidu- |
| 6 | ciary, knowing such act or omission is such |
| 7 | a breach; |
| 8 | (ii) by the fiduciary's failure to com- |
| 9 | ply with subsection (b) in the administra- |
| 10 | tion of the fiduciary's specific responsibil- |
| 11 | ities which give rise to the fiduciary status, |
| 12 | the fiduciary has enabled such other fidu- |
| 13 | ciary to commit such a breach; or |
| 14 | (iii) the fiduciary has knowledge of a |
| 15 | breach by such other fiduciary, unless the |
| 16 | fiduciary makes reasonable efforts under |
| 17 | the circumstances to remedy the breach. |
| 18 | (4) Allocation of Duties.—The Secretary of |
| 19 | Labor shall prescribe, in regulations, procedures for |
| 20 | allocating fiduciary responsibilities among fidu- |
| 21 | ciaries, including asset managers. Any fiduciary who, |
| 22 | pursuant to such procedures, allocates to any person |
| 23 | any fiduciary responsibility shall not be liable for an |
| 24 | act or omission of such person unless such fiduciary |
| 25 | violated subsection (b) with respect to the allocation, |

| 1 | with respect to the implementation of the procedures |
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| 2 | prescribed by the Secretary of Labor. |
| 3 | (5) OTHER CIVIL ACTIONS.— |
| 4 | (A) In general.—No civil action may be |
| 5 | maintained against any fiduciary with respect |
| 6 | to the responsibilities, liabilities, and penalties |
| 7 | authorized or provided for in this section except |
| 8 | in accordance with subparagraphs (B) and (C). |
| 9 | (B) ACTIONS PERMITTED.—A civil action |
| 10 | may be brought in the district courts of the |
| 11 | United States— |
| 12 | (i) by the Secretary of Labor against |
| 13 | any fiduciary other than a member of the |
| 14 | Board or the Executive Director of the |
| 15 | Board— |
| 16 | (I) to determine and enforce a li- |
| 17 | ability under paragraph (1); |
| 18 | (II) to collect any civil penalty |
| 19 | under paragraph (2); |
| 20 | (III) to enjoin any act or practice |
| 21 | which violates any provision of sub- |
| 22 | section (b) or (c); |
| 23 | (IV) to obtain any appropriate |
| 24 | equitable relief to redress a violation |
| 25 | of any such provision; or |

| 1 | (V) to enjoin any act or practice |
|----|--|
| 2 | which violates subsection (g)(2) or (h) |
| 3 | of section 201; |
| 4 | (ii) by any participant, beneficiary, or |
| 5 | fiduciary— |
| 6 | (I) to enjoin any act or practice |
| 7 | which violates any provision of sub- |
| 8 | section (b) or (c); |
| 9 | (II) to obtain any other appro- |
| 10 | priate equitable relief to redress a vio- |
| 11 | lation of any such provision; or |
| 12 | (III) to enjoin any act or practice |
| 13 | which violate subsection $(g)(2)$ or (h) |
| 14 | of section 201; or |
| 15 | (iii) by any participant or bene- |
| 16 | ficiary— |
| 17 | (I) to recover benefits of such |
| 18 | participant or beneficiary under the |
| 19 | provisions of title I, to enforce any |
| 20 | right of such participant or bene- |
| 21 | ficiary under such provisions, or to |
| 22 | clarify any such right to future bene- |
| 23 | fits under such provisions; or |
| 24 | (II) to enforce a claim otherwise |
| 25 | cognizable under sections 1346(b) and |

| 1 | 2671 through 2680 of title 28, United |
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| 2 | States Code, except that the remedy |
| 3 | against the United States provided by |
| 4 | section 1346(b) and 2672 of such title |
| 5 | 28 for damages for injury or loss of |
| 6 | property caused by the negligent or |
| 7 | wrongful act or omission of any fidu- |
| 8 | ciary while acting within the scope of |
| 9 | the fiduciary's duties or employment |
| 10 | shall be exclusive of any other civil ac- |
| 11 | tion or proceeding by the participant |
| 12 | or beneficiary for recovery of money |
| 13 | by reason of the same subject matter |
| 14 | against the fiduciary (or the estate of |
| 15 | such fiduciary) whose act or omission |
| 16 | gave rise to such action or proceeding, |
| 17 | whether or not such action or pro- |
| 18 | ceeding is based on an alleged viola- |
| 19 | tion of subsection (b) or (c). |
| 20 | (C) Representation.— |
| 21 | (i) In general.—In all civil actions |
| | |

