

115TH CONGRESS
1ST SESSION

S. 1383

To amend the Internal Revenue Code of 1986 to modify safe harbor requirements applicable to automatic contribution arrangements, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JUNE 20, 2017

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

A BILL

To amend the Internal Revenue Code of 1986 to modify safe harbor requirements applicable to automatic contribution arrangements, 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.**

4 This Act may be cited as the “Retirement Security
5 Act of 2017”.

6 **SEC. 2. MULTIPLE EMPLOYER PLANS.**

7 (a) **QUALIFICATION REQUIREMENTS.**—

1 (1) IN GENERAL.—Section 413 of the Internal
 2 Revenue Code of 1986 is amended by adding at the
 3 end the following new subsection:

4 “(e) APPLICATION OF QUALIFICATION REQUIRE-
 5 MENTS FOR CERTAIN MULTIPLE EMPLOYER PLANS WITH
 6 POOLED PLAN PROVIDERS.—

7 “(1) IN GENERAL.—Except as provided in para-
 8 graph (2), if a defined contribution plan to which
 9 subsection (c) applies—

10 “(A) is sponsored by employers all of
 11 which have both a common interest other than
 12 having adopted the plan and control of the
 13 plan, or

14 “(B) in the case of a plan not described in
 15 subparagraph (A), has a pooled plan provider,
 16 then the plan shall not be treated as failing to meet
 17 the requirements under this title applicable to a plan
 18 described in section 401(a) or to a plan that consists
 19 of individual retirement accounts described in sec-
 20 tion 408 (including by reason of subsection (c)
 21 thereof), whichever is applicable, merely because one
 22 or more employers of employees covered by the plan
 23 fail to take such actions as are required of such em-
 24 ployers for the plan to meet such requirements.

25 “(2) LIMITATIONS.—

1 “(A) IN GENERAL.—Paragraph (1) shall
2 not apply to any plan unless the terms of the
3 plan provide that in cases of employers failing
4 to take the actions described in paragraph
5 (1)—

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

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

1 “(B) FAILURES BY POOLED PLAN PRO-
 2 VIDERS.—If the pooled plan provider of a plan
 3 described in paragraph (1)(B) does not perform
 4 substantially all of the administrative duties
 5 which are required of the provider under para-
 6 graph (3)(A)(i) for any plan year, the Sec-
 7 retary, in the Secretary’s own discretion, may
 8 provide that the determination as to whether
 9 the plan meets the requirements under this title
 10 applicable to a plan described in section 401(a)
 11 or to a plan that consists of individual retire-
 12 ment accounts described in section 408 (includ-
 13 ing by reason of subsection (c) thereof), which-
 14 ever is applicable, shall be made in the same
 15 manner as would be made without regard to
 16 paragraph (1).

17 “(3) POOLED PLAN PROVIDER.—For purposes
 18 of this subsection—

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

22 “(i) is designated by the terms of the
 23 plan as a named fiduciary (as defined in
 24 section 402(a)(2) of the Employee Retire-
 25 ment Income Security Act of 1974), as the

1 plan administrator, and as the person re-
2 sponsible to perform all administrative du-
3 ties (including conducting proper testing
4 with respect to the plan and employees of
5 each participating employer) which are
6 reasonably necessary to ensure that—

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

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

1 allow the plan to meet such require-
2 ments,

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

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

14 “(iv) is responsible for ensuring that
15 all persons who handle assets of, or who
16 are fiduciaries of, the plan are bonded in
17 accordance with section 412 of the Em-
18 ployee Retirement Income Security Act of
19 1974.

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

25 “(4) GUIDANCE.—

1 “(A) IN GENERAL.—The Secretary shall
2 issue such guidance as the Secretary determines
3 appropriate to carry out this subsection, includ-
4 ing guidance—

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

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

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

22 The Secretary shall take into account under
23 clause (iii) whether the failure of an employer
24 or pooled plan provider to provide any disclo-
25 sures or other information, or to take any other

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

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

12 “(5) MODEL PLAN.—The Secretary shall, in
13 consultation with the Secretary of Labor when ap-
14 propriate, publish model plan language which meets
15 the requirements of this subsection and of para-
16 graphs (43) and (44) of section 3 of the Employee
17 Retirement Income Security Act of 1974 and which
18 may be adopted in order for a plan to be treated as
19 a plan described in paragraph (1)(B).”.

