

115TH CONGRESS
1ST SESSION

H. R. 4523

To amend the Internal Revenue Code of 1986 to expand retirement plan coverage, increase retirement security, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

DECEMBER 1, 2017

Mr. NEAL 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

A BILL

To amend the Internal Revenue Code of 1986 to expand retirement plan coverage, increase retirement security, 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 “Automatic Retirement Plan Act of 2017”.

6 (b) TABLE OF CONTENTS.—The table of contents of
7 this Act is as follows:

Sec. 1. Short title; table of contents.

Sec. 2. Employers required to maintain automatic contribution plan.

- Sec. 3. Deferral-only arrangements.
 Sec. 4. Nondiscrimination testing changes to facilitate higher contributions.
 Sec. 5. Multiple employer plans.
 Sec. 6. Limitation on employer liability.
 Sec. 7. Portability of lifetime income options.
 Sec. 8. Increase in credit limitation for small employer pension plan startup costs.
 Sec. 9. Small employer automatic enrollment credit.
 Sec. 10. Treatment of automatic contribution plans under State law.
 Sec. 11. Matching payments for elective deferral and IRA contributions by certain individuals.
 Sec. 12. Authority to require reporting.

1 **SEC. 2. EMPLOYERS REQUIRED TO MAINTAIN AUTOMATIC**
 2 **CONTRIBUTION PLAN.**

3 (a) **AUTOMATIC CONTRIBUTION PLAN.**—Section 414
 4 of the Internal Revenue Code of 1986 is amended by add-
 5 ing at the end the following:

6 “(aa) **AUTOMATIC CONTRIBUTION PLAN.**—For pur-
 7 poses of this title—

8 “(1) **IN GENERAL.**—The term ‘automatic con-
 9 tribution plan’ means a defined contribution plan
 10 that—

11 “(A) is described in clause (i), (ii), or (iv)
 12 of section 219(g)(5)(A),

13 “(B) is described in paragraph (2), and

14 “(C) meets the eligibility, investment, life-
 15 time income, and fee requirements described in
 16 paragraphs (3), (4), (5), and (6), respectively,
 17 of this subsection.

18 “(2) **PLAN DESCRIBED.**—A plan is described in
 19 this paragraph if the plan is one of the following:

1 “(A) DEFERRAL ONLY.—A deferral only
2 arrangement that meets the requirements of
3 section 401(k)(14).

4 “(B) 403(b) PLAN.—A 403(b) plan that—

5 “(i) meets the requirements of section
6 401(k)(14), or

7 “(ii) would be described in subpara-
8 graph (C) without regard to the references
9 to section 416.

10 “(C) TESTING AUTOMATIC CONTRIBUTION
11 PLAN.—A plan that—

12 “(i) would qualify as a plan described
13 in subparagraph (A), except that such plan
14 allows employer contributions, and

15 “(ii) satisfies sections
16 401(k)(3)(A)(ii), 401(m)(2), and 416 tak-
17 ing into account all applicable rules, in-
18 cluding—

19 “(I) paragraphs (11), (12), and
20 (13) of section 401(k),

21 “(II) paragraphs (10), (11), and
22 (12) of section 401(m), and

23 “(III) section 416(g)(4)(H).

24 “(D) GRANDFATHERED AUTOMATIC CON-
25 TRIBUTION PLAN.—A plan described in clause

1 (i), (ii), (iv), (v), or (vi) of section 219(g)(5)(A)
2 that—

3 “(i) is maintained by an employer as
4 of the date of enactment of the Automatic
5 Retirement Plan Act of 2017,

6 “(ii) has been maintained by such em-
7 ployer (or a predecessor employer) for at
8 least 1 year before such date of enactment,
9 and

10 “(iii) except as provided by the Sec-
11 retary, has not had its coverage or benefits
12 substantially decreased for any plan year
13 beginning after such date of enactment.

14 “(3) ELIGIBILITY REQUIREMENTS.—

15 “(A) IN GENERAL.—Subject to subpara-
16 graph (B), the eligibility requirements described
17 in this paragraph are that all employees of the
18 employer are eligible to participate in an auto-
19 matic contribution plan maintained by the em-
20 ployer.

21 “(B) CERTAIN EXCLUSIONS.—Subpara-
22 graph (A) shall not apply to the following:

23 “(i) INDIVIDUALS LESS THAN 21
24 YEARS OLD.—The employer may, but need
25 not, include an employee who has not at-

1 tained age 21 in an automatic contribution
2 plan maintained by the employer.

3 “(ii) CERTAIN OTHER EMPLOYEES.—

4 The employer may, but need not, include
5 an employee described in section 410(b)(3)
6 in an automatic contribution plan main-
7 tained by the employer.

8 “(iii) PART TIME EMPLOYEES, ETC.—

9 No employee may be treated as ineligible
10 in an automatic contribution plan main-
11 tained by the employer solely by reason of
12 working on a part-time, temporary, or sea-
13 sonal basis, except as otherwise provided in
14 this subparagraph.

15 “(iv) NEW EMPLOYEE.—The employer

16 may, but need not, exclude an employee
17 from an automatic contribution plan main-
18 tained by the employer until the first day
19 of the second calendar month beginning on
20 or after the day the individual begins work
21 for the employer.

22 “(v) SEASONAL OR TEMPORARY EM-
23 PLOYEES.—The employer may, but need

24 not, exclude an employee from an auto-
25 matic contribution plan maintained by the

1 employer to the extent that such employee
2 is not expected to work during more than
3 three months during the 12-month period
4 starting when such employee would other-
5 wise be required to be eligible under such
6 plan.

7 “(C) SPECIAL RULES FOR CONTROLLED
8 GROUPS.—Eligible employees within an em-
9 ployer need not be eligible to participate in the
10 same automatic contribution plan. For purposes
11 of this subsection, the term ‘employer’ shall in-
12 clude all employers treated as a single employer
13 under subsection (b), (c), (m), or (o) of section
14 414.

15 “(D) SPECIAL RULES FOR GRAND-
16 FATHERED PLANS.—This paragraph shall not
17 apply to a plan described in paragraph (2)(D)
18 until the sixth plan year beginning on or after
19 the date of enactment of the Automatic Retire-
20 ment Plan Act of 2017. In the case of an eligi-
21 ble employer (as defined in section
22 408(p)(2)(C)(i)), ‘eighth’ shall be substituted
23 for ‘sixth’ in the preceding sentence.

24 “(4) INVESTMENT REQUIREMENTS.—Except in
25 the case of a plan that is an automatic contribution

1 plan by reason of paragraph (2)(D), any investment
2 made in the absence of an investment election by a
3 participant or beneficiary shall be invested in accord-
4 ance with regulations prescribed by the Secretary of
5 Labor under section 404(c)(5) of the Employee Re-
6 tirement Income Security Act of 1974.

7 “(5) LIFETIME INCOME REQUIREMENTS.—Ex-
8 cept in the case of a plan that is an automatic con-
9 tribution plan by reason of paragraph (2)(D), the
10 lifetime income requirements described in this para-
11 graph are—

12 “(A) GUARANTEED INCOME FOR LIFE
13 AVAILABLE.—A plan shall not be treated as an
14 automatic contribution plan unless the plan per-
15 mits participants to elect to receive at least 50
16 percent of their vested account balance in a
17 form of distribution described in section
18 401(a)(38)(B)(iii).

19 “(B) EXCEPTIONS.—This paragraph shall
20 not apply with respect to any participant whose
21 vested account balance is \$5,000 or less at the
22 time of distribution.

23 “(6) FEE REQUIREMENTS.—Under the fee re-
24 quirements of this paragraph, no participant may be
25 charged unreasonable fees solely on the basis that

1 the participant’s balance in an automatic contribu-
2 tion plan is small or solely on the basis that adop-
3 tion of such a plan by the employee’s employer is
4 mandatory.”.

5 (b) EXCISE TAX FOR FAILURE TO MAINTAIN AUTO-
6 MATIC CONTRIBUTION PLAN.—Chapter 43 of such Code
7 is amended by adding at the end the following new section:

8 **“SEC. 4980J. FAILURE TO MAINTAIN AUTOMATIC CON-**
9 **TRIBUTION PLAN.**

10 “(a) GENERAL RULE.—

11 “(1) IN GENERAL.—There is hereby imposed a
12 tax on the failure of an employer to make eligible to
13 participate in an automatic contribution plan main-
14 tained by the employer any employee of the employer
15 who, under the terms of section 414(aa), would be
16 required to be eligible to participate in an automatic
17 contribution plan maintained by the employer.

18 “(2) EXCEPTIONS.—

19 “(A) Paragraph (1) shall not apply to an
20 employer to the extent such employer partici-
21 pates in an arrangement under a qualified
22 State law under section 514(f)(2) of the Em-
23 ployee Retirement Income Security Act of 1974.

24 “(B) Paragraph (1) shall not apply to an
25 employer with respect to any employee who is

1 eligible to participate in a different automatic
2 contribution plan than one or more other em-
3 ployees of the employer.

