

113TH CONGRESS
2D SESSION

H. R. 4376

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

IN THE HOUSE OF REPRESENTATIVES

APRIL 2, 2014

Mr. BRALEY of Iowa 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 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 2014”.

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

3 (a) IN GENERAL.—Not later than one year after the
4 date of the enactment of this Act, the Secretary of the
5 Treasury shall prescribe final regulations under which a
6 plan described in section 413(c) of the Internal Revenue
7 Code of 1986 may be treated as satisfying the qualifica-
8 tion requirements of section 401(a) of such Code despite
9 the violation of such requirements with respect to one or
10 more participating employers. Such rules may require that
11 the portion of the plan attributable to such participating
12 employers be spun off to plans maintained by such em-
13 ployers.

14 **SEC. 3. MODIFICATION OF ERISA RULES RELATING TO**
15 **MULTIPLE EMPLOYER DEFINED CONTRIBU-**
16 **TION PLANS.**

17 (a) IN GENERAL.—

18 (1) REQUIREMENT OF COMMON INTEREST.—
19 Section 3(2) of the Employee Retirement Income Se-
20 curity Act of 1974 is amended by adding at the end
21 the following:

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

1 “(ii) For purposes of this subparagraph, the
2 term ‘qualified multiple employer plan’ means a plan
3 described in section 413(c) of the Internal Revenue
4 Code of 1986 which—

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

8 “(II) includes in its annual report required
9 to be filed under section 104(a) the name and
10 identifying information of each participating
11 employer.

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

15 “(I) the selection and monitoring of the
16 named fiduciary, and

17 “(II) the investment and management of
18 the portion of the plan’s assets attributable to
19 employees of the employer to the extent not
20 otherwise delegated to another fiduciary.

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

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

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

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

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

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

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

17 “(i) prescribe simplified summary plan descrip-
 18 tions, annual reports, and pension benefit state-
 19 ments for purposes of section 102, 103, or 105, re-
 20 spectively, and

21 “(ii) waive the requirement under section
 22 103(a)(3) to engage an independent qualified public
 23 accountant in cases where the Secretary determines
 24 it appropriate.

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

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

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

9 (b) EFFECTIVE DATE.—The amendments made by
 10 this section shall apply to years beginning after December
 11 31, 2014.

12 **SEC. 4. 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
 25 cash or deferred arrangement which meets the

1 requirements of subparagraphs (C), (D), and
2 (E) of paragraph (13), except as modified by
3 this paragraph.

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

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

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

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

23 “(D) MATCHING CONTRIBUTIONS.—

24 “(i) IN GENERAL.—For purposes of
25 this paragraph, an arrangement shall be

1 treated as having met the requirements of
2 paragraph (13)(D)(i) if and only if the em-
3 ployer makes matching contributions on
4 behalf of each employee who is not a highly
5 compensated employee in an amount equal
6 to the sum of—

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

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

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

19 “(ii) APPLICATION OF RULES FOR
20 MATCHING CONTRIBUTIONS.—The rules of
21 clause (ii) of paragraph (12)(B) and
22 clauses (iii) and (iv) of paragraph (13)(D)
23 shall apply for purposes of clause (i) but
24 the rule of clause (iii) of paragraph
25 (12)(B) shall not apply for such purposes.

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

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

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

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

19 “(B) meets the requirements of clauses (ii)
 20 and (iii) of paragraph (11)(B), and

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

1 (c) EFFECTIVE DATE.—The amendments made by
 2 this section shall apply to plan years beginning after De-
 3 cember 31, 2014.

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

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

10 **“SEC. 45S. CREDIT FOR SMALL EMPLOYERS WITH RESPECT**
 11 **TO MODIFIED SAFE HARBOR REQUIREMENTS**
 12 **FOR AUTOMATIC CONTRIBUTION ARRANGE-**
 13 **MENTS.**

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

22 “(b) LIMITATIONS.—

23 “(1) LIMITATION WITH RESPECT TO COM-
 24 PENSATION.—The credit determined under sub-
 25 section (a) with respect to contributions made on be-

1 half of an employee who is not a highly compensated
2 employee shall not exceed 2 percent of the com-
3 pensation of such employee for the taxable year.

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

11 “(c) DEFINITIONS.—

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

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

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

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—

1 (1) by striking “plus” at the end of paragraph
2 (35),

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

5 (3) by adding at the end the following new
6 paragraph:

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

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

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

14 (d) EFFECTIVE DATE.—The amendments made by
15 this section shall apply to taxable years that include any
16 portion of a plan year beginning after December 31, 2014.

17 **SEC. 6. MODIFICATION OF REGULATIONS.**

18 The Secretary of the Treasury shall promulgate regu-
19 lations or other guidance that—

20 (1) simplify and clarify the rules regarding the
21 timing of participant notices required under section
22 401(k)(13)(E) of the Internal Revenue Code of
23 1986, with specific application to—

1 (A) plans that allow employees to be eligi-
 2 ble for participation immediately upon begin-
 3 ning employment, and

4 (B) employers with multiple payroll and
 5 administrative systems, and

6 (2) simplify and clarify the automatic escalation
 7 rules under sections 401(k)(13)(C)(iii) and
 8 401(k)(14)(C) of the Internal Revenue Code of 1986
 9 in the context of employers with multiple payroll and
 10 administrative systems.

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

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

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

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