

117TH CONGRESS
2D SESSION

S. 3955

To amend the Internal Revenue Code of 1986 to provide for starter 401(k)s for employers with no retirement plans, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 30, 2022

Mr. BARRASSO (for himself and Mr. CARPER) 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 provide for starter 401(k)s for employers with no retirement plans, 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 “Starter-K Act of
5 2022”.

6 **SEC. 2. STARTER 401(k) PLANS FOR EMPLOYERS WITH NO**
7 **RETIREMENT PLAN.**

8 (a) IN GENERAL.—Section 401(k) of the Internal
9 Revenue Code of 1986 is amended by adding at the end
10 the following new paragraph:

1 “(16) STARTER 401(k) DEFERRAL-ONLY PLANS
2 FOR EMPLOYERS WITH NO RETIREMENT PLAN.—

3 “(A) IN GENERAL.—A starter 401(k) de-
4 ferral-only arrangement maintained by an eligi-
5 ble employer shall be treated as meeting the re-
6 quirements of paragraph (3)(A)(ii).

7 “(B) STARTER 401(k) DEFERRAL-ONLY
8 ARRANGEMENT.—For purposes of this para-
9 graph, the term ‘starter 401(k) deferral-only
10 arrangement’ means any cash or deferred ar-
11 rangement which meets—

12 “(i) the automatic deferral require-
13 ments of subparagraph (C),

14 “(ii) the contribution limitations of
15 subparagraph (D), and

16 “(iii) the requirements of subpara-
17 graph (E) of paragraph (13).

18 “(C) AUTOMATIC DEFERRAL.—

19 “(i) IN GENERAL.—The requirements
20 of this subparagraph are met if, under the
21 arrangement, each employee eligible to
22 participate in the arrangement is treated
23 as having elected to have the employer
24 make elective contributions in an amount

1 equal to a qualified percentage of com-
2 pensation.

3 “(ii) ELECTION OUT.—The election
4 treated as having been made under clause
5 (i) shall cease to apply with respect to any
6 employee if such employee makes an af-
7 firmative election—

8 “(I) to not have such contribu-
9 tions made, or

10 “(II) to make elective contribu-
11 tions at a level specified in such af-
12 firmative election.

13 “(iii) QUALIFIED PERCENTAGE.—For
14 purposes of this subparagraph, the term
15 ‘qualified percentage’ means, with respect
16 to any employee, any percentage deter-
17 mined under the arrangement if such per-
18 centage is applied uniformly and is not less
19 than 3 or more than 15 percent.

20 “(D) CONTRIBUTION LIMITATIONS.—

21 “(i) IN GENERAL.—The requirements
22 of this subparagraph are met if, under the
23 arrangement—

24 “(I) the only contributions which
25 may be made are elective contribu-

1 tions of employees described in sub-
2 paragraph (C), and

3 “(II) the aggregate amount of
4 such elective contributions which may
5 be made with respect to any employee
6 for any calendar year shall not exceed
7 \$6,000.

8 “(ii) COST-OF-LIVING ADJUSTMENT.—

9 In the case of any calendar year beginning
10 after December 31, 2023, the \$6,000
11 amount under clause (i) shall be adjusted
12 in the same manner as under section
13 402(g)(4), except that ‘2022’ shall be sub-
14 stituted for ‘2005’.

15 “(iii) CROSS REFERENCE.—For catch-
16 up contributions for individuals age 50 or
17 over, see section 414(v)(2)(B)(ii).

18 “(E) ELIGIBLE EMPLOYER.—For purposes
19 of this paragraph—

20 “(i) IN GENERAL.—The term ‘eligible
21 employer’ means any employer which, dur-
22 ing the first plan year of the cash or de-
23 ferred arrangement described in subpara-
24 graph (B), does not maintain any other
25 qualified plan. An employer treated as an

1 eligible employer under the preceding sen-
2 tence shall be treated as an eligible em-
3 ployer with respect to the arrangement for
4 any subsequent plan year without regard
5 to whether it maintains another qualified
6 plan.

7 “(ii) QUALIFIED PLAN.—The term
8 ‘qualified plan’ means a plan, contract,
9 pension, account, or trust described in sub-
10 paragraph (A) or (B) of paragraph (5) of
11 section 219(g) (determined without regard
12 to the last sentence of such paragraph
13 (5)).”.

14 (b) CERTAIN ANNUITY CONTRACTS.—Subsection (b)
15 of section 403 of the Internal Revenue Code of 1986 is
16 amended by adding at the end the following new para-
17 graph:

18 “(15) SAFE HARBOR DEFERRAL-ONLY PLANS
19 FOR EMPLOYERS WITH NO RETIREMENT PLAN.—

20 “(A) IN GENERAL.—A safe harbor defer-
21 ral-only plan maintained by an eligible employer
22 shall be treated as meeting the requirements of
23 paragraph (12).

24 “(B) SAFE HARBOR DEFERRAL-ONLY
25 PLAN.—For purposes of this paragraph, the

1 term ‘safe harbor deferral-only plan’ means any
2 plan which meets—

3 “(i) the automatic deferral require-
4 ments of subparagraph (C),

5 “(ii) the contribution limitations of
6 subparagraph (D), and

7 “(iii) the requirements of subpara-
8 graph (E) of section 401(k)(13).