20 “(2) CONFORMING AMENDMENT.—Paragraph (3)
21 of section 413(b) of such Code is amended by strik-
22 ing “section 401(a)” and inserting “sections 401(a)
23 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 2 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) provide that each participating
12 employer retains fiduciary responsibility
13 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 any disclosures or other information
18 to facilitate the selection or any moni-
19 toring of the pooled plan provider by
20 participating employers; and

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

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

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

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

25 “(i) a multiemployer plan; or

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

8 “(44) POOLED PLAN PROVIDER.—

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

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

20 “(I) the plan meets any require-
 21 ment applicable under this Act or the
 22 Internal Revenue Code of 1986 to a
 23 plan described in section 401(a) of
 24 such Code or to a plan that consists
 25 of individual retirement accounts de-

1 scribed in section 408 of such Code
2 (including by reason of subsection (c)
3 thereof), whichever is applicable; and

4 “(II) each participating employer
5 takes such actions as the Secretary or
6 pooled plan provider determines are
7 necessary for the plan to meet the re-
8 quirements described in subclause (I),
9 including providing the disclosures
10 and information described in para-
11 graph (43)(B)(v)(II);

12 “(ii) registers as a pooled plan pro-
13 vider with the Secretary, and provides to
14 the Secretary such other information as
15 the Secretary may require, before begin-
16 ning operations as a pooled plan provider;

17 “(iii) acknowledges in writing that
18 such person is a named fiduciary, and the
19 plan administrator, with respect to the
20 pooled employer plan; and

21 “(iv) is responsible for ensuring that
22 all persons who handle assets of, or who
23 are fiduciaries of, the pooled employer plan
24 are bonded in accordance with section 412.

1 “(B) AUDITS, EXAMINATIONS AND INVES-
 2 TIGATIONS.—The Secretary may perform au-
 3 dits, examinations, and investigations of pooled
 4 plan providers as may be necessary to enforce
 5 and carry out the purposes of this paragraph
 6 and paragraph (43).

7 “(C) GUIDANCE.—

8 “(i) IN GENERAL.—The Secretary
 9 shall issue such guidance as the Secretary
 10 determines appropriate to carry out this
 11 paragraph and paragraph (43), including
 12 guidance—

13 “(I) to identify the administra-
 14 tive duties and other actions required
 15 to be performed by a pooled plan pro-
 16 vider under either such paragraph;
 17 and

18 “(II) which requires in appro-
 19 priate cases that if a participating
 20 employer fails to take the actions re-
 21 quired under subparagraph
 22 (A)(i)(II)—

23 “(aa) the assets of the plan
 24 attributable to employees of the
 25 participating employer are trans-

ferred to a plan maintained only by the participating employer (or its successor), to an eligible retirement plan as defined in section 402(c)(8)(B) of the Internal Revenue Code of 1986 for each individual whose account is transferred, or to any other arrangement that the Secretary determines is appropriate in such guidance; and

“(bb) the participating employer described in item (aa) (and not the plan with respect to which the failure occurred or any other participating employer in such plan) shall, except to the extent provided in such guidance, be liable for any liabilities with respect to such plan attributable to employees of the participating employer.

The Secretary shall take into account under subclause (II) whether the failure of an employer or pooled plan provider to

1 provide any disclosures or other informa-
 2 tion, or to take any other action, necessary
 3 to administer a plan or to allow a plan to
 4 meet requirements described in subpara-
 5 graph (A)(i)(II) has continued over a pe-
 6 riod of time that clearly demonstrates a
 7 lack of commitment to compliance. The
 8 Secretary may waive the requirements of
 9 subclause (II)(aa) in appropriate cir-
 10 cumstances if the Secretary determines it
 11 is in the best interests of the employees of
 12 the participating employer described in
 13 such clause to retain the assets in the plan
 14 with respect to which the employer's fail-
 15 ure occurred.