4 “(b) AMOUNT OF TAX.—

5 “(1) IN GENERAL.—The amount of the tax im-
6 posed by subsection (a) on any failure with respect
7 to an employee shall be \$10 for each day in the non-
8 compliance period with respect to such failure.

9 “(2) NONCOMPLIANCE PERIOD.—For purposes
10 of this section, the term ‘noncompliance period’
11 means, with respect to any failure, the period—

12 “(A) beginning on the date such failure
13 first occurs, and

14 “(B) ending on the earlier of—

15 “(i) the date such failure is corrected,
16 or

17 “(ii) with respect to any employer, the
18 date that is 3 months after the last date
19 on which the employee is required to be eli-
20 gible to participate in an automatic con-
21 tribution plan maintained by such em-
22 ployer.

23 “(c) LIMITATIONS ON AMOUNT OF TAX.—

24 “(1) TAX NOT TO APPLY WHERE FAILURE NOT
25 DISCOVERED EXERCISING REASONABLE DILI-

1 GENCE.—No tax shall be imposed by subsection (a)
2 on any failure during any period for which it is es-
3 tablished to the satisfaction of the Secretary that
4 none of the persons referred to in subsection (e)
5 knew that such failure existed.

6 “(2) TAX NOT TO APPLY TO FAILURES COR-
7 RECTED WITHIN 9½ MONTHS.—No tax shall be im-
8 posed by subsection (a) on any failure if—

9 “(A) such failure was due to reasonable
10 cause and not to willful neglect, and

11 “(B) such failure is corrected during the
12 9½-month period beginning on the first date
13 any of the persons referred to in subsection (e)
14 knew that such failure existed.

15 “(3) OVERALL LIMITATION FOR UNINTEN-
16 TIONAL FAILURES.—In the case of failures which
17 are due to reasonable cause and not to willful ne-
18 glect—

19 “(A) GENERAL RULE.—The tax imposed
20 by subsection (a) for failures during the taxable
21 year of the employer shall not exceed \$500,000.

22 “(B) TAXABLE YEARS IN THE CASE OF
23 CERTAIN CONTROLLED GROUPS.—For purposes
24 of this subparagraph, if not all persons who are
25 treated as a single employer for purposes of this

1 section have the same taxable year, the taxable
2 years taken into account shall be determined
3 under principles similar to the principles of sec-
4 tion 1561.

5 “(4) WAIVER BY SECRETARY.—In the case of a
6 failure which is due to reasonable cause and not to
7 willful neglect, the Secretary may waive part or all
8 of the tax imposed by subsection (a) to the extent
9 that the payment of such tax would be excessive rel-
10 ative to the failure involved.

11 “(d) TAX NOT TO APPLY IN CERTAIN CASES.—This
12 section shall not apply in the case of—

13 “(1) any failure of an employer to meet the re-
14 quirements of subsection (a) with respect to any em-
15 ployee if the failure with respect to such employee
16 occurred during the calendar year immediately fol-
17 lowing a calendar year during which all employers
18 maintaining such plan normally employed 10 or
19 fewer employees on a typical business day,

20 “(2) any governmental plan (within the mean-
21 ing of section 414(d)),

22 “(3) any church plan (within the meaning of
23 section 414(e)), or

1 “(4) employers that have not been in existence
2 for three years, taking into account all predecessor
3 employers.

4 “(e) LIABILITY FOR TAX.—The employer shall be lia-
5 ble for the tax imposed by subsection (a) on a failure. All
6 employers, determined without regard to subsection (f)(2),
7 shall be jointly and severally liable for the liability of any
8 other employer with which they are aggregated under sub-
9 section (f)(2).

10 “(f) DEFINITIONS.—For purposes of this section—

11 “(1) the term ‘automatic contribution plan’ has
12 the meaning given such term under section 414(aa),
13 and

14 “(2) the term ‘employer’ includes all employers
15 treated as a single employer under subsection (b),
16 (c), (m), or (o) of section 414.”.

17 “(c) CLERICAL AMENDMENT.—The table of sections
18 for chapter 43 of the Internal Revenue Code of 1986 is
19 amended by adding at the end the following new item:

 “Sec. 4980J. Failure to maintain automatic contribution plan.”.

20 “(d) EFFECTIVE DATE.—

21 “(1) IN GENERAL.—The amendments made by
22 subsection (a) shall apply to years beginning after
23 December 31, 2017.

24 “(2) DELAYED EFFECTIVE DATE.—

1 (A) LARGE EMPLOYERS.—Except as pro-
2 vided in subparagraph (B), the amendments
3 made by subsections (b) and (c) shall apply to
4 years beginning after December 31, 2019.

5 (B) SMALL EMPLOYERS.—In the case of
6 an eligible employer (as defined in section
7 408(p)(2)(C)(i) of the Internal Revenue Code of
8 1986), the amendments made by subsections
9 (b) and (c) shall apply to years beginning after
10 December 31, 2021.

11 **SEC. 3. DEFERRAL-ONLY ARRANGEMENTS.**

12 (a) IN GENERAL.—Subsection (k) of section 401 of
13 the Internal Revenue Code of 1986 is amended by adding
14 at the end the following new paragraph:

15 “(14) DEFERRAL-ONLY ARRANGEMENT.—

16 “(A) IN GENERAL.—A deferral-only ar-
17 rangement shall be treated as meeting the re-
18 quirements of paragraph (3)(A)(ii).

19 “(B) DEFERRAL-ONLY ARRANGEMENT.—

20 For purposes of this paragraph, the term ‘de-
21 ferral-only arrangement’ means any cash or de-
22 ferred arrangement which meets—

23 “(i) the automatic deferral require-
24 ments of subparagraph (C),

1 “(ii) the elective contribution require-
2 ment of subparagraph (D), and

3 “(iii) the requirements of subpara-
4 graph (E) of paragraph (13).

5 “(C) AUTOMATIC DEFERRAL.—

6 “(i) IN GENERAL.—The requirements
7 of this subparagraph are met if, under the
8 arrangement, each employee eligible to
9 participate in the arrangement who is not
10 contributing or is contributing less than
11 the qualified percentage applicable to an
12 eligible employee in the first year of eligi-
13 bility is treated as having elected in appli-
14 cable years to have the employer make
15 elective contributions in an amount equal
16 to the qualified percentage of compensation
17 applicable under clause (iii). In the absence
18 of an election out as described in clause
19 (ii), such election shall, as adjusted under
20 clause (iii), remain in effect for all subse-
21 quent years, regardless of whether such
22 years are applicable years.

23 “(ii) ELECTION OUT.—The election
24 treated as having been made under clause
25 (i) shall cease to apply with respect to any

1 employee if such employee makes an af-
2 firmative election—

3 “(I) to not have such contribu-
4 tions made, or

5 “(II) to make elective contribu-
6 tions at a level specified in such af-
7 firmative election.

8 “(iii) QUALIFIED PERCENTAGE.—For
9 purposes of this subparagraph, with re-
10 spect to any employee, the term ‘qualified
11 percentage’ means, in lieu of the meaning
12 given such term in paragraph (13)(C)(iii),
13 any percentage determined under the ar-
14 rangement if such percentage is applied
15 uniformly and is—

16 “(I) at least 6 percent, but not
17 greater than 10 percent, during the
18 period ending on the last day of the
19 first plan year which begins after the
20 date on which the first elective con-
21 tribution described in clause (i) is
22 made with respect to such employee
23 (disregarding any elective contribution
24 made for any preceding year that pre-
25 ceded a year in which the employee

1 made an affirmative election described
2 in clause (ii)),

3 “(II) at least 7 percent during
4 the first plan year following the plan
5 year described in subclause (I),

6 “(III) at least 8 percent during
7 the first plan year following the plan
8 year described in subclause (II),

9 “(IV) at least 9 percent during
10 the first plan year following the plan
11 year described in subclause (III), and

12 “(V) At least 10 percent during
13 any subsequent plan year.

14 “(iv) APPLICABLE YEAR EVERY THIRD
15 YEAR.—

16 “(I) IN GENERAL.—For purposes
17 of this subparagraph, the term ‘appli-
18 cable year’ means, with respect to an
19 employee, such employee’s first plan
20 year of eligibility under the arrange-
21 ment, and all subsequent plan years
22 of eligibility.

23 “(II) EXCEPTION.—Following
24 any applicable year of the employee
25 (determined after the application of

1 this subclause), the plan may elect to
2 treat the next one or two plan years
3 as not being applicable years with re-
4 spect to such employee.

5 “(D) ELECTIVE CONTRIBUTIONS.—

6 “(i) IN GENERAL.—The requirements
7 of this subparagraph are met if under the
8 plan containing the arrangement—

9 “(I) the only contributions which
10 may be made are elective contribu-
11 tions of employees who are eligible to
12 participate in the arrangement, and

13 “(II) the aggregate amount of
14 such elective contributions which may
15 be made with respect to any employee
16 for any calendar year shall not exceed
17 \$8,000.

18 “(ii) COST OF LIVING ADJUSTMENT.—

19 In the case of any calendar year beginning
20 after December 31, 2018, the \$8,000
21 amount under clause (i) shall be adjusted
22 in the same manner as cost of living ad-
23 justments are made under section
24 402(g)(4), except that ‘2017’ shall be sub-
25 stituted for ‘2005’.

