

114TH CONGRESS
1ST SESSION

S. 266

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

JANUARY 27, 2015

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 2015”.

6 **SEC. 2. ELIMINATION OF DISINCENTIVE TO POOLING FOR**
7 **MULTIPLE EMPLOYER PLANS.**

8 (a) IN GENERAL.—Not later than one year after the
9 date of the enactment of this Act, the Secretary of the

1 Treasury shall prescribe final regulations under which a
2 plan described in section 413(c) of the Internal Revenue
3 Code of 1986 may be treated as satisfying the qualifica-
4 tion requirements of section 401(a) of such Code despite
5 the violation of such requirements with respect to one or
6 more participating employers. Such rules may require that
7 the portion of the plan attributable to such participating
8 employers be spun off to plans maintained by such em-
9 ployers.

10 **SEC. 3. MODIFICATION OF ERISA RULES RELATING TO**
11 **MULTIPLE EMPLOYER DEFINED CONTRIBU-**
12 **TION PLANS.**

13 (a) IN GENERAL.—

14 (1) REQUIREMENT OF COMMON INTEREST.—

15 Section 3(2) of the Employee Retirement Income Se-
16 curity Act of 1974 is amended by adding at the end
17 the following:

18 “(C)(i) A qualified multiple employer plan shall
19 not fail to be treated as an employee pension benefit
20 plan or pension plan solely because the employers
21 sponsoring the plan share no common interest.

22 “(ii) For purposes of this subparagraph, the
23 term ‘qualified multiple employer plan’ means a plan
24 described in section 413(c) of the Internal Revenue
25 Code of 1986 which—

1 “(I) is an individual account plan with re-
2 spect to which the requirements of clauses (iii),
3 (iv), and (v) are met, and

4 “(II) includes in its annual report required
5 to be filed under section 104(a) the name and
6 identifying information of each participating
7 employer.

8 “(iii) The requirements of this clause are met
9 if, under the plan, each participating employer re-
10 tains fiduciary responsibility for—

11 “(I) the selection and monitoring of the
12 named fiduciary, and

13 “(II) the investment and management of
14 the portion of the plan’s assets attributable to
15 employees of the employer to the extent not
16 otherwise delegated to another fiduciary.

17 “(iv) The requirements of this clause are met if,
18 under the plan, a participating employer is not sub-
19 ject to unreasonable restrictions, fees, or penalties
20 by reason of ceasing participation in, or otherwise
21 transferring assets from, the plan.

22 “(v) The requirements of this clause are met if
23 each participating employer in the plan is an eligible
24 employer as defined in section 408(p)(2)(C)(i) of the
25 Internal Revenue Code of 1986, applied—

1 “(I) by substituting ‘500’ for ‘100’ in sub-
2 clause (I) thereof,

3 “(II) by substituting ‘5’ for ‘2’ each place
4 it appears in subclause (II) thereof, and

5 “(III) without regard to the last sentence
6 of subclause (II) thereof.”.

7 (2) SIMPLIFIED REPORTING FOR SMALL MUL-
8 TIPLE EMPLOYER PLANS.—Section 104(a) of such
9 Act (29 U.S.C. 1024(a)) is amended by adding at
10 the end the following:

11 “(7)(A) In the case of any eligible small multiple em-
12 ployer plan, the Secretary may by regulation—

13 “(i) prescribe simplified summary plan descrip-
14 tions, annual reports, and pension benefit state-
15 ments for purposes of section 102, 103, or 105, re-
16 spectively, and

17 “(ii) waive the requirement under section
18 103(a)(3) to engage an independent qualified public
19 accountant in cases where the Secretary determines
20 it appropriate.

21 “(B) For purposes of this paragraph, the term ‘eligi-
22 ble small multiple employer plan’ means, with respect to
23 any plan year—

24 “(i) a qualified multiple employer plan, as de-
25 fined in section 3(2)(C)(ii), or

1 “(ii) any other plan described in section 413(c)
2 of the Internal Revenue Code of 1986 that satisfies
3 the requirements of clause (v) of section 3(2)(C).”.

4 (b) EFFECTIVE DATE.—The amendments made by
5 this section shall apply to years beginning after December
6 31, 2015.

7 **SEC. 4. SECURE DEFERRAL ARRANGEMENTS.**

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

11 “(14) ALTERNATIVE METHOD FOR SECURE DE-
12 FERRAL ARRANGEMENTS TO MEET NONDISCRIMINA-
13 TION REQUIREMENTS.—

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

17 “(B) SECURE DEFERRAL ARRANGE-
18 MENT.—For purposes of this paragraph, the
19 term ‘secure deferral arrangement’ means any
20 cash or deferred arrangement which meets the
21 requirements of subparagraphs (C), (D), and
22 (E) of paragraph (13), except as modified by
23 this paragraph.

24 “(C) QUALIFIED PERCENTAGE.—For pur-
25 poses of this paragraph, with respect to any

1 employee, the term ‘qualified percentage’
2 means, in lieu of the meaning given such term
3 in paragraph (13)(C)(iii), any percentage deter-
4 mined under the arrangement if such percent-
5 age is applied uniformly and is—

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

13 “(ii) at least 8 percent during the
14 first plan year following the plan year de-
15 scribed in clause (i), and

16 “(iii) at least 10 percent during any
17 subsequent plan year.

