

114TH CONGRESS
1ST SESSION

S. 2308

AN ACT

To amend the Internal Revenue Code of 1986 to clarify the treatment of church pension 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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Church Plan Clarifica-
3 tion Act of 2015”.

4 **SEC. 2. CHURCH PLAN CLARIFICATION.**

5 (a) APPLICATION OF CONTROLLED GROUP RULES TO
6 CHURCH PLANS.—

7 (1) IN GENERAL.—Section 414(c) of the Inter-
8 nal Revenue Code of 1986 is amended—

9 (A) by striking “For purposes” and insert-
10 ing the following:

11 “(1) IN GENERAL.—Except as provided in para-
12 graph (2), for purposes”, and

13 (B) by adding at the end the following new
14 paragraph:

15 “(2) SPECIAL RULES RELATING TO CHURCH
16 PLANS.—

17 “(A) GENERAL RULE.—Except as provided
18 in subparagraphs (B) and (C), for purposes of
19 this subsection and subsection (m), an organi-
20 zation that is otherwise eligible to participate in
21 a church plan shall not be aggregated with an-
22 other such organization and treated as a single
23 employer with such other organization for a
24 plan year beginning in a taxable year unless—

25 “(i) one such organization provides
26 (directly or indirectly) at least 80 percent

1 of the operating funds for the other orga-
2 nization during the preceding tax year of
3 the recipient organization, and

4 “(ii) there is a degree of common
5 management or supervision between the or-
6 ganizations such that the organization pro-
7 viding the operating funds is directly in-
8 volved in the day-to-day operations of the
9 other organization.

10 “(B) NONQUALIFIED CHURCH-CON-
11 TROLLED ORGANIZATIONS.—Notwithstanding
12 subparagraph (A), for purposes of this sub-
13 section and subsection (m), an organization
14 that is a nonqualified church-controlled organi-
15 zation shall be aggregated with 1 or more other
16 nonqualified church-controlled organizations, or
17 with an organization that is not exempt from
18 tax under section 501, and treated as a single
19 employer with such other organization, if at
20 least 80 percent of the directors or trustees of
21 such other organization are either representa-
22 tives of, or directly or indirectly controlled by,
23 such nonqualified church-controlled organiza-
24 tion. For purposes of this subparagraph, the
25 term ‘nonqualified church-controlled organiza-

1 tion' means a church-controlled tax-exempt or-
2 ganization described in section 501(c)(3) that is
3 not a qualified church-controlled organization
4 (as defined in section 3121(w)(3)(B)).

5 “(C) PERMISSIVE AGGREGATION AMONG
6 CHURCH-RELATED ORGANIZATIONS.—The
7 church or convention or association of churches
8 with which an organization described in sub-
9 paragraph (A) is associated (within the mean-
10 ing of subsection (e)(3)(D)), or an organization
11 designated by such church or convention or as-
12 sociation of churches, may elect to treat such
13 organizations as a single employer for a plan
14 year. Such election, once made, shall apply to
15 all succeeding plan years unless revoked with
16 notice provided to the Secretary in such manner
17 as the Secretary shall prescribe.

18 “(D) PERMISSIVE DISAGGREGATION OF
19 CHURCH-RELATED ORGANIZATIONS.—For pur-
20 poses of subparagraph (A), in the case of a
21 church plan, an employer may elect to treat
22 churches (as defined in section 403(b)(12)(B))
23 separately from entities that are not churches
24 (as so defined), without regard to whether such
25 entities maintain separate church plans. Such

1 election, once made, shall apply to all suc-
2 ceeding plan years unless revoked with notice
3 provided to the Secretary in such manner as the
4 Secretary shall prescribe.”.

5 (2) CLARIFICATION RELATING TO APPLICATION
6 OF ANTI-ABUSE RULE.—The rule of 26 CFR
7 1.414(c)–5(f) shall continue to apply to each para-
8 graph of section 414(c) of the Internal Revenue
9 Code of 1986, as amended by paragraph (1).

10 (3) EFFECTIVE DATE.—The amendments made
11 by paragraph (1) shall apply to years beginning be-
12 fore, on, or after the date of the enactment of this
13 Act.

