

**AMENDMENT TO H.R. 6757, AS REPORTED
OFFERED BY MR. BRADY OF TEXAS**

Strike section 203 and insert the following:

1 **SEC. 203. FIDUCIARY SAFE HARBOR FOR SELECTION OF**
2 **LIFETIME INCOME PROVIDER.**

3 Section 404 of the Employee Retirement Income Se-
4 curity Act of 1974 (29 U.S.C. 1104) is amended by adding
5 at the end the following:

6 “(e) SAFE HARBOR FOR ANNUITY SELECTION.—

7 “(1) IN GENERAL.—With respect to the selec-
8 tion of an insurer for a guaranteed retirement in-
9 come contract, the requirements of subsection
10 (a)(1)(B) will be deemed to be satisfied if a fidu-
11 ciary—

12 “(A) engages in an objective, thorough,
13 and analytical search for the purpose of identi-
14 fying insurers from which to purchase such con-
15 tracts;

16 “(B) with respect to each insurer identified
17 under subparagraph (A)—

18 “(i) considers the financial capability
19 of such insurer to satisfy its obligations

1 under the guaranteed retirement income
2 contract; and

3 “(ii) considers the cost (including fees
4 and commissions) of the guaranteed retire-
5 ment income contract offered by the in-
6 surer in relation to the benefits and prod-
7 uct features of the contract and adminis-
8 trative services to be provided under such
9 contract; and

10 “(C) on the basis of such consideration,
11 concludes that—

12 “(i) at the time of the selection, the
13 insurer is financially capable of satisfying
14 its obligations under the guaranteed retire-
15 ment income contract; and

16 “(ii) the relative cost of the selected
17 guaranteed retirement income contract as
18 described in subparagraph (B)(ii) is rea-
19 sonable.

20 “(2) FINANCIAL CAPABILITY OF THE IN-
21 SURER.—A fiduciary will be deemed to satisfy the
22 requirements of paragraphs (1)(B)(i) and (1)(C)(i)
23 if—

24 “(A) the fiduciary obtains written rep-
25 resentations from the insurer that—

1 “(i) the insurer is licensed to offer
2 guaranteed retirement income contracts;

3 “(ii) the insurer, at the time of selec-
4 tion and for each of the immediately pre-
5 ceding 7 plan years—

6 “(I) operates under a certificate
7 of authority from the insurance com-
8 missioner of its domiciliary State
9 which has not been revoked or sus-
10 pended;

11 “(II) has filed audited financial
12 statements in accordance with the
13 laws of its domiciliary State under ap-
14 plicable statutory accounting prin-
15 ciples;

16 “(III) maintains (and has main-
17 tained) reserves which satisfies all the
18 statutory requirements of all States
19 where the insurer does business; and

20 “(IV) is not operating under an
21 order of supervision, rehabilitation, or
22 liquidation;

23 “(iii) the insurer undergoes, at least
24 every 5 years, a financial examination
25 (within the meaning of the law of its domi-

1 ciliary State) by the insurance commis-
2 sioner of the domiciliary State (or rep-
3 resentative, designee, or other party ap-
4 proved by such commissioner); and

5 “(iv) the insurer will notify the fidu-
6 ciary of any change in circumstances oc-
7 ccurring after the provision of the represen-
8 tations in clauses (i), (ii), and (iii) which
9 would preclude the insurer from making
10 such representations at the time of
11 issuance of the guaranteed retirement in-
12 come contract; and

13 “(B) after receiving such representations
14 and as of the time of selection, the fiduciary
15 has not received any notice described in sub-
16 paragraph (A)(iv) and is in possession of no
17 other information which would cause the fidu-
18 ciary to question the representations provided.

19 “(3) NO REQUIREMENT TO SELECT LOWEST
20 COST.—Nothing in this subsection shall be construed
21 to require a fiduciary to select the lowest cost con-
22 tract. A fiduciary may consider the value of a con-
23 tract, including features and benefits of the contract
24 and attributes of the insurer (including, without lim-

1 itation, the insurer’s financial strength) in conjunc-
2 tion with the cost of the contract.