under subparagraph (B)(i), attorneys ap-

pointed by the Secretary may represent the

Secretary (except as provided in section

518(a) of title 28, United States Code),

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| 1 | nowever, all such litigation shall be subject |
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| 2 | to the direction and control of the Attorney |
| 3 | General. |
| 4 | (ii) Attorney general.—The Attor- |
| 5 | ney General shall defend any civil action or |
| 6 | proceeding brought in any court against |
| 7 | any fiduciary referred to in subparagraph |
| 8 | (B)(iii)(II) (or the estate of such fiduciary) |
| 9 | for any such injury. Any fiduciary against |
| 10 | whom such a civil action or proceeding is |
| 11 | brought shall deliver, within such time |
| 12 | after date of service or knowledge of serv- |
| 13 | ice as determined by the Attorney General, |
| 14 | all process served upon such fiduciary (or |
| 15 | an attested copy thereof) to the Executive |
| 16 | Director, who shall promptly furnish copies |
| 17 | of the pleading and process to the Attorney |
| 18 | General and the United States Attorney |
| 19 | for the district wherein the action or pro- |
| 20 | ceeding is brought. |
| 21 | (iii) Certification of scope of |
| 22 | DUTY.—Upon certification by the Attorney |
| 23 | General that a fiduciary described in sub- |
| 24 | paragraph (B)(iii)(II) was acting in the |
| 25 | scope of such fiduciary's duties or employ- |

| 1 | ment as a fiduciary at the time of the oc- |
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| 2 | currence or omission out of which the ac- |
| 3 | tion arose, any such civil action or pro- |
| 4 | ceeding commenced in the State court shall |
| 5 | be— |
| 6 | (I) removed without bond at any |
| 7 | time before trial by the Attorney Gen- |
| 8 | eral to the district court of the United |
| 9 | States for the district and division in |
| 10 | which it is pending; and |
| 11 | (II) deemed a tort action brought |
| 12 | against the United States under the |
| 13 | provisions of title 28, United States |
| 14 | Code, and all references thereto. |
| 15 | (iv) Compromise or settlement.— |
| 16 | The Attorney General may compromise or |
| 17 | settle any claim asserted in such civil ac- |
| 18 | tion or proceeding in the manner provided |
| 19 | in section 2677 of title 28, United States |
| 20 | Code, and with the same effect. To the ex- |
| 21 | tent section 2672 of title 28, United States |
| 22 | Code, provides that persons other than the |
| 23 | Attorney General or the Attorney General's |
| 24 | designee may compromise and settle |
| 25 | claims, and that payments of such claims |

| I | may be made from agency appropriations, |
|----|--|
| 2 | such provisions shall not apply to claims |
| 3 | based upon an alleged violation of sub- |
| 4 | section (b) or (c). |
| 5 | (v) CERTAIN CLAIMS.—For the pur- |
| 6 | poses of subparagraph (B)(iii)(II), the pro- |
| 7 | visions of section 2680(h) of title 28, |
| 8 | United States Code shall not apply to any |
| 9 | claim based upon an alleged violation of |
| 10 | subsection (b) or (c). |
| 11 | (vi) Payment of Awards.—Notwith- |
| 12 | standing sections 1346(b) and 2671 |
| 13 | through 2680 of title 28, United States |
| 14 | Code, whenever an award, compromise, or |
| 15 | settlement is made under such section |
| 16 | upon any claim based upon an alleged vio- |
| 17 | lation of subsection (b) or (c), payment of |
| 18 | such award, compromise, or settlement |
| 19 | shall be made to the appropriate account |
| 20 | with in the Fund, or where there is no |
| 21 | such appropriate account, to the partici- |
| 22 | pant or beneficiary bringing the claim. |
| 23 | (vii) Definition.—For purposes of |
| 24 | subparagraph (B)(iii)(II), the term "fidu- |

