

112TH CONGRESS  
1ST SESSION

# H. R. 3656

To amend the Internal Revenue Code of 1986 to provide for death and disability protection for loans from qualified employer plans.

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## IN THE HOUSE OF REPRESENTATIVES

DECEMBER 13, 2011

Mr. SESSIONS introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committee on Education and the Workforce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

To amend the Internal Revenue Code of 1986 to provide for death and disability protection for loans from qualified employer plans.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Retirement Savings  
5 Security Act of 2011”.

1 **SEC. 2. PARTICIPANT LOAN DEATH AND DISABILITY PRO-**  
2 **TECTION.**

3 (a) QUALIFIED PARTICIPANT LOAN PROTECTION AR-  
4 RANGEMENT.—Section 414 of the Internal Revenue Code  
5 of 1986 is amended by inserting at the end the following  
6 new subsection:

7 “(y) QUALIFIED PARTICIPANT LOAN PROTECTION  
8 ARRANGEMENT.—

9 “(1) IN GENERAL.—For purposes of this title,  
10 the term ‘qualified participant loan protection ar-  
11 rangement’ means an arrangement under which a  
12 participant or beneficiary who receives (directly or  
13 indirectly) any amount as a loan from an eligible re-  
14 tirement plan described in clause (iii), (iv), or (vi) of  
15 section 402(c)(8)(B) has the option to obtain protec-  
16 tion against death and disability in the manner de-  
17 scribed in paragraph (2).

18 “(2) MANNER OF PROVIDING PROTECTION.—  
19 For purposes of paragraph (1)—

20 “(A) MANNER OF PROTECTION.—Protec-  
21 tion against death and disability described in  
22 this paragraph is protection provided through—

23 “(i) a group insurance policy issued to  
24 the plan for the sole purpose of providing  
25 participant and beneficiary loan death and  
26 disability insurance, or

1           “(ii) a debt protection product in  
2           which debt protection is provided through  
3           appropriate commercial contractual liabil-  
4           ity insurance.

5           “(B) COST OF DEBT PROTECTION.—For  
6           purposes of subparagraph (A)(ii), a product  
7           shall not be treated as a debt protection prod-  
8           uct unless the cost of such product is allocated  
9           to the accounts of participants or beneficiaries  
10          with outstanding loans.

11          “(C) REIMBURSEMENT REQUIREMENT.—  
12          An arrangement shall not be treated as pro-  
13          viding protection against death and disability  
14          for purposes of paragraph (1) unless under  
15          such arrangement—

16                 “(i) the plan, upon death or disability  
17                 of the participant or beneficiary, is re-  
18                 quired to cancel any outstanding loan bal-  
19                 ance, and

20                 “(ii) such protection provides for pay-  
21                 ment to the plan of—

22                         “(I) an amount equal to the out-  
23                         standing loan balance of the partici-  
24                         pant or beneficiary, and

1                   “(II) the amount taken into ac-  
2                   count under section 402(m)(1)(B).

3                   “(D) ELECTION TO OPT OUT OF COV-  
4                   ERAGE.—Protection against death and dis-  
5                   ability under a qualified participant loan protec-  
6                   tion arrangement shall apply unless a partici-  
7                   pant or beneficiary elects in writing to receive  
8                   a loan without protection against participant  
9                   death or disability. Any such election shall be  
10                  irrevocable.

11                  “(3) RATE OF INTEREST.—A loan described in  
12                  paragraph (1) shall not be treated as failing to bear  
13                  a reasonable rate of interest for purposes of any re-  
14                  quirement of law solely because the rate of interest  
15                  under the loan is reduced by the cost of the death  
16                  and disability protection provided pursuant to this  
17                  subsection, and such protection may be taken into  
18                  account in determining whether a loan bears a rea-  
19                  sonable rate of interest.

20                  “(4) DEFINITIONS.—For purpose of this sub-  
21                  section—

22                  “(A) DEBT PROTECTION PRODUCT.—The  
23                  term ‘debt protection product’ means a loan  
24                  term or contractual arrangement modifying  
25                  loan terms under which a plan agrees to—

1           “(i) cancel all or part of a partici-  
2           pant’s or beneficiary’s obligation to repay  
3           an extension of credit from that plan upon  
4           the occurrence of a specified event; and

5           “(ii) in the event of a participant’s or  
6           beneficiary’s death or disability, credit to  
7           the account of such participant or bene-  
8           ficiary of an additional amount equal to  
9           the amount taken into account under sec-  
10          tion 402(m)(1)(B).

11          Such loan term or contractual arrangement  
12          may be separate from or a part of other loan  
13          documents.

14          “(B) DISABILITY.—The term ‘disability’  
15          means an impairment described in section  
16          72(m)(7) that causes a participant to be dis-  
17          abled within the meaning of section 72(m)(7).

18          “(5) SPECIAL RULE.—A debt protection prod-  
19          uct used in connection with a qualified participant  
20          loan protection arrangement shall not be treated as  
21          a swap (as defined by section 1a(47) of the Com-  
22          modity Exchange Act (7 U.S.C. 1a(47))) or as a se-  
23          curity-based swap (as defined by section 3(a)(68) of  
24          the Securities Exchange Act of 1934 (15 U.S.C.  
25          78c(a)(68))).”.