16 “(ii) PROSPECTIVE APPLICATION.—
 17 Any guidance issued by the Secretary
 18 under this subparagraph shall not apply to
 19 any action or failure occurring before the
 20 issuance of such guidance.

21 “(D) AGGREGATION RULES.—For purposes
 22 of this paragraph—

23 “(i) IN GENERAL.—In determining
 24 whether a person meets the requirements
 25 of this paragraph to be a pooled plan pro-

1 vider with respect to any plan, all persons
 2 who are members of the same controlled
 3 group and who perform services for the
 4 plan shall be treated as one person.

5 “(ii) MEMBERS OF COMMON GROUP.—
 6 Persons shall be treated as members of the
 7 same controlled group if such persons are
 8 treated as a single employer under sub-
 9 section (c) or (d) of section 210.”.

10 (2) BONDING REQUIREMENTS FOR POOLED EM-
 11 PLOYER PLANS.—The last sentence of section 412(a)
 12 of the Employee Retirement Income Security Act of
 13 1974 (29 U.S.C. 1112(a)) is amended by inserting
 14 “or in the case of a pooled employer plan (as defined
 15 in section 3(43))” after “section 407(d)(1))”.

16 (3) CONFORMING AND TECHNICAL AMEND-
 17 MENTS.—Section 3 of the Employee Retirement In-
 18 come Security Act of 1974 (29 U.S.C. 1002) is
 19 amended—

20 (A) in paragraph (16)(B)—

21 (i) by striking “or” at the end of
 22 clause (ii), and

23 (ii) by striking the period at the end
 24 and inserting “, or (iv) in the case of a

1 pooled employer plan, the pooled plan pro-
 2 vider.”; and

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

4 (d) EFFECTIVE DATE.—

5 (1) IN GENERAL.—The amendments made by
 6 this section shall apply to years beginning after De-
 7 cember 31, 2017.

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

17 **SEC. 3. POOLED EMPLOYER AND MULTIPLE EMPLOYER**
 18 **PLAN REPORTING.**

19 (a) ADDITIONAL INFORMATION.—Section 103 of the
 20 Employee Retirement Income Security Act of 1974 (29
 21 U.S.C. 1023) is amended—

22 (1) in subsection (a)(1)(B), by striking “appli-
 23 cable subsections (d), (e), and (f)” and inserting
 24 “applicable subsections (d), (e), (f), and (g)”; and

1 (2) by amending subsection (g) to read as fol-
 2 lows:

3 “(g) ADDITIONAL INFORMATION WITH RESPECT TO
 4 POOLED EMPLOYER AND MULTIPLE EMPLOYER
 5 PLANS.—An annual report under this section for a plan
 6 year shall include—

7 “(1) with respect to any plan to which section
 8 210(a) applies (including a pooled employer plan), a
 9 list of participating employers and a good faith esti-
 10 mate of the percentage of total contributions made
 11 by such participating employers during the plan
 12 year; and

13 “(2) with respect to a pooled employer plan, the
 14 identifying information for the person designated
 15 under the terms of the plan as the pooled plan pro-
 16 vider.”.

17 (b) SIMPLIFIED ANNUAL REPORTS.—Section 104(a)
 18 of the Employee Retirement Income Security Act of 1974
 19 (29 U.S.C. 1024(a)) is amended by striking paragraph
 20 (2)(A) and inserting the following:

21 “(2)(A) With respect to annual reports required
 22 to be filed with the Secretary under this part, the
 23 Secretary may by regulation prescribe simplified an-
 24 nual reports for any pension plan that—

25 “(i) covers fewer than 100 participants; or

1 “(ii) is a plan described in section 210(a)
 2 that covers fewer than 1,000 participants, but
 3 only if no single participating employer has 100
 4 or more participants covered by the plan.”.

5 (c) EFFECTIVE DATE.—The amendments made by
 6 this section shall apply to annual reports for plan years
 7 beginning after December 31, 2017.