| 1 | ciary" includes only the members of the |
|----|--|
| 2 | Board and the Board's Executive Director. |
| 3 | (D) Limitation on monetary relief.— |
| 4 | Any relief awarded against a member of the |
| 5 | Board or the Board's Executive Director in a |
| 6 | civil action authorized by subparagraph (B) |
| 7 | may not include any monetary damages or any |
| 8 | other recovery of money. |
| 9 | (E) Time for commencement of ac- |
| 10 | TION.—An action may not be commenced under |
| 11 | clause (i) or (ii) of subparagraph (B) with re- |
| 12 | spect to a fiduciary's breach of any responsi- |
| 13 | bility, duty, or obligation under subsection (b) |
| 14 | or a violation of subsection (c) after the earlier |
| 15 | of— |
| 16 | (i) 6 years after— |
| 17 | (I) the date of the last action |
| 18 | which constituted a part of the breach |
| 19 | or violation; or |
| 20 | (II) in the case of an omission, |
| 21 | the latest date on which the fiduciary |
| 22 | could have cured the breach or viola- |
| 23 | tion; or |
| 24 | (ii) 3 years after the earliest date on |
| 25 | which the plaintiff had actual knowledge of |

| 1 | the breach or violation, except that, in the |
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| 2 | case of fraud or concealment, such action |
| 3 | may be commenced not later than 6 years |
| 4 | after the date of discovery of such breach |
| 5 | or violation. |
| 6 | (F) Jurisdiction.— |
| 7 | (i) In general.—The district courts |
| 8 | of the United States shall have exclusive |
| 9 | jurisdiction of civil actions under this sub- |
| 10 | section. |
| 11 | (ii) Venue.—An action under this |
| 12 | subsection may be brought in the District |
| 13 | Court of the United States for the District |
| 14 | of Columbia or a district court of the |
| 15 | United States in the district where the |
| 16 | breach alleged in the complaint or petition |
| 17 | filed in the action took place or in the dis- |
| 18 | trict where a defendant resides or may be |
| 19 | found. Process may be served in any other |
| 20 | district where a defendant resides or may |
| 21 | be found. |
| 22 | (G) Other rules.— |
| 23 | (i) IN GENERAL.—A copy of the com- |
| 24 | plaint or petition filed in any action |
| 25 | brought under this subsection (other than |

| 1 | by the Secretary of Labor) shall be served |
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| 2 | on the Executive Director, the Secretary of |
| 3 | Labor, and the Secretary of the Treasury |
| 4 | by certified mail. |
| 5 | (ii) Intervention.—Any officer re- |
| 6 | ferred to in clause (i) shall have the right |
| 7 | in the officer's discretion to intervene in |
| 8 | any action. If the Secretary of Labor |
| 9 | brings an action under subparagraph |
| 10 | (B)(i) on behalf of a participant or bene- |
| 11 | ficiary, the Secretary of Labor shall notify |
| 12 | the Executive Director and the Secretary |
| 13 | of the Treasury. |
| 14 | (g) REGULATIONS.—The Secretary of Labor may |
| 15 | prescribe regulations to carry out this section. |
| 16 | (h) Audits.— |
| 17 | (1) IN GENERAL.—The Secretary of Labor shall |
| 18 | establish a program to carry out audits to determine |
| 19 | the level of compliance with the requirements of this |
| 20 | section relating to fiduciary responsibilities and pro- |
| 21 | hibited activities of fiduciaries. |
| 22 | (2) Delegation.—An audit under this sub- |
| 23 | section may be conducted by the Secretary of Labor |
| 24 | by contract with a qualified non-governmental orga- |
| 25 | nization, or in cooperation with the Comptroller |