1 “(iii) CROSS REFERENCE.—For catch-
2 up contributions for individuals age 50 or
3 over, see section 414(v).”.

4 (b) CATCH-UP CONTRIBUTIONS FOR INDIVIDUALS
5 AGE 50 AND OVER.—

6 (1) Clause (i) of section 414(v)(2)(B) of such
7 Code is amended by inserting “, 401(k)(14),” after
8 “401(k)(11)”.

9 (2) Section 414(v)(2)(B) of such Code is
10 amended by adding at the end thereof the following
11 clause:

12 “(iii) in the case of an applicable em-
13 ployer plan described in section
14 401(k)(14), the applicable dollar amount is
15 \$1,000.”.

16 (3) Section 414(v)(2)(C) of such Code is
17 amended by—

18 (A) by striking “(B)(i) and” and inserting
19 “(B)(i),” and by inserting after “subparagraph
20 (B)(ii)” the following: “, and the \$1,000
21 amount described in subparagraph (B)(iii)”,
22 and

23 (B) inserting after “2005” the following:
24 “(the calendar quarter beginning July 1, 2017,

1 in the case of the \$1,000 amount described in
2 subparagraph (B)(iii))”.

3 (c) **SIMPLIFIED REPORTING.**—Section 104(a)(2)(A)
4 of the Employee Retirement Income Security Act of 1974
5 (29 U.S.C. 1024(a)(2)) is amended by inserting “or for
6 any pension plan which is a deferral-only arrangement de-
7 scribed in section 401(k)(14)(B) of the Internal Revenue
8 Code of 1986” before the period at the end.

9 (d) **PLANS NOT TREATED AS TOP-HEAVY PLANS.**—
10 Clause (i) of section 416(g)(4)(H) of such Code is amend-
11 ed by striking “or 401(k)(13)” and inserting “401(k)(13),
12 or 401(k)(14)”.

13 (e) **EFFECTIVE DATE.**—The amendments made by
14 this section shall apply to plan years beginning after De-
15 cember 31, 2017.

16 **SEC. 4. NONDISCRIMINATION TESTING CHANGES TO FA-**
17 **CILITATE HIGHER CONTRIBUTIONS.**

18 (a) **IN GENERAL.**—Clause (iii) of section
19 401(k)(13)(C) of the Internal Revenue Code of 1986 is
20 amended by striking “, does not exceed 10 percent, and
21 is at least” and inserting “and is”.

22 (b) **CONFORMING AMENDMENTS.**—

23 (1) Subclause (I) of section 401(k)(13)(C)(iii)
24 of such Code is amended by striking “3 percent”

1 and inserting “at least 3 percent, but not greater
2 than 10 percent,”.

3 (2) Subclause (II) of section 401(k)(13)(C)(iii)
4 of such Code is amended by striking “4 percent”
5 and inserting “at least 4 percent”.

6 (3) Subclause (III) of section 401(k)(13)(C)(iii)
7 of such Code is amended by striking “5 percent”
8 and inserting “at least 5 percent”.

9 (4) Subclause (IV) of section 401(k)(13)(C)(iii)
10 of such Code is amended by striking “6 percent”
11 and inserting “at least 6 percent”.

12 (c) MATCHING CONTRIBUTIONS.—Clause (i) of sec-
13 tion 401(m)(11)(B) of such Code is amended by striking
14 “6” and inserting “10”.

15 (d) EFFECTIVE DATE.—The amendments made by
16 this section shall apply to plan years beginning after De-
17 cember 31, 2017.

18 **SEC. 5. MULTIPLE EMPLOYER PLANS.**

19 (a) QUALIFICATION REQUIREMENTS.—

20 (1) IN GENERAL.—Section 413 of the Internal
21 Revenue Code of 1986, as amended by this Act, is
22 amended by adding at the end the following new
23 subsection:

1 “(g) APPLICATION OF QUALIFICATION REQUIRE-
2 MENTS FOR CERTAIN MULTIPLE EMPLOYER PLANS WITH
3 POOLED PLAN PROVIDERS.—

4 “(1) IN GENERAL.—Except as provided in para-
5 graph (2), a defined contribution plan to which sub-
6 section (c) applies shall not be treated as failing to
7 meet the requirements under this title applicable to
8 a plan described in section 401(a) or to a plan that
9 consists of individual retirement accounts described
10 in section 408 (including by reason of subsection (c)
11 thereof), whichever is applicable, merely because one
12 or more employers of employees covered by the plan
13 fail to take such actions as are required of such em-
14 ployers for the plan to meet such requirements if the
15 plan—

16 “(A) is sponsored by employers all of
17 which have both a common interest other than
18 having adopted the plan and control of the
19 plan, or

20 “(B) in the case of a plan not described in
21 subparagraph (A), has a pooled plan provider.

22 “(2) LIMITATIONS.—

23 “(A) IN GENERAL.—Paragraph (1) shall
24 not apply to any plan unless the terms of the
25 plan provide that in cases of employers failing

1 to take the actions described in paragraph
2 (1)—

3 “(i) the assets of the plan attributable
4 to employees of the employer will be trans-
5 ferred to a plan maintained only by the
6 employer (or its successor), to an eligible
7 retirement plan as defined in section
8 402(c)(8)(B) for each individual whose ac-
9 count is transferred, or to any other ar-
10 rangement that the Secretary determines is
11 appropriate, unless the Secretary deter-
12 mines it is in the best interests of such em-
13 ployees to retain the assets in the plan,
14 and

15 “(ii) the employer described in clause
16 (i) (and not the plan with respect to which
17 the failure occurred or any other partici-
18 pating employer in such plan) shall, except
19 to the extent provided by the Secretary, be
20 liable for any liabilities with respect to
21 such plan attributable to employees of the
22 employer.

23 “(B) FAILURES BY POOLED PLAN PRO-
24 VIDERS.—If the pooled plan provider of a plan
25 described in paragraph (1)(B) does not perform

1 substantially all of the administrative duties
2 which are required of the provider under para-
3 graph (3)(A)(i) for any plan year, the Sec-
4 retary, in the Secretary's own discretion, may
5 provide that the determination as to whether
6 the plan meets the requirements under this title
7 applicable to a plan described in section 401(a)
8 or to a plan that consists of individual retire-
9 ment accounts described in section 408 (includ-
10 ing by reason of subsection (c) thereof), which-
11 ever is applicable, shall be made in the same
12 manner as would be made without regard to
13 paragraph (1).

14 “(3) POOLED PLAN PROVIDER.—For purposes
15 of this subsection—

16 “(A) IN GENERAL.—The term ‘pooled plan
17 provider’ means, with respect to any plan, a
18 person who—

19 “(i) is designated by the terms of the
20 plan as a named fiduciary (as defined in
21 section 402(a)(2) of the Employee Retirement
22 Income Security Act of 1974), as the
23 plan administrator, and as the person re-
24 sponsible to perform all administrative du-
25 ties (including conducting proper testing

1 with respect to the plan and employees of
2 each participating employer) which are
3 reasonably necessary to ensure that—

4 “(I) the plan meets any require-
5 ment applicable under the Employee
6 Retirement Income Security Act of
7 1974 or this title to a plan described
8 in section 401(a) or to a plan that
9 consists of individual retirement ac-
10 counts described in section 408 (in-
11 cluding by reason of subsection (c)
12 thereof), whichever is applicable, and

13 “(II) each participating employer
14 takes such actions as the Secretary or
15 such person determines are necessary
16 for the plan to meet the requirements
17 described in subclause (I), including
18 providing to such person any disclo-
19 sures or other information which the
20 Secretary may require or which such
21 person otherwise determines is nec-
22 essary to administer the plan or to
23 allow the plan to meet such require-
24 ments,

1 “(ii) registers as a pooled plan pro-
2 vider with the Secretary, and provides such
3 other information to the Secretary as the
4 Secretary may require, before beginning
5 operations as a pooled plan provider,

6 “(iii) acknowledges in writing that
7 such person is a named fiduciary (within
8 the meaning of section 402(a)(2) of the
9 Employee Retirement Income Security Act
10 of 1974), and the plan administrator, with
11 respect to the plan, and

12 “(iv) is responsible for ensuring that
13 all persons who handle assets of, or who
14 are fiduciaries of, the plan are bonded in
15 accordance with section 412 of the Em-
16 ployee Retirement Income Security Act of
17 1974.

18 “(B) AUDITS, EXAMINATIONS, AND INVES-
19 TIGATIONS.—The Secretary may perform au-
20 dits, examinations, and investigations of pooled
21 plan providers as may be necessary to enforce
22 and carry out the purposes of this subsection.