8 **SEC. 4. REMOVAL OF 10 PERCENT CAP FROM AUTOMATIC**
 9 **ENROLLMENT SAFE HARBOR AFTER 1ST**
 10 **PLAN YEAR.**

11 (a) IN GENERAL.—Clause (iii) of section
 12 401(k)(13)(C) of the Internal Revenue Code of 1986 is
 13 amended by striking “, does not exceed 10 percent, and
 14 is at least” and inserting “and is”.

15 (b) CONFORMING AMENDMENTS.—

16 (1) Subclause (I) of section 401(k)(13)(C)(iii)
 17 of the Internal Revenue Code of 1986 is amended by
 18 striking “3 percent” and inserting “at least 3 per-
 19 cent, but not greater than 10 percent,”.

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

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

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

4 (c) EFFECTIVE DATE.—The amendments made by
 5 this section shall apply to plan years beginning after De-
 6 cember 31, 2017.

7 **SEC. 5. RULES RELATING TO ELECTION OF SAFE HARBOR**

8 **401(k) STATUS.**

9 (a) LIMITATION OF ANNUAL SAFE HARBOR NOTICE
 10 TO MATCHING CONTRIBUTION PLANS.—

11 (1) IN GENERAL.—Subparagraph (A) of section
 12 401(k)(12) of the Internal Revenue Code of 1986 is
 13 amended by striking “if such arrangement” and all
 14 that follows and inserting “if such arrangement—

15 “(i) meets the contribution require-
 16 ments of subparagraph (B) and the notice
 17 requirements of subparagraph (D), or

18 “(ii) meets the contribution require-
 19 ments of subparagraph (C).”.

20 (2) AUTOMATIC CONTRIBUTION ARRANGE-
 21 MENTS.—Subparagraph (B) of section 401(k)(13) of
 22 such Code is amended by striking “means” and all
 23 that follows and inserting “means a cash or deferred
 24 arrangement—

1 “(i) which is described in subpara-
 2 graph (D)(i)(I) and meets the applicable
 3 requirements of subparagraphs (C)
 4 through (E), or

5 “(ii) which is described in subpara-
 6 graph (D)(i)(II) and meets the applicable
 7 requirements of subparagraphs (C) and
 8 (D).”.

9 (b) NONELECTIVE CONTRIBUTIONS.—Section
 10 401(k)(12) of the Internal Revenue Code of 1986 is
 11 amended by redesignating subparagraph (F) as subpara-
 12 graph (G), and by inserting after subparagraph (E) the
 13 following new subparagraph:

14 “(F) TIMING OF PLAN AMENDMENT FOR
 15 EMPLOYER MAKING NONELECTIVE CONTRIBU-
 16 TIONS.—

17 “(i) IN GENERAL.—Except as pro-
 18 vided in clause (ii), a plan may be amend-
 19 ed after the beginning of a plan year to
 20 provide that the requirements of subpara-
 21 graph (C) shall apply to the arrangement
 22 for the plan year, but only if the amend-
 23 ment is adopted—

1 “(I) at any time before the 30th
2 day before the close of the plan year,
3 or

4 “(II) at any time before the last
5 day under paragraph (8)(A) for dis-
6 tributing excess contributions for the
7 plan year.

8 “(ii) EXCEPTION WHERE PLAN PRO-
9 VIDED FOR MATCHING CONTRIBUTIONS.—
10 Clause (i) shall not apply to any plan year
11 if the plan provided at any time during the
12 plan year that the requirements of sub-
13 paragraph (B) or paragraph (13)(D)(i)(I)
14 applied to the plan year.

15 “(iii) 4-PERCENT CONTRIBUTION RE-
16 QUIREMENT.—Clause (i)(II) shall not
17 apply to an arrangement unless the
18 amount of the contributions described in
19 subparagraph (C) which the employer is
20 required to make under the arrangement
21 for the plan year with respect to any em-
22 ployee is an amount equal to at least 4
23 percent of the employee’s compensation.”.