| 1 | General of the United States, as the Secretary of |
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| 2 | Labor considers appropriate. |
| 3 | SEC. 207. BONDING. |
| 4 | (a) Requirements.— |
| 5 | (1) In general.—Except as provided in para- |
| 6 | graph (2), each fiduciary and each person who han- |
| 7 | dles funds or property of the Fund shall be bonded |
| 8 | as provided in this section. |
| 9 | (2) Exceptions.— |
| 10 | (A) IN GENERAL.—Bond shall not be re- |
| 11 | quired of a fiduciary (or of any officer or em- |
| 12 | ployee of such fiduciary) if such fiduciary— |
| 13 | (i) is a corporation organized and |
| 14 | doing business under the laws of the |
| 15 | United States or of any State; |
| 16 | (ii) is authorized under such laws to |
| 17 | exercise trust powers or to conduct an in- |
| 18 | surance business; |
| 19 | (iii) is subject to supervision or exam- |
| 20 | ination by Federal or State authority; and |
| 21 | (iv) has at all times a combined cap- |
| 22 | ital and surplus in excess of such minimum |
| 23 | amount (not less than \$1,000,000) as the |
| 24 | Secretary of Labor prescribes in regula- |
| 25 | tions. |

| 1 | (B) Limitation.—If— |
|----|--|
| 2 | (i) a bank or other financial institu- |
| 3 | tion would, but for this subparagraph, not |
| 4 | be required to be bonded under this section |
| 5 | by reason of the application of the excep- |
| 6 | tion provided in subparagraph (A), |
| 7 | (ii) the bank or financial institution is |
| 8 | authorized to exercise trust powers, and |
| 9 | (iii) the deposits of the bank or finan- |
| 10 | cial institution are not insured by the Fed- |
| 11 | eral Deposit Insurance Corporation, |
| 12 | such exception shall apply to such bank or fi- |
| 13 | nancial institution only if the bank or institu- |
| 14 | tion meets bonding requirements under State |
| 15 | law which the Secretary of Labor determines |
| 16 | are at least equivalent to those imposed on |
| 17 | banks by Federal law. |
| 18 | (b) REGULATIONS.— |
| 19 | (1) IN GENERAL.—The Secretary of Labor shall |
| 20 | prescribe the amount of a bond under this section at |
| 21 | the beginning of each fiscal year. Such amount shall |
| 22 | not be less than 10 percent of the amount of funds |
| 23 | handled, except that in no case shall such bond be |
| 24 | less than $$1,000$ or more than $$500,000$, or such |
| 25 | higher amount as the Secretary of Labor, after due |

notice and opportunity for hearing to all interested parties, and other consideration of the record, may prescribe.

(2) Amount of funds handled.—For the purpose of prescribing the amount of a bond under paragraph (1), the amount of funds handled shall be determined by reference to the amount of the funds handled by the person, group, or class to be covered by such bond or by their predecessor or predecessors, if any, during the preceding fiscal year, or to the amount of funds to be handled during the current fiscal year by such person, group, or class, estimated as provided in regulations prescribed by the Secretary of Labor.

(c) TERMS.—A bond required by subsection (a)—

- (1) shall include such terms and conditions as the Secretary of Labor considers necessary to protect the Fund against loss by reason of acts of fraud or dishonesty on the part of the bonded person directly or through connivance with others;
- (2) shall have as surety thereon a corporate surety company which is an acceptable surety on Federal bonds under authority granted by the Secretary of the Treasury pursuant to sections 9304 through 9308 of title 31, United States Code; and

64 1 (3) shall be in a form or of a type approved by 2 the Secretary of Labor, including individual bonds or 3 schedule or blanket forms of bonds which cover a 4 group or class. 5 (d) Custody of Funds.— 6 (1) IN GENERAL.—It shall be unlawful for any 7 person to whom subsection (a) applies, to receive, 8 handle, disburse, or otherwise exercise custody or 9 control of any of the funds or other property of the 10 Fund without being bonded as required by this sec-11 tion. 12 (2) FIDUCIARIES.—It shall be unlawful for any 13 fiduciary, or any other person having authority to 14 direct the performance of functions described in 15 paragraph (1), to permit any such function to be 16 performed by any person to whom subsection (a) ap-17 plies unless such person has met the requirements of 18 such subsection. (e) Exemption.—Notwithstanding any other provi-

19 20 sion of law, any person who is required to be bonded as 21 provided in subsection (a) shall be exempt from any other provision of law which would, but for this subsection, require such person to be bonded for the handling of the funds or other property of the Fund.