23 “(4) GUIDANCE.—

24 “(A) IN GENERAL.—The Secretary shall
25 issue such guidance as the Secretary determines

1 appropriate to carry out this subsection, includ-
2 ing guidance—

3 “(i) to identify the administrative du-
4 ties and other actions required to be per-
5 formed by a pooled plan provider under
6 this subsection,

7 “(ii) which describes the procedures to
8 be taken to terminate a plan which fails to
9 meet the requirements to be a plan de-
10 scribed in paragraph (1), including the
11 proper treatment of, and actions needed to
12 be taken by, any participating employer of
13 the plan and the assets and liabilities of
14 the plan with respect to employees of that
15 employer, and

16 “(iii) identifying appropriate cases to
17 which the rules of paragraph (2)(A) will
18 apply to employers failing to take the ac-
19 tions described in paragraph (1).

20 The Secretary shall take into account under
21 clause (iii) whether the failure of an employer
22 or pooled plan provider to provide any disclo-
23 sures or other information, or to take any other
24 action, necessary to administer a plan or to
25 allow a plan to meet requirements applicable to

1 the plan under section 401(a) or 408, whichever
2 is applicable, has continued over a period of
3 time that clearly demonstrates a lack of com-
4 mitment to compliance.

5 “(B) PROSPECTIVE APPLICATION.—Any
6 guidance issued by the Secretary under this
7 paragraph shall not apply to any action or fail-
8 ure occurring before the issuance of such guid-
9 ance.

10 “(5) MODEL PLAN.—No later than June 30,
11 2018, the Secretary shall, in consultation with the
12 Secretary of Labor when appropriate, publish model
13 plan language which meets the requirements of this
14 subsection and of paragraphs (43) and (44) of sec-
15 tion 3 of the Employee Retirement Income Security
16 Act of 1974 and which may be adopted in order for
17 a plan to be treated as a plan described in para-
18 graph (1)(B). Such model plans shall also include
19 options under which they can be used by plans that
20 are not pooled employer plans.”.

21 (2) CONFORMING AMENDMENT.—Paragraph (3)
22 of section 413(b) of such Code is amended by strik-
23 ing “section 401(a)” and inserting “sections 401(a)
24 and 408(c)”.

1 (3) TECHNICAL AMENDMENT.—Subsection (c)
2 of section 408 of such Code is amended by inserting
3 after paragraph (2) the following new paragraph:

4 “(3) There is a separate accounting for any in-
5 terest of an employee or member (or spouse of an
6 employee or member) in a Roth IRA.”.

7 (b) NO COMMON INTEREST REQUIRED FOR POOLED
8 EMPLOYER PLANS.—Section 3(2) of the Employee Retire-
9 ment Income Security Act of 1974 (29 U.S.C. 1002(2))
10 is amended by adding at the end the following:

11 “(C) A pooled employer plan shall be treat-
12 ed as—

13 “(i) a single employee pension benefit
14 plan or single pension plan, and

15 “(ii) a plan to which section 210(a)
16 applies.”.

17 (c) POOLED EMPLOYER PLAN AND PROVIDER DE-
18 FINED.—

19 (1) IN GENERAL.—Section 3 of the Employee
20 Retirement Income Security Act of 1974 (29 U.S.C.
21 1002) is amended by adding at the end the fol-
22 lowing:

23 “(43) POOLED EMPLOYER PLAN.—

24 “(A) IN GENERAL.—The term ‘pooled em-
25 ployer plan’ means a plan—

1 “(i) which is an individual account
2 plan established or maintained for the pur-
3 pose of providing benefits to the employees
4 of two or more employers;

5 “(ii) which is a plan described in sec-
6 tion 401(a) of the Internal Revenue Code
7 of 1986 which includes a trust exempt
8 from tax under section 501(a) of such
9 Code or a plan that consists of individual
10 retirement accounts described in section
11 408 of such Code (including by reason of
12 subsection (c) thereof); and

13 “(iii) the terms of which meet the re-
14 quirements of subparagraph (B).

15 Such term shall not include a plan with respect
16 to which all of the participating employers have
17 both a common interest other than having
18 adopted the plan and control of the plan.

19 “(B) REQUIREMENTS FOR PLAN TERMS.—
20 The requirements of this subparagraph are met
21 with respect to any plan if the terms of the
22 plan—

23 “(i) designate a pooled plan provider
24 and provide that the pooled plan provider
25 is a named fiduciary of the plan;

1 “(ii) designate one or more trustees
2 meeting the requirements of section
3 408(a)(2) of the Internal Revenue Code of
4 1986 (other than a participating employer)
5 to be responsible for collecting contribu-
6 tions to, and holding the assets of, the
7 plan and require such trustees to imple-
8 ment written contribution collection proce-
9 dures that are reasonable, diligent, and
10 systematic;

11 “(iii) except as provided in section
12 404(e), provide that each participating em-
13 ployer retains fiduciary responsibility for—

14 “(I) the selection and monitoring
15 in accordance with section 404(a) of
16 the person designated as the pooled
17 plan provider and any other person
18 who, in addition to the pooled plan
19 provider, is designated as a named fi-
20 duciary of the plan; and

21 “(II) to the extent not otherwise
22 delegated to another fiduciary by the
23 pooled plan provider and subject to
24 the provisions of section 404(c), the
25 investment and management of that

1 portion of the plan’s assets attrib-
2 utable to the employees of that par-
3 ticipating employer;

4 “(iv) provide that a participating em-
5 ployer, or a participant or beneficiary, is
6 not subject to unreasonable restrictions,
7 fees, or penalties with regard to ceasing
8 participation, receipt of distributions, or
9 otherwise transferring assets of the plan in
10 accordance with section 208 or paragraph
11 (44)(C)(i)(II);

12 “(v) require—

13 “(I) the pooled plan provider to
14 provide to participating employers any
15 disclosures or other information which
16 the Secretary may require, including,
17 as applicable, any disclosures or other
18 information to facilitate the selection
19 or any monitoring of the pooled plan
20 provider by participating employers;
21 and

22 “(II) each participating employer
23 to take such actions as the Secretary
24 or the pooled plan provider determines
25 are necessary to administer the plan

1 or for the plan to meet any require-
2 ment applicable under this Act or the
3 Internal Revenue Code of 1986 to a
4 plan described in section 401(a) of
5 such Code or to a plan that consists
6 of individual retirement accounts de-
7 scribed in section 408 of such Code
8 (including by reason of subsection (c)
9 thereof), whichever is applicable, in-
10 cluding providing any disclosures or
11 other information which the Secretary
12 may require or which the pooled plan
13 provider otherwise determines is nec-
14 essary to administer the plan or to
15 allow the plan to meet such require-
16 ments; and

17 “(vi) provide that any disclosure or
18 other information required to be provided
19 under clause (v) may be provided in elec-
20 tronic form and will be designed to ensure
21 only reasonable costs are imposed on
22 pooled plan providers and participating
23 employers.

24 “(C) EXCEPTIONS.—The term ‘pooled em-
25 ployer plan’ does not include—

1 “(i) a multiemployer plan;

2 “(ii) a plan established before Janu-
3 ary 1, 2016, unless the plan administrator
4 elects that the plan will be treated as a
5 pooled employer plan and the plan meets
6 the requirements of this title applicable to
7 a pooled employer plan established on or
8 after such date; and

9 “(iii) a plan with respect to which all
10 of the participating employers have both a
11 common interest other than having adopt-
12 ed the plan and control of the plan.

13 “(44) POOLED PLAN PROVIDER.—

14 “(A) IN GENERAL.—The term ‘pooled plan
15 provider’ means a person who—

16 “(i) is designated by the terms of a
17 pooled employer plan as a named fiduciary,
18 as the plan administrator, and as the per-
19 son responsible for the performance of all
20 administrative duties (including conducting
21 proper testing with respect to the plan and
22 employees of each participating employer)
23 which are reasonably necessary to ensure
24 that—

1 “(I) the plan meets any require-
2 ment applicable under this Act or the
3 Internal Revenue Code of 1986 to a
4 plan described in section 401(a) of
5 such Code or to a plan that consists
6 of individual retirement accounts de-
7 scribed in section 408 of such Code
8 (including by reason of subsection (c)
9 thereof), whichever is applicable; and

10 “(II) each participating employer
11 takes such actions as the Secretary or
12 pooled plan provider determines are
13 necessary for the plan to meet the re-
14 quirements described in subclause (I),
15 including providing the disclosures
16 and information described in para-
17 graph (43)(B)(v)(II);

18 “(ii) registers as a pooled plan pro-
19 vider with the Secretary, and provides to
20 the Secretary such other information as
21 the Secretary may require, before begin-
22 ning operations as a pooled plan provider;

23 “(iii) acknowledges in writing that
24 such person is a named fiduciary, and the

1 plan administrator, with respect to the
2 pooled employer plan; and

3 “(iv) is responsible for ensuring that
4 all persons who handle assets of, or who
5 are fiduciaries of, the pooled employer plan
6 are bonded in accordance with section 412.

7 “(B) AUDITS, EXAMINATIONS, AND INVESTIGATIONS.—The Secretary may perform au-
8 dits, examinations, and investigations of pooled
9 plan providers as may be necessary to enforce
10 and carry out the purposes of this paragraph
11 and paragraph (43).

