S. 3221

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

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

A BILL

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

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Retirement Security Flexibility Act of 2018”.

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SEC. 2. ADDITIONAL NONDISCRIMINATION SAFE HARBOR FOR AUTOMATIC CONTRIBUTION ARRANGEMENTS.

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

“(14) SPECIAL NONELECTIVE AND MATCHING CONTRIBUTION RULES FOR SMALL EMPLOYERS.—

“(A) IN GENERAL.—In the case of a cash or deferred arrangement maintained by an eligible employer (as defined in section 408(p)(2)(C)(i)), for purposes of paragraph (13), the arrangement shall be treated as meeting the requirements of subparagraph (D) thereof if under the arrangement, the total elective deferrals (as defined in section 402(g)(3)(A)) with respect to any employee do not exceed an amount equal to the applicable percentage of the limitation otherwise applicable under section 402(g).

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

“(i) 40 percent in the case of an arrangement which does not meet the re-
requirements of paragraph (13)(D) and is not described in clause (ii) or (iii),

“(ii) 60 percent in the case of an arrangement which is not described in clause (iii) and which would meet the requirements of paragraph (13)(D) if—

“(I) ‘equal to at least’ were substituted 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 substituted for ‘3 percent’ in clause (i)(II) thereof, and

“(iii) 80 percent in the case of an arrangement which would meet the requirements of paragraph (13)(D) if—

“(I) ‘equal to at least’ were substituted for ‘equal to’ in clause (i)(I) thereof,
“(II) ‘4 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) ‘2 percent’ were substituted for ‘3 percent’ in clause (i)(II) thereof.

“(C) REPORTING.—This paragraph shall apply to an arrangement only if the plan includes with the reports required under sections 6057 and 6058—

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

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

(b) MODIFICATION OF EXISTING AUTOMATIC CONTRIBUTION SAFE HARBOR.—

(1) QUALIFIED PERCENTAGE.—

(A) IN GENERAL.—Clause (iii) of section 401(k)(13)(C) of the Internal Revenue Code of 1986 is amended by striking “10 percent” and inserting “15 percent”.

(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, 2018.

(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, 2018, 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
(as amended by this section) may be applied without taking into account any employee who—

(A) is eligible to participate in the arrangement (or a predecessor arrangement) immediately before the date the arrangement goes into effect, and

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