- 1 (f) REGULATIONS.—The Secretary of Labor shall
- 2 prescribe such regulations as may be necessary to carry
- 3 out the provisions of this section, including exempting a
- 4 person or class of persons from the requirements of this
- 5 section.

6 SEC. 208. INVESTIGATIVE AUTHORITY.

- 7 Any authority available to the Secretary of Labor
- 8 under section 504 of the Employee Retirement Income Se-
- 9 curity Act of 1974 (29 U.S.C. 1134) is hereby made avail-
- 10 able to the Secretary of Labor, and any officer designated
- 11 by the Secretary of Labor, to determine whether any per-
- 12 son has violated, or is about to violate, any provision of
- 13 sections 206 or 207.

14 SEC. 209. EXCULPATORY PROVISIONS; INSURANCE.

- 15 (a) Exculpatory Provisions Void.—Any provi-
- 16 sion in an agreement or instrument which purports to re-
- 17 lieve a fiduciary from responsibility or liability for any re-
- 18 sponsibility, obligation, or duty under this title shall be
- 19 void.
- 20 (b) Insurance.—In accordance with section 101(e),
- 21 the sums credited to the Fund shall be available to pay
- 22 administrative expenses which may include, at the discre-
- 23 tion of the Executive Director, the purchase of insurance
- 24 to cover potential liability of persons who serve in a fidu-
- 25 ciary capacity with respect to the Fund, without regard

- 1 to whether a policy of insurance permits recourse by the
- 2 insurer against the fiduciary in the case of a breach of
- 3 a fiduciary obligation..

4 SEC. 210. SUBPOENA AUTHORITY.

- 5 (a) Subpoena Authority.—In order to carry out
- 6 the responsibilities specified in this Act, the Executive Di-
- 7 rector may issue subpoenas commanding each person to
- 8 whom the subpoena is directed to produce designated
- 9 books, documents, records, electronically stored informa-
- 10 tion, or tangible materials in the possession or control of
- 11 that individual.
- 12 (b) Liability.—Notwithstanding any Federal, State,
- 13 or local law, any person, including officers, agents, and
- 14 employees, receiving a subpoena under this section, who
- 15 complies in good faith with the subpoena and thus pro-
- 16 duces the materials sought, shall not be liable in any court
- 17 of any State or the United States to any individual, do-
- 18 mestic or foreign corporation or upon a partnership or
- 19 other unincorporated association for such production.
- 20 (c) Enforcement.—When a person fails to obey a
- 21 subpoena issued under this section, the district court of
- 22 the United States for the district in which the investiga-
- 23 tion is conducted or in which the person failing to obey
- 24 is found, shall on proper application issue an order direct-

- 67 ing that person to comply with the subpoena. The court may punish as contempt any disobedience of its order. 3 (d) Regulations.—The Executive Director shall 4 prescribe regulations to carry out subsection (a). TITLE III—GOVERNMENT MATCH 5 TAX CREDIT 6 7 SEC. 301. GOVERNMENT MATCH TAX CREDIT. 8 (a) Credit.—Subpart A of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 is 10 amended by inserting after section 25E the following new 11 section: 12 "SEC. 25F. GOVERNMENT MATCH TAX CREDIT. 13 "(a) ALLOWANCE OF CREDIT.—In the case of an eligible individual, there shall be allowed as a credit for the 14 15 taxable year an amount equal to the sum of— 16 "(1) 1 percent of the eligible individual's gross 17 income, plus 18 "(2) the applicable percentage of the partici-19 pant's contributions to the American Worker Retire-20 ment Fund during the taxable year. 21 "(b) APPLICABLE PERCENTAGE.—For purposes of 22 this section, the applicable percentage is—
- 23 "(1) 100 percent of so much of the contribu-24 tions to the American Worker Retirement Fund as 25 do not exceed 3 percent of gross income,