12 “(C) GUIDANCE.—

13 “(i) IN GENERAL.—The Secretary
14 shall issue such guidance as the Secretary
15 determines appropriate to carry out this
16 paragraph and paragraph (43), including
17 guidance—
18

19 “(I) to identify the administra-
20 tive duties and other actions required
21 to be performed by a pooled plan pro-
22 vider under either such paragraph;
23 and

24 “(II) which requires in appro-
25 priate cases that if a participating

1 employer fails to take the actions re-
2 quired under subparagraph
3 (A)(i)(II)—

4 “(aa) the assets of the plan
5 attributable to employees of the
6 participating employer are trans-
7 ferred to a plan maintained only
8 by the participating employer (or
9 its successor), to an eligible re-
10 tirement plan as defined in sec-
11 tion 402(c)(8)(B) of the Internal
12 Revenue Code of 1986 for each
13 individual whose account is
14 transferred, or to any other ar-
15 rangement that the Secretary de-
16 termines is appropriate in such
17 guidance; and

18 “(bb) the participating em-
19 ployer described in item (aa)
20 (and not the plan with respect to
21 which the failure occurred or any
22 other participating employer in
23 such plan) shall, except to the ex-
24 tent provided in such guidance,
25 be liable for any liabilities with

1 respect to such plan attributable
2 to employees of the participating
3 employer.

4 The Secretary shall take into account
5 under subclause (II) whether the fail-
6 ure of an employer or pooled plan pro-
7 vider to provide any disclosures or
8 other information, or to take any
9 other action, necessary to administer
10 a plan or to allow a plan to meet re-
11 quirements described in subparagraph
12 (A)(i)(II) has continued over a period
13 of time that clearly demonstrates a
14 lack of commitment to compliance.
15 The Secretary may waive the require-
16 ments of subclause (II)(aa) in appro-
17 priate circumstances if the Secretary
18 determines it is in the best interests
19 of the employees of the participating
20 employer described in such clause to
21 retain the assets in the plan with re-
22 spect to which the employer’s failure
23 occurred.

24 “(ii) PROSPECTIVE APPLICATION.—
25 Any guidance issued by the Secretary

1 under this subparagraph shall not apply to
2 any action or failure occurring before the
3 issuance of such guidance.

4 “(D) AGGREGATION RULES.—For purposes
5 of this paragraph—

6 “(i) IN GENERAL.—In determining
7 whether a person meets the requirements
8 of this paragraph to be a pooled plan pro-
9 vider with respect to any plan, all persons
10 who are members of the same controlled
11 group and who perform services for the
12 plan shall be treated as one person.

13 “(ii) MEMBERS OF COMMON GROUP.—
14 Persons shall be treated as members of the
15 same controlled group if such persons are
16 treated as a single employer under sub-
17 section (c) or (d) of section 210.”.

18 (2) BONDING REQUIREMENTS FOR POOLED EM-
19 PLOYER PLANS.—The last sentence of section 412(a)
20 of the Employee Retirement Income Security Act of
21 1974 (29 U.S.C. 1112(a)) is amended by inserting
22 “or in the case of a pooled employer plan (as defined
23 in section 3(43))” after “section 407(d)(1))”.

24 (3) CONFORMING AND TECHNICAL AMEND-
25 MENTS.—Section 3 of the Employee Retirement In-

1 come Security Act of 1974 (29 U.S.C. 1002) is
2 amended—

3 (A) in paragraph (16)(B)—

4 (i) by striking “or” at the end of
5 clause (ii); and

6 (ii) by striking the period at the end
7 and inserting “, or (iv) in the case of a
8 pooled employer plan, the pooled plan pro-
9 vider.”; and

10 (B) by striking the second paragraph (41).

11 (d) EFFECTIVE DATE.—

12 (1) IN GENERAL.—The amendments made by
13 this section shall apply to years beginning after De-
14 cember 31, 2019.

15 (2) RULE OF CONSTRUCTION.—Nothing in the
16 amendments made by subsection (a) shall be con-
17 strued as limiting the authority of the Secretary of
18 the Treasury or the Secretary’s delegate (determined
19 without regard to such amendment) to provide for
20 the proper treatment of a failure to meet any re-
21 quirement applicable under the Internal Revenue
22 Code of 1986 with respect to one employer (and its
23 employees) in a multiple employer plan.

1 **SEC. 6. LIMITATION ON EMPLOYER LIABILITY.**

2 Section 404 of the Employee Retirement Income Se-
3 curity Act of 1974 (29 U.S.C. 1021 et seq.) is amended
4 by adding at the end the following:

5 “(e)(1) An eligible employer (as defined in section
6 408(p)(2)(C)(i) of the Internal Revenue Code of 1986)
7 shall not be a fiduciary in any respect with respect to a
8 pooled employer plan, including with respect to the selec-
9 tion or monitoring of any plan service provider or any in-
10 vestment under the plan, if the pooled plan provider—

11 “(A) receives no more than reasonable com-
12 pensation for its services, as agreed to by the eligible
13 employer, and

14 “(B) agrees in the plan document to—

15 “(i) comply with all requirements applica-
16 ble to a pooled plan provider under this title,
17 and

18 “(ii) assume, with respect to such eligible
19 employer as agreed to by the eligible employer,
20 all fiduciary responsibility with respect to the
21 plan not retained by the eligible employer, and

22 “(C) notifies the eligible employer of its obliga-
23 tions under the pooled employer plan.

24 “(2) Notwithstanding paragraph (1), eligible employ-
25 ers participating in such a pooled employer plan shall be
26 responsible for—

1 “(A) meeting the enrollment requirements ap-
2 plicable to such employer under the plan,

3 “(B) transmitting contributions to the plan in
4 accordance with the terms of the plan,

5 “(C) providing such information and assistance
6 as is within the sole control of the eligible employer
7 and is needed by the plan to operate in accordance
8 with the plan document, and

9 “(D) providing such other information or as-
10 sistance in accordance with regulations prescribed by
11 the Secretary.”.

12 **SEC. 7. PORTABILITY OF LIFETIME INCOME OPTIONS.**

13 (a) **IN GENERAL.**—Subsection (a) of section 401 of
14 the Internal Revenue Code of 1986 is amended by insert-
15 ing after paragraph (37) the following new paragraph:

16 “(38) **PORTABILITY OF LIFETIME INCOME AND**
17 **MANAGED ACCOUNT OPTIONS.**—

18 “(A) **IN GENERAL.**—A trust forming part
19 of a defined contribution plan shall not be
20 treated as failing to constitute a qualified trust
21 under this section solely by reason of allowing—

22 “(i) qualified distributions of a life-
23 time income investment or a managed ac-
24 count investment, or

1 “(ii) distributions of a lifetime income
2 investment in the form of a qualified plan
3 distribution annuity contract,
4 on or after the date that is 90 days prior to the
5 date on which such lifetime income investment
6 or such managed account investment is no
7 longer authorized to be held as an investment
8 option under the plan except as may otherwise
9 be provided by regulations.

10 “(B) DEFINITIONS.—For purposes of this
11 subsection—

12 “(i) the term ‘qualified distribution’
13 means a direct trustee-to-trustee transfer
14 to an eligible retirement plan (as defined
15 in section 402(c)(8)(B)), as described in
16 section 401(a)(31)(A), and in the case of a
17 managed account investment, the eligible
18 retirement plan must be maintained by the
19 account manager of such managed account
20 investment,

21 “(ii) the term ‘lifetime income invest-
22 ment’ means an investment option that is
23 designed to provide an employee with elec-
24 tion rights—

1 “(I) that are not uniformly avail-
2 able with respect to other investment
3 options under the plan, and

4 “(II) that are to a lifetime in-
5 come feature available through a con-
6 tract or other arrangement offered
7 under the plan or under another eligi-
8 ble retirement plan (as defined in sec-
9 tion 402(c)(8)(B)) through a direct
10 trustee-to-trustee transfer to such
11 other eligible retirement plan under
12 section 401(a)(31)(A),

13 “(iii) the term ‘lifetime income fea-
14 ture’ means—

15 “(I) a feature that guarantees a
16 minimum level of income annually (or
17 more frequently) for at least the re-
18 mainder of the life of the employee or
19 the joint lives of the employee and the
20 employee’s designated beneficiary, or

21 “(II) an annuity payable on be-
22 half of the employee under which pay-
23 ments are made in substantially equal
24 periodic payments (not less frequently
25 than annually) over the life of the em-

1 employee or the joint lives of the em-
2 ployee and the employee’s designated
3 beneficiary,

4 “(iv) the term ‘qualified plan distribu-
5 tion annuity contract’ means an annuity
6 contract purchased for a participant and
7 distributed to the participant by a plan de-
8 scribed in subparagraph (B) of section
9 402(c)(8) (without regard to clauses (i)
10 and (ii) thereof),

11 “(v) the term ‘managed account in-
12 vestment’ means an investment option
13 under which the assets of the employee’s
14 individual account are managed by an ac-
15 count manager, applying generally accept-
16 ed investment theories, to achieve varying
17 degrees of long-term appreciation and cap-
18 ital preservation based on the employee’s
19 age, target retirement date or life expect-
20 ancy,

21 “(vi) the term ‘account manager’
22 means an investment manager (within the
23 meaning of section 3(38) of the Employee
24 Retirement Income Security Act), and

1 “(vii) a lifetime income investment or
2 managed account investment is treated as
3 no longer authorized to be held as an in-
4 vestment under the plan if such treatment
5 applies to all plan participants or to a class
6 of such participants, as determined in any
7 reasonable manner.”.

