

115TH CONGRESS  
2D SESSION

# S. 3221

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

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IN THE SENATE OF THE UNITED STATES

JULY 17, 2018

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

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## 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 2018”.

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 “(14) 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-

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

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

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

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

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

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

22           “(I) ‘equal to at least’ were sub-  
23           stituted for ‘equal to’ in clause (i)(I)  
24           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” and  
24                   inserting “15 percent”.

25                   (B) CONFORMING AMENDMENTS.—

1 (i) Subclause (I) of section  
2 401(k)(13)(C)(iii) of the Internal Revenue  
3 Code of 1986 is amended—

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

7 (II) by adding “and” at the end.

8 (ii) Subclause (II) of section  
9 401(k)(13)(C)(iii) of such Code is amended  
10 to read as follows:

11 “(II) during any subsequent plan  
12 year, the lesser of 1 percentage point  
13 higher than the percentage in effect  
14 for the preceding plan year or 8 per-  
15 cent.”.

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

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

23 “(iv) AUTOMATIC RE-ELECTION RE-  
24 QUIRED.—The requirements of this sub-  
25 paragraph shall be treated as met only if,

1 under the arrangement, every 3 years each  
2 employee—

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

5 “(II) who is not participating, or  
6 is contributing less than 3 percent of  
7 compensation, at the time of deter-  
8 mination,

9 is treated as having made the election de-  
10 scribed in clause (i) unless the employee  
11 makes a new election under clause (ii).”.

12 (c) EFFECTIVE DATE.—

13 (1) IN GENERAL.—Except as provided in para-  
14 graph (2), the amendments made by this section  
15 shall apply to plan years beginning after December  
16 31, 2018.

17 (2) IMMEDIATE AUTOMATIC DEFERRAL FOR  
18 CURRENT EMPLOYEES NOT REQUIRED.—In the case  
19 of an employer who adopts a qualified automatic  
20 contribution arrangement (as defined in section  
21 401(k)(13)(B) of the Internal Revenue Code of  
22 1986) after December 31, 2018, solely for the first  
23 and second plan years for which the arrangement is  
24 in effect, clauses (i) and (iv) of section  
25 401(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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