14 (b) APPLICATION OF CONTRIBUTION AND FUNDING
15 LIMITATIONS TO 403(b) GRANDFATHERED DEFINED
16 BENEFIT PLANS.—

17 (1) IN GENERAL.—Section 251(e)(5) of the Tax
18 Equity and Fiscal Responsibility Act of 1982 (Public
19 Law 97–248), is amended—

20 (A) by striking “403(b)(2)” and inserting
21 “403(b)”, and

22 (B) by inserting before the period at the
23 end the following: “, and shall be subject to the
24 applicable limitations of section 415(b) of such
25 Code as if it were a defined benefit plan under

1 section 401(a) of such Code (and not to the
2 limitations of section 415(c) of such Code).”.

3 (2) EFFECTIVE DATE.—The amendments made
4 by this subsection shall apply to years beginning be-
5 fore, on, or after the date of the enactment of this
6 Act.

7 (c) AUTOMATIC ENROLLMENT BY CHURCH PLANS.—

8 (1) IN GENERAL.—This subsection shall super-
9 sede any law of a State that relates to wage, salary,
10 or payroll payment, collection, deduction, garnish-
11 ment, assignment, or withholding which would di-
12 rectly or indirectly prohibit or restrict the inclusion
13 in any church plan (as defined in section 414(e) of
14 the Internal Revenue Code of 1986) of an automatic
15 contribution arrangement.

16 (2) DEFINITION OF AUTOMATIC CONTRIBUTION
17 ARRANGEMENT.—For purposes of this subsection,
18 the term “automatic contribution arrangement”
19 means an arrangement—

20 (A) under which a participant may elect to
21 have the plan sponsor or the employer make
22 payments as contributions under the plan on
23 behalf of the participant, or to the participant
24 directly in cash,

1 (B) under which a participant is treated as
2 having elected to have the plan sponsor or the
3 employer make such contributions in an amount
4 equal to a uniform percentage of compensation
5 provided under the plan until the participant
6 specifically elects not to have such contributions
7 made (or specifically elects to have such con-
8 tributions made at a different percentage), and

9 (C) under which the notice and election re-
10 quirements of paragraph (3), and the invest-
11 ment requirements of paragraph (4), are satis-
12 fied.

13 (3) NOTICE REQUIREMENTS.—

14 (A) IN GENERAL.—The plan sponsor of, or
15 plan administrator or employer maintaining, an
16 automatic contribution arrangement shall, with-
17 in a reasonable period before the first day of
18 each plan year, provide to each participant to
19 whom the arrangement applies for such plan
20 year notice of the participant's rights and obli-
21 gations under the arrangement which—

22 (i) is sufficiently accurate and com-
23 prehensive to apprise the participant of
24 such rights and obligations, and

1 (ii) is written in a manner calculated
2 to be understood by the average partici-
3 pant to whom the arrangement applies.

4 (B) ELECTION REQUIREMENTS.—A notice
5 shall not be treated as meeting the require-
6 ments of subparagraph (A) with respect to a
7 participant unless—

8 (i) the notice includes an explanation
9 of the participant’s right under the ar-
10 rangement not to have elective contribu-
11 tions made on the participant’s behalf (or
12 to elect to have such contributions made at
13 a different percentage),

14 (ii) the participant has a reasonable
15 period of time, after receipt of the expla-
16 nation described in clause (i) and before
17 the first elective contribution is made, to
18 make such election, and

19 (iii) the notice explains how contribu-
20 tions made under the arrangement will be
21 invested in the absence of any investment
22 election by the participant.

23 (4) DEFAULT INVESTMENT.—If no affirmative
24 investment election has been made with respect to
25 any automatic contribution arrangement, contribu-

1 tions to such arrangement shall be invested in a de-
2 fault investment selected with the care, skill, pru-
3 dence, and diligence that a prudent person selecting
4 an investment option would use.

5 (5) EFFECTIVE DATE.—This subsection shall
6 take effect on the date of the enactment of this Act.

