

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 dislo-  
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 INVESTIGATIONS.—The Secretary may perform audits, examinations, and investigations of pooled  
2 plan providers as may be necessary to enforce  
3 and carry out the purposes of this paragraph  
4 and paragraph (43).  
5

6           “(C) GUIDANCE.—

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

13           “(I) to identify the administrative  
14 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 appropriate  
19 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-



1           ferred to a plan maintained only  
2           by the participating employer (or  
3           its successor), to an eligible re-  
4           irement plan as defined in sec-  
5           tion 402(c)(8)(B) of the Internal  
6           Revenue Code of 1986 for each  
7           individual whose account is  
8           transferred, or to any other ar-  
9           rangement that the Secretary de-  
10          termines is appropriate in such  
11          guidance; and

12                   “(bb) the participating em-  
13                   ployer described in item (aa)  
14                   (and not the plan with respect to  
15                   which the failure occurred or any  
16                   other participating employer in  
17                   such plan) shall, except to the ex-  
18                   tent provided in such guidance,  
19                   be liable for any liabilities with  
20                   respect to such plan attributable  
21                   to employees of the participating  
22                   employer.

23           The Secretary shall take into account  
24           under subclause (II) whether the failure of  
25           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 “apppli-  
23 cable subsections (d), (e), and (f)” and inserting  
24 “applicable subsections (d), (e), (f), and (g)”;

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-

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

3 “(iii) 4-PERCENT CONTRIBUTION RE-  
 4 QUIREMENT.—Clause (i)(II) shall not  
 5 apply to an arrangement unless the  
 6 amount of the contributions described in  
 7 subparagraph (D)(i)(II) which the em-  
 8 ployer is required to make under the ar-  
 9 rangement for the plan year with respect  
 10 to any employee is an amount equal to at  
 11 least 4 percent of the employee’s com-  
 12 pensation.”.

13 (d) EFFECTIVE DATE.—The amendments made by  
 14 this section shall apply to plan years beginning after De-  
 15 cember 31, 2017.

16 **SEC. 6. INCREASE IN CREDIT LIMITATION FOR SMALL EM-**  
 17 **PLOYER PENSION PLAN STARTUP COSTS.**

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

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

24 “(A) \$500, or

25 “(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 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 redesignig-  
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.

○