| 1 | "(2) 50 percent of so much of such contribu- |
|----|---|
| 2 | tions as exceeds 3 percent but does not exceed 5 per- |
| 3 | cent of gross income;, and |
| 4 | "(3) 0 percent for such contributions that ex- |
| 5 | ceed 5 percent of so much of such contributions as |
| 6 | exceeds 5 percent of gross income. |
| 7 | "(c) Phaseout.— |
| 8 | "(1) In General.—The credit determined |
| 9 | under subsection (a) shall be reduced by \$75 for |
| 10 | each \$1,000 or portion thereof by which the eligible |
| 11 | individual's gross income exceeds the phaseout |
| 12 | amount. |
| 13 | "(2) Phaseout amount.—For purposes of |
| 14 | paragraph (1), the phaseout amount is— |
| 15 | "(A) in the case of a joint return, an |
| 16 | amount equal to 200 percent of the United |
| 17 | States median income for the preceding taxable |
| 18 | year, as determined by the Secretary, |
| 19 | "(B) in the case of a head of household (as |
| 20 | defined in section 2(b)), 3/4 of the amount de- |
| 21 | termined under subparagraph (A), and |
| 22 | "(C) in any other case, ½ of the amount |
| 23 | determined under subparagraph (A). |
| 24 | "(d) Eligible Individual.—For purposes of this |
| 25 | section, the term 'eligible individual' has the meaning |

given the term 'participant' by section 2(13) of the Retirement Savings for Americans Act of 2022. 3 "(e) American Worker Retirement Fund.—For purposes of this section, the American Worker Retirement Fund is the Fund created under section 101(a) of the Retirement Savings for Americans Act of 2022. 6 7 "(f) Deposit Into Participant's Account.— 8 "(1) IN GENERAL.—Any amount allowed as a 9 credit under subsection (a)— 10 "(A) shall not be allowed as a credit 11 against any tax imposed by this subtitle, and 12 "(B) shall be treated as an overpayment 13 under section 6401(b). 14 "(2) PAYMENT.—The Secretary shall contribute 15 the amount treated as an overpayment under para-16 graph (1) to the eligible individual's account with 17 the American Worker Retirement Fund. 18 "(g) Advance Payment.— "(1) REGULATIONS.—The Secretary shall pre-19 20 scribe regulations to provide that the payments 21 made under subsection (f) are made as concurrently 22 as is reasonably possible with contributions by a tax-23 payer to the American Worker Retirement Fund. 24 Such regulations shall provide that, for purposes of 25 such payments, the credit under subsection (a) may

be determined on the basis of the eligible individual's
gross income for the preceding taxable year.

new item:

to the Treasury.".

"(2) Excess payments.—If the aggregate amount of payments under subsection (f) with respect to an eligible individual for any taxable year exceeds the amount of the credit allowed under subsection (a) to such individual for such taxable year, the tax imposed by this chapter for such taxable year shall be increased by the amount of such excess. Any failure to so increase the tax shall be treated as arising out of a mathematical or clerical error and assessed according to section 6213(b)(1). "(h) Forfeit of Amounts.—If any contribution described in subsection (a) does not remain in the American Worker Retirement Fund for at least 6 months after such contribution is made, the amount of the credit under this section attributable to such contribution shall be returned

19 (b) CLERICAL AMENDMENTS.—The table of sections 20 for subpart A of part IV of subchapter A of chapter 1 21 of the Internal Revenue Code of 1986 is amended by in-22 serting after the item relating to section 26E the following

"Sec. 25F. Government Match Tax Credit.".

- 1 (c) Effective Date.—The amendments made by
- 2 this section shall apply to taxable years beginning after
- 3 December 31, 2022.