7 (d) ALLOW CERTAIN PLAN TRANSFERS AND MERG-
8 ERS.—

9 (1) IN GENERAL.—Section 414 of the Internal
10 Revenue Code of 1986 is amended by adding at the
11 end the following new subsection:

12 “(z) CERTAIN PLAN TRANSFERS AND MERGERS.—

13 “(1) IN GENERAL.—Under rules prescribed by
14 the Secretary, except as provided in paragraph (2),
15 no amount shall be includible in gross income by
16 reason of—

17 “(A) a transfer of all or a portion of the
18 accrued benefit of a participant or beneficiary,
19 whether or not vested, from a church plan that
20 is a plan described in section 401(a) or an an-
21 nuity contract described in section 403(b) to an
22 annuity contract described in section 403(b), if
23 such plan and annuity contract are both main-
24 tained by the same church or convention or as-
25 sociation of churches,

1 “(B) a transfer of all or a portion of the
2 accrued benefit of a participant or beneficiary
3 from an annuity contract described in section
4 403(b) to a church plan that is a plan described
5 in section 401(a) or an annuity contract de-
6 scribed in section 403(b), if such plan and an-
7 nuity contract are both maintained by the same
8 church or convention or association of churches,
9 or

10 “(C) a merger of a church plan that is a
11 plan described in section 401(a), or an annuity
12 contract described in section 403(b) with an an-
13 nuity contract described in section 403(b), if
14 such plan and annuity contract are both main-
15 tained by the same church or convention or as-
16 sociation of churches.

17 “(2) LIMITATION.—Paragraph (1) shall not
18 apply to a transfer or merger unless the partici-
19 pant’s or beneficiary’s total accrued benefit imme-
20 diately after the transfer or merger is equal to or
21 greater than the participant’s or beneficiary’s total
22 accrued benefit immediately before the transfer or
23 merger, and such total accrued benefit is nonforfeit-
24 able after the transfer or merger.

1 “(3) QUALIFICATION.—A plan or annuity con-
2 tract shall not fail to be considered to be described
3 in sections 401(a) or 403(b) merely because such
4 plan or annuity contract engages in a transfer or
5 merger described in this subsection.

6 “(4) DEFINITIONS.—For purposes of this sub-
7 section:

8 “(A) CHURCH OR CONVENTION OR ASSO-
9 CIATION OF CHURCHES.—The term ‘church or
10 convention or association of churches’ includes
11 an organization described in subparagraph (A)
12 or (B)(ii) of subsection (e)(3).

13 “(B) ANNUITY CONTRACT.—The term ‘an-
14 nuity contract’ includes a custodial account de-
15 scribed in section 403(b)(7) and a retirement
16 income account described in section 403(b)(9).

17 “(C) ACCRUED BENEFIT.—The term ‘ac-
18 crued benefit’ means—

19 “(i) in the case of a defined benefit
20 plan, the employee’s accrued benefit deter-
21 mined under the plan, and

22 “(ii) in the case of a plan other than
23 a defined benefit plan, the balance of the
24 employee’s account under the plan.”.

1 (2) EFFECTIVE DATE.—The amendment made
2 by this subsection shall apply to transfers or merg-
3 ers occurring after the date of the enactment of this
4 Act.

5 (e) INVESTMENTS BY CHURCH PLANS IN COLLEC-
6 TIVE TRUSTS.—

7 (1) IN GENERAL.—In the case of—

8 (A) a church plan (as defined in section
9 414(e) of the Internal Revenue Code of 1986),
10 including a plan described in section 401(a) of
11 such Code and a retirement income account de-
12 scribed in section 403(b)(9) of such Code, and

13 (B) an organization described in section
14 414(e)(3)(A) of such Code the principal pur-
15 pose or function of which is the administration
16 of such a plan or account,

17 the assets of such plan, account, or organization (in-
18 cluding any assets otherwise permitted to be com-
19 mingled for investment purposes with the assets of
20 such a plan, account, or organization) may be in-
21 vested in a group trust otherwise described in Inter-
22 nal Revenue Service Revenue Ruling 81–100 (as
23 modified by Internal Revenue Service Revenue Rul-
24 ings 2004–67, 2011–1, and 2014–24), or any subse-
25 quent revenue ruling that supersedes or modifies

1 such revenue ruling, without adversely affecting the
2 tax status of the group trust, such plan, account, or
3 organization, or any other plan or trust that invests
4 in the group trust.

5 (2) EFFECTIVE DATE.—This subsection shall
6 apply to investments made after the date of the en-
7 actment of this Act.

Passed the Senate December 10, 2015.

Attest:

Secretary.

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