

116TH CONGRESS
2D SESSION

S. 5064

To amend the Internal Revenue Code of 1986 to increase retirement savings, to improve retirement plan administration, and for other purposes.

IN THE SENATE OF THE UNITED STATES

DECEMBER 18, 2020

Mr. GRASSLEY (for himself, Ms. HASSAN, and Mr. LANKFORD) 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 increase retirement savings, to improve retirement plan administration, 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 “Improving Access to
5 Retirement Savings Act”.

6 **SEC. 2. MULTIPLE EMPLOYER 403(b) PLANS.**

7 (a) IN GENERAL.—Section 403(b) of the Internal
8 Revenue Code of 1986 is amended by adding at the end
9 the following new paragraph:

10 “(15) MULTIPLE EMPLOYER PLANS.—

1 “(A) IN GENERAL.—Except in the case of
2 a church plan, this subsection shall not be
3 treated as failing to apply to an annuity con-
4 tract solely by reason of such contract being
5 purchased under a plan maintained by more
6 than 1 employer.

7 “(B) TREATMENT OF EMPLOYERS FAILING
8 TO MEET REQUIREMENTS OF PLAN.—

9 “(i) IN GENERAL.—In the case of a
10 plan maintained by more than 1 employer,
11 this subsection shall not be treated as fail-
12 ing to apply to an annuity contract held
13 under such plan merely because of 1 or
14 more employers failing to meet the require-
15 ments of this subsection, if such plan satis-
16 fies rules similar to the rules of section
17 413(e)(2) with respect to any such em-
18 ployer failure.

19 “(ii) ADDITIONAL REQUIREMENTS IN
20 CASE OF NON-GOVERNMENTAL PLANS.—A
21 plan shall not be treated as meeting the re-
22 quirements of this subsection unless the
23 plan meets the requirements of subpara-
24 graph (A) or (B) of section 413(e)(1), ex-
25 cept in the case of a multiple employer

1 plan maintained solely by a State, a polit-
2 ical subdivision of a State, or an agency or
3 instrumentality thereof.”.

4 (b) ANNUAL REGISTRATION FOR 403(b) MULTIPLE
5 EMPLOYER PLAN.—Section 6057 of the Internal Revenue
6 Code of 1986 is amended by redesignating subsection (g)
7 as subsection (h) and by inserting after subsection (f) the
8 following new subsection:

9 “(g) 403(b) MULTIPLE EMPLOYER PLANS TREATED
10 AS 1 PLAN.—In the case of annuity contracts to which
11 this section applies and to which section 403(b) applies
12 by reason of the plan under which such contracts are pur-
13 chased meeting the requirements of paragraph (15) there-
14 of, such plan shall be treated as a single plan for purposes
15 of this section.”.

16 (c) ANNUAL INFORMATION RETURNS FOR 403(b)
17 MULTIPLE EMPLOYER PLAN.—Section 6058 of the Inter-
18 nal Revenue Code of 1986 is amended by redesignating
19 subsection (f) as subsection (g) and by inserting after sub-
20 section (e) the following new subsection:

21 “(f) 403(b) MULTIPLE EMPLOYER PLANS TREATED
22 AS 1 PLAN.—In the case of annuity contracts to which
23 this section applies and to which section 403(b) applies
24 by reason of the plan under which such contracts are pur-
25 chased meeting the requirements of paragraph (15) there-

1 of, such plan shall be treated as a single plan for purposes
2 of this section.”.

3 (d) AMENDMENTS TO EMPLOYEE RETIREMENT IN-
4 COME SECURITY ACT OF 1974.—

5 (1) TREATED AS POOLED EMPLOYER PLAN.—

6 (A) IN GENERAL.—Section 3(43)(A) of the
7 Employee Retirement Income Security Act of
8 1974 (29 U.S.C. 1002(43)(A)) is amended—

9 (i) in clause (ii), by striking “section
10 501(a) of such Code or” and inserting
11 “501(a) of such Code, a plan that consists
12 of contracts described in section 403(b) of
13 such Code, or”; and

14 (ii) in the flush text at the end, by
15 striking “the plan.” and inserting “the
16 plan, but such term shall include any pro-
17 gram (other than a governmental plan)
18 maintained for the benefit of the employees
19 of more than 1 employer that consists of
20 contracts described in section 403(b) of
21 such Code and that meets the require-
22 ments of subparagraph (A) or (B) of sec-
23 tion 413(e)(1) of such Code.”.

24 (B) CONFORMING AMENDMENTS.—Para-
25 graphs (43)(B)(v)(II) and (44)(A)(i)(I) of sec-

1 tion 3 of such Act (29 U.S.C. 1002) are each
2 amended by striking “section 401(a) of such
3 Code or” and inserting “401(a) of such Code,
4 a plan that consists of contracts described in
5 section 403(b) of such Code, or”.

6 (2) FIDUCIARIES.—Section 3(43)(B)(ii) of such
7 Act (29 U.S.C. 1002(43)(B)(ii)) is amended—

8 (A) by striking “trustees meeting the re-
9 quirements of section 408(a)(2) of the Internal
10 Revenue Code of 1986” and inserting “trustees
11 (or other fiduciaries in the case of a plan that
12 consists of contracts described in section 403(b)
13 of the Internal Revenue Code of 1986) meeting
14 the requirements of section 408(a)(2) of such
15 Code”; and

16 (B) by striking “holding” and inserting
17 “holding (or causing to be held under the terms
18 of a plan consisting of such contracts)”.