8 (b) CASH OR DEFERRED ARRANGEMENT.—Clause (i)
9 of section 401(k)(2)(B) of such Code is amended by strik-
10 ing “or” at the end of subclause (IV), by striking “and”
11 at the end of subclause (V) and inserting “or”, and by
12 adding at the end of clause (i) the following:

13 “(VI) with respect to amounts in-
14 vested in a lifetime income investment
15 (as defined in section
16 401(a)(38)(B)(ii)) or a managed ac-
17 count investment (as defined in sec-
18 tion 401(a)(38)(B)(v)), the date that
19 is 90 days prior to the date that such
20 lifetime income investment or such
21 managed account investment may no
22 longer be held as an investment option
23 under the plan (within the meaning of
24 section 401(a)(38)(B)(vii)), provided
25 that any distribution under this sub-

1 clause must be in the form of a quali-
2 fied distribution (as defined in section
3 401(a)(38)(B)(i)) or, in the case of a
4 lifetime income investment, a qualified
5 plan distribution annuity contract (as
6 defined in section 401(a)(38)(B)(iv)),
7 and”.

8 (c) SECTION 403(b) PLANS.—

9 (1) ANNUITY CONTRACTS.—Paragraph (11) of
10 section 403(b) of such Code is amended by striking
11 “or” at the end of subparagraph (B), by striking the
12 period at the end of subparagraph (C), and by in-
13 sserting “, or”, and by adding at the end the fol-
14 lowing:

15 “(D) with respect to amounts invested in a
16 lifetime income investment (as defined in sec-
17 tion 401(a)(38)(B)(ii)) or a managed account
18 investment (as defined in section
19 401(a)(38)(B)(v)), the date that is 90 days
20 prior to the date that such lifetime income in-
21 vestment or such managed account investment
22 may no longer be held as an investment option
23 under the plan (within the meaning of section
24 401(a)(38)(B)(vii)), provided that any distribu-
25 tion under this subparagraph must be in the

1 form of a qualified distribution (as defined in
2 section 401(a)(38)(B)(i)) or, in the case of a
3 lifetime income investment, a qualified plan dis-
4 tribution annuity contract (as defined in section
5 401(a)(38)(B)(iv)).”.

6 (2) CUSTODIAL ACCOUNTS.—Clause (ii) of sec-
7 tion 403(b)(7)(A) of such Code is amended to read
8 as follows:

9 “(ii) under the custodial account, no
10 such amounts may be paid or made avail-
11 able to any distributee (unless such
12 amount is a distribution to which section
13 72(t)(2)(G) applies) before—

14 “(I) the employee dies,

15 “(II) the employee attains age
16 59½,

17 “(III) the employee has a sever-
18 ance from employment,

19 “(IV) the employee becomes dis-
20 abled (within the meaning of section
21 72(m)(7)),

22 “(V) in the case of contributions
23 made pursuant to a salary reduction
24 agreement (within the meaning of sec-

1 tion 3121(a)(5)(D)), the employee en-
2 counters financial hardship, or

3 “(VI) with respect to amounts in-
4 vested in a lifetime income investment
5 (as defined in section
6 401(a)(38)(B)(ii)) or a managed ac-
7 count investment (as defined in sec-
8 tion 401(a)(38)(B)(v)), the date that
9 is 90 days prior to the date that such
10 lifetime income investment or such
11 managed account investment may no
12 longer be held as an investment option
13 under the plan (within the meaning of
14 section 401(a)(38)(B)(vii)), provided
15 that any distribution under this sub-
16 paragraph must be in the form of a
17 qualified distribution (as defined in
18 section 401(a)(38)(B)(i)) or, in the
19 case of a lifetime income investment,
20 a qualified plan distribution annuity
21 contract (as defined in section
22 401(a)(38)(B)(iv)).”.

23 (d) ELIGIBLE DEFERRED COMPENSATION PLANS.—

24 Subparagraph (A) of section 457(d)(1) of such Code is
25 amended by striking “or” at the end of clause (ii), by in-

1 serting “or” at the end of clause (iii), and by adding after
2 clause (iii) the following:

3 “(iv) with respect to amounts invested
4 in a lifetime income investment (as defined
5 in section 401(a)(38)(B)(ii)) or a managed
6 account investment (as defined in section
7 401(a)(38)(B)(v)), the date that is 90 days
8 prior to the date that such lifetime income
9 investment or such managed account in-
10 vestment may no longer be held as an in-
11 vestment option under the plan (within the
12 meaning of section 401(a)(38)(B)(vii)),
13 provided that any distribution under this
14 subparagraph must be in the form of a
15 qualified distribution (as defined in section
16 401(a)(38)(B)(i)) or, in the case of a life-
17 time income investment, a qualified plan
18 distribution annuity contract (as defined in
19 section 401(a)(38)(B)(iv)),”.

20 (e) EFFECTIVE DATE.—The amendments made by
21 this section shall apply to plan years beginning after De-
22 cember 31, 2017.

1 **SEC. 8. INCREASE IN CREDIT LIMITATION FOR SMALL EM-**
2 **PLOYER PENSION PLAN STARTUP COSTS.**

3 (a) IN GENERAL.—Paragraph (1) of section 45E(b)
4 of the Internal Revenue Code of 1986 is amended to read
5 as follows:

6 “(1) for the first credit year and each of the 4
7 taxable years immediately following the first credit
8 year, the greater of—

9 “(A) \$500, or

10 “(B) the lesser of—

11 “(i) \$250 for each employee of the eli-
12 gible employer who is not a highly com-
13 pensated employee (as defined in section
14 414(q)) and who is eligible to participate
15 in the eligible employer plan maintained by
16 the eligible employer, or

17 “(ii) \$5,000, and”.

18 (b) SPECIAL RULE FOR EMPLOYERS WITH 25 OR
19 FEWER EMPLOYEES.—Subsection (a) of section 45E of
20 such Code is amended by inserting before the period at
21 the end the following: “(100 percent of such costs in the
22 case of an eligible employer with 25 or fewer employees,
23 as determined by substituting ‘25’ for ‘100’ in section
24 408(p)(2)(C)(i))”.

25 (c) AUTOMATIC CONTRIBUTION PLAN.—Paragraph
26 (2) of section 45E(d) of such Code is amended by striking

1 “a qualified employer plan within the meaning of section
2 4972(d)” and inserting “an automatic contribution plan
3 within the meaning of section 414(aa)”.

4 (d) CONFORMING CHANGE.—Paragraph (2) of sec-
5 tion 45E(d) of such Code is amended by adding at the
6 end thereof the following: “For purposes of this section,
7 the term ‘qualified employer plan’ has the meaning given
8 such term under section 4972(d).”.

9 (e) EFFECTIVE DATE.—The amendment made by
10 this section shall apply to taxable years beginning after
11 December 31, 2017.

12 **SEC. 9. SMALL EMPLOYER AUTOMATIC ENROLLMENT**
13 **CREDIT.**

14 (a) IN GENERAL.—Subpart D of part IV of sub-
15 chapter A of chapter 1 of the Internal Revenue Code of
16 1986 is amended by adding at the end the following new
17 section:

18 **“SEC. 45S. AUTO-ENROLLMENT CREDIT FOR RETIREMENT**
19 **SAVINGS OPTIONS PROVIDED BY SMALL EM-**
20 **PLOYERS.**

21 “(a) IN GENERAL.—For purposes of section 38, in
22 the case of an eligible employer, the retirement auto-en-
23 rollment credit determined under this section for any tax-
24 able year is an amount equal to—

1 “(1) \$500 for any taxable year occurring during
2 the credit period, and

3 “(2) zero for any other taxable year.

4 “(b) CREDIT PERIOD.—For purposes of subsection
5 (a)—

6 “(1) IN GENERAL.—The credit period with re-
7 spect to any eligible employer is the 5-taxable-year
8 period beginning with the first taxable year for
9 which the employer adopts an automatic contribu-
10 tion plan (as defined in section 414(aa)), determined
11 without regard to a plan described in section
12 414(aa)(2)(D) (relating to a grandfathered auto-
13 matic contribution plan).

14 “(2) MAINTENANCE OF ARRANGEMENT.—No
15 taxable year with respect to an employer shall be
16 treated as occurring within the credit period unless
17 the arrangement described in section 401(k)(14)(C)
18 is included in the plan for such year.

19 “(c) ELIGIBLE EMPLOYER.—For purposes of this
20 section, the term ‘eligible employer’ has the meaning given
21 such term in section 408(p)(2)(C)(i).”.