1 (b) DEEMED DISTRIBUTION IN EVENT OF DEATH OR  
2 DISABILITY.—Paragraph (2) of section 72(p) of the Inter-  
3 nal Revenue Code of 1986 is amended by redesignating  
4 subparagraph (D) as subparagraph (E) and by inserting  
5 after subparagraph (C) the following new subparagraph:

6 “(D) QUALIFIED PARTICIPANT LOAN PRO-  
7 TECTION ARRANGEMENT.—In the event of the  
8 death or disability of a participant or bene-  
9 ficiary, the amount of any outstanding loan to  
10 the participant or beneficiary that is cancelled  
11 pursuant to a group insurance policy or debt  
12 protection product that was made available  
13 under a qualified participant loan protection ar-  
14 rangement described in section 414(y) shall  
15 be—

16 “(i) paid to the plan and credited to  
17 the interest in the plan of the participant  
18 or beneficiary,

19 “(ii) deemed distributed to such par-  
20 ticipant or beneficiary (or his or her speci-  
21 fied beneficiaries) on the date of such pay-  
22 ment, and

23 “(iii) treated as an amount described  
24 in paragraph (1)(A) on the date of such

1 payment and not as an amount described  
2 in section 61(a)(12).”.

3 (c) EXCEPTION TO INCOME INCLUSION RULES RE-  
4 LATING TO PURCHASE OF LIFE INSURANCE PROTEC-  
5 TION.—Subparagraph (B) of section 72(m)(3) of the In-  
6 ternal Revenue Code of 1986 is amended by adding at the  
7 end the following new sentence: “This subparagraph shall  
8 not apply to any amount that is a repayment of a loan  
9 to a participant or beneficiary by a plan described in sub-  
10 paragraph (A)(i) or a trust described in subparagraph  
11 (A)(ii), if that repayment is applied to the purchase of  
12 participant and beneficiary loan death and disability pro-  
13 tection pursuant to a qualified participant loan protection  
14 arrangement described in section 414(y).”.

15 (d) EXCLUSION FROM GROSS INCOME FOR CERTAIN  
16 DISTRIBUTIONS PURSUANT TO CANCELLED LOAN.—Sec-  
17 tion 402 of the Internal Revenue Code of 1986 (relating  
18 to the taxability of beneficiary of employees’ trust) is  
19 amended by inserting at the end the following new sub-  
20 section:

21 “(m) CERTAIN DISTRIBUTIONS PURSUANT TO CAN-  
22 CELLED LOAN.—

23 “(1) IN GENERAL.—In the case of an employee  
24 to whom paragraph (2) applies (or the beneficiary of  
25 such employee), gross income of such employee (or

1 such beneficiary) does not include any distribution  
2 from the eligible retirement plan described in para-  
3 graph (2)(A) to the extent that—

4 “(A) such distribution is made on or before  
5 the day prescribed by law (including extensions  
6 of time) for filing such employee’s or bene-  
7 ficiary’s return for the taxable year in which  
8 such employee dies or becomes disabled, and

9 “(B) the aggregate amount of such dis-  
10 tributions does not exceed the excess of—

11 “(i) the proceeds of the group insur-  
12 ance policy or debt protection product  
13 through which the protection described in  
14 paragraph (2)(B) is provided, over

15 “(ii) the amount of the deemed dis-  
16 tribution described in paragraph (2)(D).

17 For purposes of clause (i), not more than 135  
18 percent of the amount described in clause (ii)  
19 shall be taken into account.

20 “(2) APPLICATION.—This paragraph shall  
21 apply to an employee who—

22 “(A) receives a loan from an eligible retire-  
23 ment plan described in clause (iii), (iv) or (vi)  
24 of subsection (c)(8)(B),

1           “(B) obtains the protection described in  
2           section 414(y)(2) pursuant to a qualified partic-  
3           ipant and beneficiary death and disability pro-  
4           tection arrangement described in section 414(y)  
5           with respect to such loan,

6           “(C) dies or becomes disabled, and

7           “(D) is deemed to receive a distribution  
8           pursuant to section 72(p)(2)(D) following such  
9           death or disability with respect to such loan.

10          “(3) DISTRIBUTION.—A distribution described  
11          in paragraph (1) shall be treated as not violating the  
12          requirements of sections 401(k)(2), 403(b)(7)(A)(ii),  
13          and 403(b)(11).

14          “(4) OTHERWISE DISTRIBUTABLE AMOUNT.—A  
15          group insurance policy or debt protection product  
16          may provide that the amount that would otherwise  
17          be distributable pursuant to this subsection may be  
18          paid directly by the issuer of such group insurance  
19          policy or debt protection product to the employee.  
20          Any such amount shall be treated as paid to the eli-  
21          gible retirement plan and distributed to the em-  
22          ployee pursuant to this subsection.”.

23          (e) EFFECTIVE DATE.—The amendments made by  
24          this section shall be take effect with respect to loans made

1 after the one year period beginning on the day after the  
2 date of enactment of this Act.

3 (f) APPLICATION OF FIDUCIARY STANDARDS UNDER  
4 EMPLOYEE RETIREMENT INCOME SECURITY ACT OF  
5 1974 WITH RESPECT TO A QUALIFIED PARTICIPANT  
6 LOAN PROTECTION ARRANGEMENT.—No person that, as  
7 a fiduciary of an eligible retirement plan described in  
8 clause (iii), (iv) or (vi) of section 402(c)(8)(B) of the In-  
9 ternal Revenue Code of 1986, whether or not such person  
10 has adopted a qualified participant loan protection ar-  
11 rangement (as defined section 414(y) of such Code (added  
12 by subsection (a) of this section)), shall be deemed to have  
13 violated section 404 or 406 of the Employee Retirement  
14 Income Security Act of 1974 in connection with adopting  
15 or not adopting such an arrangement.

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