1 (c) AUTOMATIC CONTRIBUTION ARRANGEMENTS.—

2 Section 401(k)(13) of the Internal Revenue Code of 1986

3 is amended by adding at the end the following:

4 “(F) TIMING OF PLAN AMENDMENT FOR
5 EMPLOYER MAKING NONELECTIVE CONTRIBU-
6 TIONS.—

7 “(i) IN GENERAL.—Except as pro-
8 vided in clause (ii), a plan may be amend-
9 ed after the beginning of a plan year to
10 provide that the requirements of subpara-
11 graph (D)(i)(II) shall apply to the arrange-
12 ment for the plan year, but only if the
13 amendment is adopted—

14 “(I) at any time before the 30th
15 day before the close of the plan year,
16 or

17 “(II) at any time before the last
18 day under paragraph (8)(A) for dis-
19 tributing excess contributions for the
20 plan year.

21 “(ii) EXCEPTION WHERE PLAN PRO-
22 VIDED FOR MATCHING CONTRIBUTIONS.—
23 Clause (i) shall not apply to any plan year
24 if the plan provided at any time during the
25 plan year that the requirements of sub-

paragraph (D)(i)(I) or paragraph (12)(B) applied to the plan year.

“(iii) 4-PERCENT CONTRIBUTION REQUIREMENT.—Clause (i)(II) shall not apply to an arrangement unless the amount of the contributions described in subparagraph (D)(i)(II) which the employer is required to make under the arrangement for the plan year with respect to any employee is an amount equal to at least 4 percent of the employee’s compensation.”.

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

SEC. 6. INCREASE IN CREDIT LIMITATION FOR SMALL EMPLOYER PENSION PLAN STARTUP COSTS.

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

“(1) for the first credit year and each of the 2 taxable years immediately following the first credit year, the greater of—

“(A) \$500, or

“(B) the lesser of—

1 “(i) \$250 for each employee of the eli-
 2 gible employer who is not a highly com-
 3 pensated employee (as defined in section
 4 414(q)) and who is eligible to participate
 5 in the eligible employer plan maintained by
 6 the eligible employer, or
 7 “(ii) \$5,000, and”.

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

11 **SEC. 7. SMALL EMPLOYER AUTOMATIC ENROLLMENT**
 12 **CREDIT.**

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

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

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

24 “(1) \$500 for any taxable year occurring during
 25 the credit period, and

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

2 “(b) CREDIT PERIOD.—For purposes of subsection
3 (a)—

4 “(1) IN GENERAL.—The credit period with re-
5 spect to any eligible employer is the 3-taxable-year
6 period beginning with the first taxable year for
7 which the employer includes an eligible automatic
8 contribution arrangement (as defined in section
9 414(w)(3)) in a qualified employer plan (as defined
10 in section 4972(d)) sponsored by the employer.

11 “(2) MAINTENANCE OF ARRANGEMENT.—No
12 taxable year with respect to an employer shall be
13 treated as occurring within the credit period unless
14 the arrangement described in paragraph (1) is in-
15 cluded in the plan for such year.

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

19 (b) CREDIT TO BE PART OF GENERAL BUSINESS
20 CREDIT.—Subsection (b) of section 38 of the Internal
21 Revenue Code of 1986 is amended by striking “plus” at
22 the end of paragraph (35), by striking the period at the
23 end of paragraph (36) and inserting “, plus”, and by add-
24 ing at the end the following new paragraph:

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

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

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

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

12 **SEC. 8. SECURE DEFERRAL ARRANGEMENTS.**

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

16 “(14) ALTERNATIVE METHOD FOR SECURE DE-
 17 FERRAL ARRANGEMENTS TO MEET NONDISCRIMINA-
 18 TION REQUIREMENTS.—

19 “(A) IN GENERAL.—A secure deferral ar-
 20 rangement shall be treated as meeting the re-
 21 quirements of paragraph (3)(A)(ii).

22 “(B) SECURE DEFERRAL ARRANGE-
 23 MENT.—For purposes of this paragraph, the
 24 term ‘secure deferral arrangement’ means any

1 cash or deferred arrangement which meets the
2 requirements of subparagraphs (C), (D), and
3 (E) of paragraph (13), except as modified by
4 this paragraph.

