

117TH CONGRESS
1ST SESSION

S. 2602

To provide for an additional nondiscrimination safe harbor for automatic contribution arrangements.

IN THE SENATE OF THE UNITED STATES

AUGUST 4, 2021

Mr. YOUNG (for himself and Mr. BOOKER) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To provide for an additional nondiscrimination safe harbor for automatic contribution arrangements.

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 Flexibility Act of 2021”.

1 **SEC. 2. ADDITIONAL NONDISCRIMINATION SAFE HARBOR**
 2 **FOR AUTOMATIC CONTRIBUTION ARRANGE-**
 3 **MENTS.**

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

7 “(16) SPECIAL NONELECTIVE AND MATCHING
 8 CONTRIBUTION RULES FOR SMALL EMPLOYERS.—

9 “(A) IN GENERAL.—In the case of a cash
 10 or deferred arrangement maintained by an eligi-
 11 ble employer (as defined in section
 12 408(p)(2)(C)(i)), for purposes of paragraph
 13 (13), the arrangement shall be treated as meet-
 14 ing the requirements of subparagraph (D)
 15 thereof if under the arrangement, the total elec-
 16 tive deferrals (as defined in section
 17 402(g)(3)(A)) with respect to any employee do
 18 not exceed an amount equal to the applicable
 19 percentage of the limitation otherwise applicable
 20 under section 402(g).

21 “(B) APPLICABLE PERCENTAGE.—For
 22 purposes of subparagraph (A), the applicable
 23 percentage with respect to an arrangement is—

24 “(i) 40 percent in the case of an ar-
 25 rangement which does not meet the re-

quirements of paragraph (13)(D) and is
not described in clause (ii) or (iii),

“(ii) 60 percent in the case of an ar-
rangement which is not described in clause
(iii) and which would meet the require-
ments of paragraph (13)(D) if—

“(I) ‘equal to at least’ were sub-
stituted for ‘equal to’ in clause (i)(I)
thereof,

“(II) ‘2 percent of compensation,
and such matching contributions meet
the requirement of subsection
(m)(11)(B)’ were substituted for ‘6
percent of compensation’ in clause
(i)(I) thereof, and

“(III) ‘1 percent’ were sub-
stituted for ‘3 percent’ in clause
(i)(II) thereof, and

“(iii) 80 percent in the case of an ar-
rangement which would meet the require-
ments of paragraph (13)(D) if—

“(I) ‘equal to at least’ were sub-
stituted for ‘equal to’ in clause (i)(I)
thereof,

1 “(II) ‘4 percent of compensation,
 2 and such matching contributions meet
 3 the requirement of subsection
 4 (m)(11)(B)’ were substituted for ‘6
 5 percent of compensation’ in clause
 6 (i)(I) thereof, and

7 “(III) ‘2 percent’ were sub-
 8 stituted for ‘3 percent’ in clause
 9 (i)(II) thereof.

10 “(C) REPORTING.—This paragraph shall
 11 apply to an arrangement only if the plan in-
 12 cludes with the reports required under sections
 13 6057 and 6058—

14 “(i) the number of employees eligible
 15 to participate in the arrangement, and

16 “(ii) the number of participants for
 17 the plan year.”.

18 (b) MODIFICATION OF EXISTING AUTOMATIC CON-
 19 TRIBUTION SAFE HARBOR.—

20 (1) QUALIFIED PERCENTAGE.—

21 (A) IN GENERAL.—Clause (iii) of section
 22 401(k)(13)(C) of the Internal Revenue Code of
 23 1986 is amended by striking “(10 percent dur-
 24 ing the period described in subclause (I))”.

25 (B) CONFORMING AMENDMENTS.—

(i) Subclause (I) of section 401(k)(13)(C)(iii) of the Internal Revenue Code of 1986 is amended—

(I) by striking “3 percent” and inserting “3 percent, but not greater than 10 percent,”, and

(II) by adding “and” at the end.

(ii) Subclause (II) of section 401(k)(13)(C)(iii) of such Code is amended to read as follows:

“(II) during any subsequent plan year, the lesser of 1 percentage point higher than the percentage in effect for the preceding plan year or 8 percent.”.

(iii) Section 401(k)(13)(C)(iii) of such Code is amended by striking subclauses (III) and (IV).

(2) AUTOMATIC RE-ELECTION.—Subparagraph (C) of section 401(k)(13) of such Code is amended by striking clause (iv) and by adding at the end the following new clause:

“(iv) AUTOMATIC RE-ELECTION REQUIRED.—The requirements of this subparagraph shall be treated as met only if,

under the arrangement, every 3 years each employee—

“(I) who is eligible to participate in the arrangement, and

“(II) who is not participating, or is contributing less than 3 percent of compensation, at the time of determination,

is treated as having made the election described in clause (i) unless the employee makes a new election under clause (ii).”.

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to plan years beginning after December 31, 2021.

(2) IMMEDIATE AUTOMATIC DEFERRAL FOR CURRENT EMPLOYEES NOT REQUIRED.—In the case of an employer who adopts a qualified automatic contribution arrangement (as defined in section 401(k)(13)(B) of the Internal Revenue Code of 1986) after December 31, 2021, solely for the first and second plan years for which the arrangement is in effect, clauses (i) and (iv) of section 401(k)(13)(C) of the Internal Revenue Code of 1986

1 (as amended by this section) may be applied without
2 taking into account any employee who—

3 (A) is eligible to participate in the arrange-
4 ment (or a predecessor arrangement) imme-
5 diately before the date the arrangement goes
6 into effect, and

7 (B) has an election in effect on such date
8 either to participate in the arrangement or to
9 not participate in the arrangement.

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