22 (b) CREDIT TO BE PART OF GENERAL BUSINESS
23 CREDIT.—Subsection (b) of section 38 of the Internal
24 Revenue Code of 1986 is amended by striking “plus” at
25 the end of paragraph (35), by striking the period at the

1 end of paragraph (36) and inserting “, plus”, and by add-
 2 ing at the end the following new paragraph:

3 “(37) in the case of an eligible employer (as de-
 4 fined in section 45S(c)), the retirement auto-enroll-
 5 ment credit determined under section 45S(a).”.

6 (c) CLERICAL AMENDMENT.—The table of sections
 7 for subpart D of part IV of subchapter A of chapter 1
 8 of the Internal Revenue Code of 1986 is amended by in-
 9 serting after the item relating to section 45R the following
 10 new item:

“Sec. 45S. Auto-enrollment credit for retirement savings options provided by
 small employers.”.

11 (d) EFFECTIVE DATE.—The amendments made by
 12 this section shall apply to taxable years beginning after
 13 December 31, 2017.

14 **SEC. 10. TREATMENT OF AUTOMATIC CONTRIBUTION**
 15 **PLANS UNDER STATE LAW.**

16 (a) IN GENERAL.—Section 514 of the Employee Re-
 17 tirement Income Security Act of 1974 (29 U.S.C. 1144)
 18 is amended by adding at the end the following:

19 “(f) AUTOMATIC CONTRIBUTION PLANS.—

20 “(1) IN GENERAL.—If an employer maintains
 21 an automatic contribution plan (as defined in section
 22 414(aa) of the Internal Revenue Code of 1986) that
 23 satisfies the requirements of section 414(aa)(3)

1 (without regard to subparagraph (D) thereof), the
2 employer—

3 “(A) shall not be subject to any require-
4 ment imposed by a State or political subdivision
5 thereof to contribute to an individual retirement
6 plan (as defined in section 7701(a)(37) of the
7 Internal Revenue Code of 1986) established and
8 maintained pursuant to a payroll deduction sav-
9 ings program of a State or political subdivision
10 thereof, and

11 “(B) shall not be required to participate in
12 any manner in such a payroll deduction savings
13 program.

14 “(2) QUALIFIED STATE LAW EXCEPTION.—This
15 subsection shall not apply with respect to any em-
16 ployer to the extent that such employer participates
17 in an arrangement under a qualified State law.

18 “(3) QUALIFIED STATE LAW.—For purposes of
19 this subsection—

20 “(A) IN GENERAL.—The term ‘qualified
21 State law’ means a State law that—

22 “(i) was enacted before the date of en-
23 actment of the Automatic Retirement Plan
24 Act of 2017,

1 “(ii)(I) requires certain employers to
2 contribute to, or participate in, an indi-
3 vidual retirement plan (as defined in sec-
4 tion 7701(a)(37) of such Code) established
5 and maintained pursuant to a payroll de-
6 duction savings program of the State, or

7 “(II) allows certain employers to con-
8 tribute to, or participate in, a plan de-
9 scribed in section 413(c) of such Code es-
10 tablished and maintained by the State, and

11 “(iii) is not superseded by this title
12 (determined without regard to this sub-
13 section).

14 “(B) EXCEPTION.—If a State law de-
15 scribed in subparagraph (A)(ii) is amended
16 after the date of enactment of the Automatic
17 Retirement Plan Act of 2017 to materially ex-
18 pand the scope of the requirement described in
19 subparagraph (A)(ii)(I) or the availability of a
20 plan described in subparagraph (A)(ii)(II), the
21 State law shall, as of the effective date of such
22 amendment, cease to be treated as a qualified
23 State law.”.

1 (b) EFFECTIVE DATE.—The amendments made by
2 this section shall apply to plan years beginning after De-
3 cember 31, 2017.

4 **SEC. 11. MATCHING PAYMENTS FOR ELECTIVE DEFERRAL**
5 **AND IRA CONTRIBUTIONS BY CERTAIN INDI-**
6 **VIDUALS.**

7 (a) IN GENERAL.—Subchapter B of chapter 65 of the
8 Internal Revenue Code of 1986 is amended by adding at
9 the end the following new section:

10 **“SEC. 6433. MATCHING PAYMENTS FOR ELECTIVE DEFER-**
11 **RAL AND IRA CONTRIBUTIONS BY CERTAIN**
12 **INDIVIDUALS.**

13 “(a) IN GENERAL.—

14 “(1) ALLOWANCE OF CREDIT.—Any eligible in-
15 dividual who makes qualified retirement savings con-
16 tributions for the taxable year shall be allowed a
17 credit for such taxable year in an amount equal to
18 the applicable percentage of so much of the qualified
19 retirement savings contributions made by such eligi-
20 ble individual for the taxable year as does not exceed
21 \$1,000.

22 “(2) PAYMENT OF CREDIT.—The credit under
23 this section shall be paid by the Secretary as a con-
24 tribution (as soon as practicable after the eligible in-
25 dividual has filed a tax return for the taxable year)

1 to the applicable retirement vehicle of the eligible in-
2 dividual.

3 “(b) APPLICABLE PERCENTAGE.—For purposes of
4 this section—

5 “(1) IN GENERAL.—Except as provided in para-
6 graph (2), the applicable percentage is 50 percent.

7 “(2) PHASEOUT.—The percentage under para-
8 graph (1) shall be reduced (but not below zero) by
9 the number of percentage points which bears the
10 same ratio to 50 percentage points as—

11 “(A) the excess of—

12 “(i) the taxpayer’s modified adjusted
13 gross income for such taxable year, over

14 “(ii) the applicable dollar amount,
15 bears to

16 “(B) the phaseout range.

17 If any reduction determined under this paragraph is
18 not a whole percentage point, such reduction shall be
19 rounded to the next lowest whole percentage point.

20 “(3) APPLICABLE DOLLAR AMOUNT; PHASEOUT
21 RANGE.—

22 “(A) JOINT RETURNS.—Except as pro-
23 vided in subparagraph (B)—

24 “(i) the applicable dollar amount is
25 \$65,000, and

1 “(ii) the phaseout range is \$20,000.

2 “(B) OTHER RETURNS.—In the case of—

3 “(i) a head of a household (as defined
4 in section 2(b)), the applicable dollar
5 amount and the phaseout range shall be $\frac{3}{4}$
6 of the amounts applicable under subpara-
7 graph (A) (as adjusted under subsection
8 (g)), and

9 “(ii) any taxpayer who is not filing a
10 joint return and who is not a head of a
11 household (as so defined), the applicable
12 dollar amount and the phaseout range
13 shall be $\frac{1}{2}$ of the amounts applicable
14 under subparagraph (A) (as so adjusted).

15 “(c) ELIGIBLE INDIVIDUAL.—For purposes of this
16 section—

17 “(1) IN GENERAL.—The term ‘eligible indi-
18 vidual’ means any individual if such individual has
19 attained the age of 18 as of the close of the taxable
20 year.

21 “(2) DEPENDENTS AND FULL-TIME STUDENTS
22 NOT ELIGIBLE.—The term ‘eligible individual’ shall
23 not include—

24 “(A) any individual with respect to whom
25 a deduction under section 151 is allowed to an-

1 other taxpayer for a taxable year beginning in
2 the calendar year in which such individual's
3 taxable year begins, and

4 “(B) any individual who is a student (as
5 defined in section 152(f)(2)).

6 “(d) QUALIFIED RETIREMENT SAVINGS CONTRIBU-
7 TIONS.—For purposes of this section—

8 “(1) IN GENERAL.—The term ‘qualified retire-
9 ment savings contributions’ means, with respect to
10 any taxable year, the sum of—

11 “(A) the amount of the qualified retire-
12 ment contributions (as defined in section
13 219(e)) made by the eligible individual,

14 “(B) the amount of—

15 “(i) any elective deferrals (as defined
16 in section 402(g)(3)) of such individual,
17 and

18 “(ii) any elective deferral of com-
19 pensation by such individual under an eli-
20 gible deferred compensation plan (as de-
21 fined in section 457(b)) of an eligible em-
22 ployer described in section 457(e)(1)(A),
23 and

1 “(C) the amount of voluntary employee
2 contributions by such individual to any qualified
3 retirement plan (as defined in section 4974(c)).
4 Such term shall not include any amount attributable
5 to a payment under subsection (a).

6 “(2) REDUCTION FOR CERTAIN DISTRIBUTIONS.—
7

8 “(A) IN GENERAL.—The qualified retire-
9 ment savings contributions determined under
10 paragraph (1) for a taxable year shall be re-
11 duced (but not below zero) by the aggregate
12 distributions received by the individual during
13 the testing period from any entity of a type to
14 which contributions under paragraph (1) may
15 be made.

16 “(B) TESTING PERIOD.—For purposes of
17 subparagraph (A), the testing period, with re-
18 spect to a taxable year, is the period which in-
19 cludes—

20 “(i) such taxable year,

21 “(ii) the 2 preceding taxable years,

22 and

23 “(iii) the period after such taxable
24 year and before the due date (including ex-

1 tensions) for filing the return of tax for
2 such taxable year.