9 “(C) AUTOMATIC DEFERRAL.—

10 “(i) IN GENERAL.—The requirements
11 of this subparagraph are met if, under the
12 plan, each eligible employee is treated as
13 having elected to have the employer make
14 elective contributions in an amount equal
15 to a qualified percentage of compensation.

16 “(ii) ELECTION OUT.—The election
17 treated as having been made under clause
18 (i) shall cease to apply with respect to any
19 eligible employee if such eligible employee
20 makes an affirmative election—

21 “(I) to not have such contribu-
22 tions made, or

23 “(II) to make elective contribu-
24 tions at a level specified in such af-
25 firmative election.

1 “(iii) QUALIFIED PERCENTAGE.—For
2 purposes of this subparagraph, the term
3 ‘qualified percentage’ means, with respect
4 to any employee, any percentage deter-
5 mined under the plan if such percentage is
6 applied uniformly and is not less than 3 or
7 more than 15 percent.

8 “(D) CONTRIBUTION LIMITATIONS.—

9 “(i) IN GENERAL.—The requirements
10 of this subparagraph are met if, under the
11 plan—

12 “(I) the only contributions which
13 may be made are elective contribu-
14 tions of eligible employees, and

15 “(II) the aggregate amount of
16 such elective contributions which may
17 be made with respect to any employee
18 for any calendar year shall not exceed
19 \$6,000.

20 “(ii) COST-OF-LIVING ADJUSTMENT.—

21 In the case of any calendar year beginning
22 after December 31, 2023, the \$6,000
23 amount under clause (i) shall be adjusted
24 in the same manner as under section

1 402(g)(4), except that ‘2022’ shall be sub-
2 stituted for ‘2005’.

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

6 “(E) ELIGIBLE EMPLOYER.—For purposes
7 of this paragraph—

8 “(i) IN GENERAL.—The term ‘eligible
9 employer’ means any employer which, dur-
10 ing the first plan year of the plan de-
11 scribed in subparagraph (B), does not
12 maintain any other qualified plan. An em-
13 ployer treated as an eligible employer
14 under the preceding sentence shall be
15 treated as an eligible employer with respect
16 to the plan for any subsequent plan year
17 without regard to whether it maintains an-
18 other qualified plan.

19 “(ii) QUALIFIED PLAN.—The term
20 ‘qualified plan’ means a plan, contract,
21 pension, account, or trust described in sub-
22 paragraph (A) or (B) of paragraph (5) of
23 section 219(g) (determined without regard
24 to the last sentence of such paragraph
25 (5)).

1 “(F) ELIGIBLE EMPLOYEE.—For purposes
2 of this paragraph, the term ‘eligible employee’
3 means any employee of the employer other than
4 an employee who is permitted to be excluded
5 under paragraph (12)(A).”.

6 (c) CATCH-UP CONTRIBUTIONS FOR INDIVIDUALS
7 AGE 50 AND OVER.—

8 (1) Section 414(v)(2)(B) of the Internal Rev-
9 enue Code of 1986 is amended by inserting “,
10 401(k)(16), 403(b)(15),” after “401(k)(11)” each
11 place it appears.

12 (2) Section 414(v)(3)(B) of such Code is
13 amended—

14 (A) by inserting “, 401(k)(16)” after
15 “401(k)(11)”, and

16 (B) by inserting “, 403(b)(15)” after
17 “403(b)(12)”.

18 (d) SIMPLIFIED REPORTING.—Section 104(a)(2)(A)
19 of the Employee Retirement Income Security Act of 1974
20 (29 U.S.C. 1024(a)(2)) is amended by striking “or” at
21 the end of clause (i), by redesignating clause (ii) as clause
22 (iii), and by inserting after clause (i) the following new
23 clause:

24 “(ii) is a starter 401(k) deferral-only
25 arrangement described in section

1 401(k)(16)(B) of the Internal Revenue
2 Code of 1986 or a safe harbor deferral-
3 only plan described in section 403(b)(15)
4 of such Code; or”.

5 (e) STARTER AND SAFE HARBOR PLANS NOT
6 TREATED AS TOP-HEAVY PLANS.—Subparagraph (H) of
7 section 416(g)(4) of the Internal Revenue Code of 1986
8 is amended—

9 (1) by striking “ARRANGEMENTS” in the head-
10 ing and inserting “ARRANGEMENTS OR PLANS”,

11 (2) by striking “, and” at the end of clause (i)
12 and inserting “and matching contributions with re-
13 spect to which the requirements of section
14 401(m)(11) or 401(m)(12) are met, or”, and

15 (3) by striking clause (ii) and inserting after
16 clause (i) the following new clause:

17 “(ii) a starter 401(k) deferral-only ar-
18 rangement described in section
19 401(k)(16)(B) or a safe harbor deferral-
20 only plan described in section
21 403(b)(15).”.

22 (f) PLANS NOT SUBJECT TO EMPLOYEE RETIRE-
23 MENT INCOME SECURITY ACT OF 1974.—Applicable to
24 plan years beginning after December 31, 2022, the Sec-
25 retary of Labor shall update Field Assistance Bulletin No.

1 2010–01 to specify that the hiring of a new plan adminis-
2 trator or third-party administrator by a plan which is not
3 previously subject to title I of the Employee Retirement
4 Income Security Act of 1974 shall not cause such plan
5 to be subject to such title.

6 (g) EFFECTIVE DATE.—The amendments made by
7 this section shall apply to plan years beginning after De-
8 cember 31, 2022.

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