5 “(C) QUALIFIED PERCENTAGE.—For pur-
6 poses of this paragraph, with respect to any
7 employee, the term ‘qualified percentage’
8 means, in lieu of the meaning given such term
9 in paragraph (13)(C)(iii), any percentage deter-
10 mined under the arrangement if such percent-
11 age is applied uniformly and is—

12 “(i) at least 6 percent, but not greater
13 than 10 percent, during the period ending
14 on the last day of the first plan year which
15 begins after the date on which the first
16 elective contribution described in para-
17 graph (13)(C)(i) is made with respect to
18 such employee,

19 “(ii) at least 8 percent during the
20 first plan year following the plan year de-
21 scribed in clause (i), and

22 “(iii) at least 10 percent during any
23 subsequent plan year.

24 “(D) MATCHING CONTRIBUTIONS.—

1 “(i) IN GENERAL.—For purposes of
 2 this paragraph, an arrangement shall be
 3 treated as having met the requirements of
 4 paragraph (13)(D)(i) if and only if the em-
 5 ployer makes matching contributions on
 6 behalf of each employee who is not a highly
 7 compensated employee in an amount equal
 8 to the sum of—

9 “(I) 100 percent of the elective
 10 contributions of the employee to the
 11 extent that such contributions do not
 12 exceed 1 percent of compensation,

13 “(II) 50 percent of so much of
 14 such contributions as exceed 1 percent
 15 but do not exceed 6 percent of com-
 16 pensation, plus

17 “(III) 25 percent of so much of
 18 such contributions as exceed 6 percent
 19 but do not exceed 10 percent of com-
 20 pensation.

21 “(ii) APPLICATION OF RULES FOR
 22 MATCHING CONTRIBUTIONS.—The rules of
 23 clause (ii) of paragraph (12)(B) and
 24 clauses (iii) and (iv) of paragraph (13)(D)
 25 shall apply for purposes of clause (i) but

1 the rule of clause (iii) of paragraph
 2 (12)(B) shall not apply for such purposes.
 3 The rate of matching contribution for each
 4 incremental deferral must be at least as
 5 high as the rate specified in clause (i), and
 6 may be higher, so long as such rate does
 7 not increase as an employee's rate of elec-
 8 tive contributions increases.”.

9 (b) MATCHING CONTRIBUTIONS AND EMPLOYEE
 10 CONTRIBUTIONS.—Subsection (m) of section 401 of the
 11 Internal Revenue Code of 1986 is amended by redesign-
 12 nating paragraph (13) as paragraph (14) and by inserting
 13 after paragraph (12) the following new paragraph:

14 “(13) ALTERNATIVE METHOD FOR SECURE DE-
 15 FERRAL ARRANGEMENTS.—A defined contribution
 16 plan shall be treated as meeting the requirements of
 17 paragraph (2) with respect to matching contribu-
 18 tions and employee contributions if the plan—

19 “(A) is a secure deferral arrangement (as
 20 defined in subsection (k)(14)),

21 “(B) meets the requirements of clauses (ii)
 22 and (iii) of paragraph (11)(B), and

23 “(C) provides that matching contributions
 24 on behalf of any employee may not be made
 25 with respect to an employee's contributions or

1 elective deferrals in excess of 10 percent of the
 2 employee’s compensation.”.

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

6 **SEC. 9. CREDIT FOR EMPLOYERS WITH RESPECT TO MODI-**
 7 **FIED SAFE HARBOR REQUIREMENTS.**

8 (a) IN GENERAL.—Subpart D of part IV of sub-
 9 chapter A of chapter 1 of the Internal Revenue Code of
 10 1986, as amended by section 7, is further amended by
 11 adding at the end the following new section:

12 **“SEC. 45T. CREDIT FOR SMALL EMPLOYERS WITH RESPECT**
 13 **TO MODIFIED SAFE HARBOR REQUIREMENTS**
 14 **FOR AUTOMATIC CONTRIBUTION ARRANGE-**
 15 **MENTS.**

16 “(a) GENERAL RULE.—For purposes of section 38,
 17 in the case of a small employer, the safe harbor adoption
 18 credit determined under this section for any taxable year
 19 is the amount equal to the total of the employer’s match-
 20 ing contributions under section 401(k)(14)(D) during the
 21 taxable year on behalf of employees who are not highly
 22 compensated employees, subject to the limitations of sub-
 23 section (b).