3 “(C) EXCEPTED DISTRIBUTIONS.—There
4 shall not be taken into account under subpara-
5 graph (A)—

6 “(i) any distribution referred to in
7 section 72(p), 401(k)(8), 401(m)(6),
8 402(g)(2), 404(k), or 408(d)(4),

9 “(ii) any distribution to which section
10 408(d)(3) or 408A(d)(3) applies, and

11 “(iii) any portion of a distribution if
12 such portion is transferred or paid in a
13 rollover contribution (as defined in section
14 402(e), 403(a)(4), 403(b)(8), 408A(e), or
15 457(e)(16)) to an account or plan to which
16 qualified retirement contributions can be
17 made.

18 “(D) TREATMENT OF DISTRIBUTIONS RE-
19 CEIVED BY SPOUSE OF INDIVIDUAL.—For pur-
20 poses of determining distributions received by
21 an individual under subparagraph (A) for any
22 taxable year, any distribution received by the
23 spouse of such individual shall be treated as re-
24 ceived by such individual if such individual and
25 spouse file a joint return for such taxable year

1 and for the taxable year during which the
2 spouse receives the distribution.

3 “(e) APPLICABLE RETIREMENT SAVINGS VEHI-
4 CLE.—

5 “(1) IN GENERAL.—The term ‘applicable retire-
6 ment savings vehicle’ means—

7 “(A) an account or plan elected by the eli-
8 gible individual under paragraph (2), or

9 “(B) if no such election is made, a retire-
10 ment bond purchased by the Secretary for the
11 benefit of the eligible individual.

12 “(2) OTHER RETIREMENT VEHICLES.—An eligi-
13 ble individual may elect to have the amount deter-
14 mined under subsection (a) contributed to an ac-
15 count or plan which—

16 “(A) is a Roth IRA (as defined in section
17 408A), or a designated Roth account (within
18 the meaning of section 402A) of an applicable
19 retirement plan (as defined in section
20 402A(e)(1)),

21 “(B) is for the benefit of the eligible indi-
22 vidual,

23 “(C) accepts contributions made under this
24 section, and

1 “(D) is designated by such individual (in
2 such form and manner as the Secretary may
3 provide) on the return of tax for the taxable
4 year.

5 “(3) RETIREMENT BOND.—

6 “(A) IN GENERAL.—For purposes of this
7 section, the term ‘retirement bond’ means a
8 bond issued under chapter 31 of title 31,
9 United States Code, which by its terms, or by
10 regulations prescribed by the Secretary under
11 such chapter—

12 “(i) provides for interest to be cred-
13 ited at rates that take into account the ex-
14 pected duration of the funds invested in re-
15 tirement bonds and at rates determined or
16 adjusted in a manner and with sufficient
17 frequency to provide substantial protection
18 from inflation,

19 “(ii) is not transferable, and

20 “(iii) is designed for investment for
21 retirement.

22 “(B) ROTH IRA RULES APPLICABLE.—The
23 provisions of this title applicable to a Roth IRA,
24 including provisions relating to contributions,
25 holding and distributions, shall apply to a re-

1 retirement bond, except as determined by the Sec-
2 retary.

3 “(C) REGULATIONS.—The Secretary may
4 issue such regulations as are necessary to carry
5 out the purposes of this section, including—

6 “(i) establishment of procedures to
7 communicate to individuals the importance
8 of investment diversification and the trans-
9 fer option described in clause (ii),

10 “(ii) simplified procedures under
11 which holders of retirement bonds may pe-
12 riodically choose to have the bonds or their
13 proceeds transferred to available Roth
14 IRAs, and

15 “(iii) means by which individuals may
16 elect (or be treated as electing) whether to
17 have retirement bonds or their proceeds so
18 transferred.

19 Any such transfer shall be treated as a rollover
20 contribution for purposes of section 408(d)(3)
21 (other than subparagraph (B) thereof).

22 “(f) OTHER DEFINITIONS AND SPECIAL RULES.—

23 “(1) MODIFIED ADJUSTED GROSS INCOME.—

24 For purposes of this section, the term ‘modified ad-
25 justed gross income’ means adjusted gross income—

1 “(A) determined without regard to sections
2 911, 931, and 933, and

3 “(B) determined without regard to any ex-
4 clusion or deduction allowed for any qualified
5 retirement savings contribution made during
6 the taxable year.

7 “(2) TREATMENT OF CONTRIBUTIONS.—In the
8 case of any contribution under subsection (a)(2)—

9 “(A) except as otherwise provided in this
10 section or by the Secretary under regulations,
11 such contribution shall be treated in the same
12 manner as a contribution made by the indi-
13 vidual on whose behalf such contribution was
14 made,

15 “(B) such contribution shall not be treated
16 as income to the taxpayer, and

17 “(C) such contribution shall not be taken
18 into account with respect to any applicable limi-
19 tation under sections 402(g)(1), 403(b),
20 408(a)(1), 408(b)(2)(B), 408A(c)(2), 414(v)(2),
21 415(c), or 457(b)(2).

22 “(3) TREATMENT OF QUALIFIED PLANS, ETC.—
23 A plan or arrangement to which a contribution is
24 made under this section shall not be treated as vio-
25 lating any requirement under section 401, 403, 408,

1 or 457 solely by reason of accepting such contribu-
2 tion.

3 “(4) ERRONEOUS CREDITS.—If any contribu-
4 tion is erroneously paid under subsection (a)(2), the
5 amount of such erroneous payment shall be treated
6 as an underpayment of tax.

7 “(g) INFLATION ADJUSTMENTS.—

8 “(1) IN GENERAL.—In the case of any taxable
9 year beginning in a calendar year after 2018, each
10 of the dollar amounts in subsections (a)(2) and
11 (b)(3)(A)(i) shall be increased by an amount equal
12 to—

13 “(A) such dollar amount, multiplied by

14 “(B) the cost-of-living adjustment deter-
15 mined under section 1(f)(3) for the calendar
16 year in which the taxable year begins, deter-
17 mined by substituting ‘calendar year 2017’ for
18 ‘calendar year 1992’ in subparagraph (B)
19 thereof.

20 “(2) ROUNDING.—Any increase determined
21 under paragraph (1) shall be rounded to the nearest
22 multiple of—

23 “(A) \$100 in the case of an adjustment of
24 the amount in subsection (a)(2), and

1 “(B) \$1,000 in the case of an adjustment
2 of the amount in subsection (b)(3)(A)(i).”.

3 (b) PROMOTION AND GUIDANCE.—

4 (1) PROMOTION.—The Secretary of the Treas-
5 ury (or the Secretary’s delegate) shall educate tax-
6 payers on the benefits provided under section 6433
7 of the Internal Revenue Code of 1986.

8 (2) GUIDANCE.—Not later than December 31,
9 2017, the Secretary of the Treasury (or the Sec-
10 retary’s delegate) shall issue guidance on the imple-
11 mentation and administration of the amendments
12 made by this section.

13 (c) PAYMENT AUTHORITY.—Section 1324(b)(2) of
14 title 31, United States Code, is amended by striking “or
15 6431” and inserting “6431, or 6433”.

16 (d) DEFICIENCIES.—Section 6211(b)(4) is amended
17 by striking “and 6431” and inserting “6431, and 6433”.

18 (e) CONFORMING AMENDMENTS.—

19 (1) Section 25B of the Internal Revenue Code
20 of 1986 is amended by striking subsections (a)
21 through (f) and inserting the following:

22 “For payment of credit related to qualified retire-
23 ment savings contributions, see section 6433.”.

1 (2) The table of sections for subchapter B of
2 chapter 65 of such Code is amended by adding at
3 the end the following new item:

 “Sec. 6433. Matching payments for elective deferral and IRA contributions by
 certain individuals.”.

4 (f) EFFECTIVE DATE.—The amendments made by
5 this section shall apply to taxable years beginning after
6 December 31, 2017.

7 **SEC. 12. AUTHORITY TO REQUIRE REPORTING.**

8 (a) REPORTING UNDER INTERNAL REVENUE
9 CODE.—Subsection (a) of section 6058 of the Internal
10 Revenue Code of 1986 is amended by adding at the end
11 thereof the following: “The Secretary may by regulation
12 require the inclusion in such annual return of such infor-
13 mation as may be necessary or appropriate to determine
14 the effects of the alternative methods of satisfying applica-
15 ble nondiscrimination requirements, which are described
16 in subsections (k)(13), (k)(14), (m)(11), and (m)(12) of
17 section 401, on the contribution levels of employees who
18 are not highly compensated employees (as defined in sec-
19 tion 414(q)).”.

20 (b) REPORTING UNDER EMPLOYEE RETIREMENT IN-
21 COME SECURITY ACT OF 1974.—Section 104(a)(2)(A) of
22 the Employee Retirement Income Security Act of 1974
23 (29 U.S.C. 1042(a)(2)), as amended by section 3(c), is
24 further amended by inserting before the period at the end

1 thereof the following: “, except that in the case of such
2 a deferral-only arrangement contained in a pension plan
3 with at least 100 participants, the Secretary may require
4 such reporting as is necessary or appropriate with respect
5 to service providers, investment options, and fees, but not
6 in excess of any reporting applicable to other arrange-
7 ments.”.

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