3 “(4) TIME OF SELECTION.—

4 “(A) IN GENERAL.—For purposes of this
5 subsection, the time of selection is—

6 “(i) the time that the insurer and the
7 contract are selected for distribution of
8 benefits to a specific participant or bene-
9 ficiary; or

10 “(ii) if the fiduciary periodically re-
11 views the continuing appropriateness of the
12 conclusion described in paragraph (1)(C)
13 with respect to a selected insurer, taking
14 into account the considerations described
15 in such paragraph, the time that the in-
16 surer and the contract are selected to pro-
17 vide benefits at future dates to participants
18 or beneficiaries under the plan.

19 Nothing in the preceding sentence shall be con-
20 strued to require the fiduciary to review the ap-
21 propriateness of a selection after the purchase
22 of a contract for a participant or beneficiary.

23 “(B) PERIODIC REVIEW.—A fiduciary will
24 be deemed to have conducted the periodic re-
25 view described in subparagraph (A)(ii) if the fi-

1 duciary obtains the written representations de-
2 scribed in clauses (i), (ii), and (iii) of paragraph
3 (2)(A) from the insurer on an annual basis, un-
4 less the fiduciary receives any notice described
5 in paragraph (2)(A)(iv) or otherwise becomes
6 aware of facts that would cause the fiduciary to
7 question such representations.

8 “(5) LIMITED LIABILITY.—A fiduciary which
9 satisfies the requirements of this subsection shall not
10 be liable following the distribution of any benefit, or
11 the investment by or on behalf of a participant or
12 beneficiary pursuant to the selected guaranteed re-
13 tirement income contract, for any losses that may
14 result to the participant or beneficiary due to an in-
15 surer’s inability to satisfy its financial obligations
16 under the terms of such contract.

17 “(6) DEFINITIONS.—For purposes of this sub-
18 section—

19 “(A) INSURER.—The term ‘insurer’ means
20 an insurance company, insurance service, or in-
21 surance organization, including affiliates of
22 such companies.

23 “(B) GUARANTEED RETIREMENT INCOME
24 CONTRACT.—The term ‘guaranteed retirement
25 income contract’ means an annuity contract for

1 a fixed term or a contract (or provision or fea-
2 ture thereof) which provides guaranteed bene-
3 fits annually (or more frequently) for at least
4 the remainder of the life of the participant or
5 the joint lives of the participant and the partici-
6 pant's designated beneficiary as part of an indi-
7 vidual account plan.”.

In section 302, strike subsection (e) and insert the following:

8 (e) UNBORN CHILDREN ALLOWED AS ACCOUNT
9 BENEFICIARIES.—Section 529(e) is amended by adding at
10 the end the following new paragraph:

11 “(6) TREATMENT OF UNBORN CHILDREN.—

12 “(A) IN GENERAL.—Nothing shall prevent
13 an unborn child from being treated as a des-
14 ignated beneficiary or an individual under this
15 section.

16 “(B) UNBORN CHILD.—For purposes of
17 this paragraph—

18 “(i) IN GENERAL.—The term ‘unborn
19 child’ means a child in utero.

20 “(ii) CHILD IN UTERO.—The term
21 ‘child in utero’ means a member of the
22 species homo sapiens, at any stage of de-
23 velopment, who is carried in the womb.”.

1 (f) EFFECTIVE DATES.—

2 (1) IN GENERAL.—Except as otherwise pro-
3 vided in this subsection, the amendments made by
4 this section shall apply to distributions made after
5 December 31, 2018.

6 (2) UNBORN CHILDREN ALLOWED AS ACCOUNT
7 BENEFICIARIES.—The amendment made by sub-
8 section (e) shall apply to contributions made after
9 December 31, 2018.

At the end, add the following:

10 **TITLE IV—BUDGETARY EFFECTS**

11 **SEC. 401. BUDGETARY EFFECTS.**

12 (a) STATUTORY PAYGO SCORECARDS.—The budg-
13 etary effects of this Act shall not be entered on either
14 PAYGO scorecard maintained pursuant to section 4(d) of
15 the Statutory Pay-As-You-Go Act of 2010.

16 (b) SENATE PAYGO SCORECARDS.—The budgetary
17 effects of this Act shall not be entered on any PAYGO
18 scorecard maintained for purposes of section 4106 of H.
19 Con. Res. 71 (115th Congress).