19 (e) REGULATIONS RELATING TO PLAN TERMI-
20 NATION.—The Secretary of the Treasury (or the Sec-
21 retary’s designee) shall prescribe such regulations as may
22 be necessary to clarify the treatment of a plan termination
23 by an employer in the case of plans to which section
24 403(b)(15) of the Internal Revenue Code of 1986 applies.

25 (f) MODIFICATION OF MODEL PLAN LANGUAGE.—

1 (1) PLAN NOTIFICATIONS.—The Secretary of
2 the Treasury (or the Secretary’s designee) shall
3 modify the model plan language published under sec-
4 tion 413(e)(5) of the Internal Revenue Code of 1986
5 to include language which notifies participating em-
6 ployers which are exempt from tax under section
7 501(a) of such Code that the plan is subject to the
8 Employee Retirement Income Security Act of 1974
9 and that such employer is a plan sponsor with re-
10 spect to its employees participating in the multiple
11 employer plan and, as such, has certain fiduciary
12 duties with respect to the plan and to its employees.

13 (2) MODEL PLANS FOR MULTIPLE EMPLOYER
14 403(b) NON-GOVERNMENTAL PLANS.—For plans to
15 which section 403(b)(15)(A) of the Internal Revenue
16 Code of 1986 applies (other than a plan maintained
17 for its employees by a State, a political subdivision
18 of a State, or an agency or instrumentality thereof)
19 the Secretary shall publish model plan language
20 similar to model plan language published under sec-
21 tion 413(e)(5) of such Code.

22 (g) NO INFERENCE WITH RESPECT TO CHURCH
23 PLANS.—Regarding any application of section 403(b) of
24 the Internal Revenue Code of 1986 to an annuity contract
25 purchased under a church plan (as defined in section

1 414(e) of such Code) maintained by more than 1 em-
2 ployer, or to any application of rules similar to section
3 413(e) of such Code to such a plan, no inference shall
4 be drawn solely because section 403(b)(15)(A) of such
5 Code (as added by this Act) does not apply to such plans.

6 (h) EFFECTIVE DATE.—

7 (1) IN GENERAL.—The amendments made by
8 this section shall apply to plan years beginning after
9 December 31, 2020.

10 (2) RULE OF CONSTRUCTION.—Nothing in the
11 amendments made by subsection (a) shall be con-
12 strued as limiting the authority of the Secretary of
13 the Treasury or the Secretary’s delegate (determined
14 without regard to such amendment) to provide for
15 the proper treatment of a failure to meet any re-
16 quirement applicable under the Internal Revenue
17 Code of 1986 with respect to one employer (and its
18 employees) in the case of a plan to which section
19 403(b)(15) applies.

20 **SEC. 3. SAFE HARBOR FOR CORRECTIONS OF EMPLOYEE**
21 **ELECTIVE DEFERRAL FAILURES.**

22 (a) IN GENERAL.—Section 414 of the Internal Rev-
23 enue Code of 1986 is amended by adding at the end the
24 following new subsection:

1 “(aa) CORRECTING AUTOMATIC CONTRIBUTION ER-
2 RORS.—

3 “(1) IN GENERAL.—Any plan or arrangement
4 shall not fail to be treated as a plan described in
5 section 401(a), 403(b), 408, or 457(b), as applica-
6 ble, solely by reason of a corrected error.

7 “(2) CORRECTED ERROR.—For purposes of this
8 subsection, the term ‘corrected error’ means a rea-
9 sonable administrative error in implementing an
10 automatic enrollment or automatic escalation feature
11 in accordance with the terms of an eligible automatic
12 contribution arrangement (as defined under sub-
13 section (w)(3)), provided that such implementation
14 error—

15 “(A) is corrected by the date which is 9½
16 months after the end of the plan year during
17 which the failure occurred,

18 “(B) is corrected in a manner which is fa-
19 vorable to the participant, and

20 “(C) is of a type which is so corrected for
21 all similarly situated participants in a non-
22 discriminatory manner.

23 Such correction may occur before or after the partic-
24 ipant has terminated employment and may occur

1 without regard to whether the error is identified by
2 the Secretary.

3 “(3) REGULATIONS AND GUIDANCE FOR FAVOR-
4 ABLE CORRECTION METHODS.—The Secretary shall,
5 by regulations or other guidance of general applica-
6 bility, specify the correction methods which are in a
7 manner favorable to the participant for purposes of
8 paragraph (2)(B).”.

9 (b) EFFECTIVE DATE.—The amendment made by
10 this section shall apply to the correction of any error with
11 respect to which the date described in section
12 414(aa)(2)(A) of the Internal Revenue Code of 1986 (as
13 added by this section) is after the date of enactment of
14 this Act.

15 **SEC. 4. APPLICATION OF CREDIT FOR SMALL EMPLOYER**
16 **PENSION PLAN STARTUP COSTS TO EMPLOY-**
17 **ERS WHICH JOIN AN EXISTING PLAN.**

18 (a) IN GENERAL.—Section 45E(d)(3)(A) of the In-
19 ternal Revenue Code of 1986 is amended by striking “ef-
20 fective” and inserting “effective with respect to the eligible
21 employer”.

22 (b) EFFECTIVE DATE.—The amendment made by
23 this section shall apply to eligible employer plans which

- 1 become effective with respect to the eligible employer after
- 2 the date of the enactment of this Act.

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