18 “(D) MATCHING CONTRIBUTIONS.—

19 “(i) IN GENERAL.—For purposes of
20 this paragraph, an arrangement shall be
21 treated as having met the requirements of
22 paragraph (13)(D)(i) if and only if the em-
23 ployer makes matching contributions on
24 behalf of each employee who is not a highly

1 compensated employee in an amount equal
2 to the sum of—

3 “(I) 100 percent of the elective
4 contributions of the employee to the
5 extent that such contributions do not
6 exceed 1 percent of compensation,

7 “(II) 50 percent of so much of
8 such contributions as exceed 1 percent
9 but do not exceed 6 percent of com-
10 pensation, plus

11 “(III) 25 percent of so much of
12 such contributions as exceed 6 percent
13 but do not exceed 10 percent of com-
14 pensation.

15 “(ii) APPLICATION OF RULES FOR
16 MATCHING CONTRIBUTIONS.—The rules of
17 clause (ii) of paragraph (12)(B) and
18 clauses (iii) and (iv) of paragraph (13)(D)
19 shall apply for purposes of clause (i) but
20 the rule of clause (iii) of paragraph
21 (12)(B) shall not apply for such purposes.
22 The rate of matching contribution for each
23 incremental deferral must be at least as
24 high as the rate specified in clause (i), and
25 may be higher, so long as such rate does

1 not increase as an employee's rate of elec-
2 tive contributions increases.”.

3 (b) MATCHING CONTRIBUTIONS AND EMPLOYEE
4 CONTRIBUTIONS.—Subsection (m) of section 401 of the
5 Internal Revenue Code of 1986 is amended by redesignig-
6 nating paragraph (13) as paragraph (14) and by inserting
7 after paragraph (12) the following new paragraph:

8 “(13) ALTERNATIVE METHOD FOR SECURE DE-
9 FERRAL ARRANGEMENTS.—A defined contribution
10 plan shall be treated as meeting the requirements of
11 paragraph (2) with respect to matching contribu-
12 tions and employee contributions if the plan—

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

15 “(B) meets the requirements of clauses (ii)
16 and (iii) of paragraph (11)(B), and

17 “(C) provides that matching contributions
18 on behalf of any employee may not be made
19 with respect to an employee's contributions or
20 elective deferrals in excess of 10 percent of the
21 employee's compensation.”.

22 (c) EFFECTIVE DATE.—The amendments made by
23 this section shall apply to plan years beginning after De-
24 cember 31, 2015.

1 **SEC. 5. CREDIT FOR EMPLOYERS WITH RESPECT TO MODI-**
2 **FIED SAFE HARBOR REQUIREMENTS.**

3 (a) IN GENERAL.—Subpart D of part IV of sub-
4 chapter A of chapter 1 of the Internal Revenue Code of
5 1986 is amended by adding at the end the following new
6 section:

7 **“SEC. 45S. CREDIT FOR SMALL EMPLOYERS WITH RESPECT**
8 **TO MODIFIED SAFE HARBOR REQUIREMENTS**
9 **FOR AUTOMATIC CONTRIBUTION ARRANGE-**
10 **MENTS.**

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

19 “(b) LIMITATIONS.—

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

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

8 “(c) DEFINITIONS.—

9 “(1) IN GENERAL.—Any term used in this sec-
 10 tion which is also used in section 401(k)(14) shall
 11 have the same meaning as when used in such sec-
 12 tion.

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

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

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—

22 (1) by striking “plus” at the end of paragraph
 23 (35),

24 (2) by striking the period at the end of para-
 25 graph (36) and inserting “, plus”, and

1 (3) by adding at the end the following new
2 paragraph:

3 “(37) the safe harbor adoption credit deter-
4 mined under section 45S.”.

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

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

10 (d) EFFECTIVE DATE.—The amendments made by
11 this section shall apply to taxable years that include any
12 portion of a plan year beginning after December 31, 2015.

13 **SEC. 6. MODIFICATION OF REGULATIONS.**

14 The Secretary of the Treasury shall promulgate regu-
15 lations or other guidance that—

16 (1) simplify and clarify the rules regarding the
17 timing of participant notices required under section
18 401(k)(13)(E) of the Internal Revenue Code of
19 1986, with specific application to—

20 (A) plans that allow employees to be eligi-
21 ble for participation immediately upon begin-
22 ning employment, and

23 (B) employers with multiple payroll and
24 administrative systems, and

1 (2) simplify and clarify the automatic escalation
2 rules under sections 401(k)(13)(C)(iii) and
3 401(k)(14)(C) of the Internal Revenue Code of 1986
4 in the context of employers with multiple payroll and
5 administrative systems.

6 Such regulations or guidance shall address the particular
7 case of employees within the same plan who are subject
8 to different notice timing and different percentage require-
9 ments, and provide assistance for plan sponsors in man-
10 aging such cases.

11 **SEC. 7. OPPORTUNITY TO CLAIM THE SAVER'S CREDIT ON**
12 **FORM 1040EZ.**

13 The Secretary of the Treasury shall modify the forms
14 for the return of tax of individuals in order to allow indi-
15 viduals claiming the credit under section 25B of the Inter-
16 nal Revenue Code of 1986 to file (and claim such credit
17 on) Form 1040EZ.

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