24 “(b) LIMITATIONS.—

1 “(1) LIMITATION WITH RESPECT TO COM-
 2 PENSATION.—The credit determined under sub-
 3 section (a) with respect to contributions made on be-
 4 half of an employee who is not a highly compensated
 5 employee shall not exceed 2 percent of the com-
 6 pensation of such employee for the taxable year.

7 “(2) LIMITATION WITH RESPECT TO YEARS OF
 8 PARTICIPATION.—Credit shall be determined under
 9 subsection (a) with respect to contributions made on
 10 behalf of an employee who is not a highly com-
 11 pensated employee only during the first 5 years such
 12 employee participates in the qualified automatic con-
 13 tribution arrangement.

14 “(c) DEFINITIONS.—

15 “(1) IN GENERAL.—Any term used in this sec-
 16 tion which is also used in section 401(k)(14) shall
 17 have the same meaning as when used in such sec-
 18 tion.

19 “(2) SMALL EMPLOYER.—The term ‘small em-
 20 ployer’ means an eligible employer (as defined in
 21 section 408(p)(2)(C)(i)).

22 “(d) DENIAL OF DOUBLE BENEFIT.—No deduction
 23 shall be allowable under this title for any contribution with
 24 respect to which a credit is allowed under this section.”.

1 (b) CREDIT TO BE PART OF GENERAL BUSINESS
 2 CREDIT.—Subsection (b) of section 38 of the Internal
 3 Revenue Code of 1986, as amended by section 7, is further
 4 amended—

5 (1) by striking “plus” at the end of paragraph
 6 (36),

7 (2) by striking the period at the end of para-
 8 graph (37) and inserting “, plus”, and

9 (3) by adding at the end the following new
 10 paragraph:

11 “(38) the safe harbor adoption credit deter-
 12 mined under section 45T.”.

13 (c) CLERICAL AMENDMENT.—The table of sections
 14 for subpart D of part IV of subchapter A of chapter 1
 15 of the Internal Revenue Code of 1986, as amended by sec-
 16 tion 7, is further amended by adding after the item relat-
 17 ing to section 45S the following new item:

“Sec. 45T. Credit for small employers with respect to modified safe harbor re-
 quirements for automatic contribution arrangements.”.

18 (d) EFFECTIVE DATE.—The amendments made by
 19 this section shall apply to taxable years that include any
 20 portion of a plan year beginning after December 31, 2017.

21 **SEC. 10. MODIFICATION OF REGULATIONS.**

22 The Secretary of the Treasury shall promulgate regu-
 23 lations or other guidance that—

1 (1) simplify and clarify the rules regarding the
 2 timing of participant notices required under section
 3 401(k)(13)(E) of the Internal Revenue Code of
 4 1986, with specific application to—

5 (A) plans that allow employees to be eligi-
 6 ble for participation immediately upon begin-
 7 ning employment, and

8 (B) employers with multiple payroll and
 9 administrative systems, and

10 (2) simplify and clarify the automatic escalation
 11 rules under sections 401(k)(13)(C)(iii) and
 12 401(k)(14)(C) of the Internal Revenue Code of 1986
 13 in the context of employers with multiple payroll and
 14 administrative systems.

15 Such regulations or guidance shall address the particular
 16 case of employees within the same plan who are subject
 17 to different notice timing and different percentage require-
 18 ments, and provide assistance for plan sponsors in man-
 19 aging such cases.

20 **SEC. 11. OPPORTUNITY TO CLAIM THE SAVER’S CREDIT ON**
 21 **FORM 1040EZ.**

22 The Secretary of the Treasury shall modify the forms
 23 for the return of tax of individuals in order to allow indi-
 24 viduals claiming the credit under section 25B of the Inter-

1 nal Revenue Code of 1986 to file (and claim such credit
2 on) Form 1040EZ.

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