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.

This Act may be cited as the “Retirement Security

SEC. 2. MULTIPLE EMPLOYER PLANS.

(a) QUALIFICATION REQUIREMENTS.—
(1) **IN GENERAL.**—Section 413 of the Internal Revenue Code of 1986 is amended by adding at the end the following new subsection:

“(c) **APPLICATION OF QUALIFICATION REQUIREMENTS FOR CERTAIN MULTIPLE EMPLOYER PLANS WITH POOLED PLAN PROVIDERS.**—

“(1) **IN GENERAL.**—Except as provided in paragraph (2), if a defined contribution plan to which subsection (c) applies—

“(A) is sponsored by employers all of which have both a common interest other than having adopted the plan and control of the plan, or

“(B) in the case of a plan not described in subparagraph (A), has a pooled plan provider, then the plan shall not be treated as failing to meet the requirements under this title applicable to a plan described in section 401(a) or to a plan that consists of individual retirement accounts described in section 408 (including by reason of subsection (c) thereof), whichever is applicable, merely because one or more employers of employees covered by the plan fail to take such actions as are required of such employers for the plan to meet such requirements.

“(2) **LIMITATIONS.**—
“(A) IN GENERAL.—Paragraph (1) shall not apply to any plan unless the terms of the plan provide that in cases of employers failing to take the actions described in paragraph (1)—

“(i) the assets of the plan attributable to employees of the employer will be transferred to a plan maintained only by the employer (or its successor), to an eligible retirement plan as defined in section 402(c)(8)(B) for each individual whose account is transferred, or to any other arrangement that the Secretary determines is appropriate, unless the Secretary determines it is in the best interests of such employees to retain the assets in the plan, and

“(ii) the employer described in clause (i) (and not the plan with respect to which the failure occurred or any other participating employer in such plan) shall, except to the extent provided by the Secretary, be liable for any liabilities with respect to such plan attributable to employees of the employer.
“(B) Failures by pooled plan providers.—If the pooled plan provider of a plan described in paragraph (1)(B) does not perform substantially all of the administrative duties which are required of the provider under paragraph (3)(A)(i) for any plan year, the Secretary, in the Secretary’s own discretion, may provide that the determination as to whether the plan meets the requirements under this title applicable to a plan described in section 401(a) or to a plan that consists of individual retirement accounts described in section 408 (including by reason of subsection (c) thereof), whichever is applicable, shall be made in the same manner as would be made without regard to paragraph (1).

“(3) Pooled plan provider.—For purposes of this subsection—

“(A) In general.—The term ‘pooled plan provider’ means, with respect to any plan, a person who—

“(i) is designated by the terms of the plan as a named fiduciary (as defined in section 402(a)(2) of the Employee Retirement Income Security Act of 1974), as the
plan administrator, and as the person responsible to perform all administrative duties (including conducting proper testing with respect to the plan and employees of each participating employer) which are reasonably necessary to ensure that—

“(I) the plan meets any requirement applicable under the Employee Retirement Income Security Act of 1974 or this title to a plan described in section 401(a) or to a plan that consists of individual retirement accounts described in section 408 (including by reason of subsection (c) thereof), whichever is applicable, and

“(II) each participating employer takes such actions as the Secretary or such person determines are necessary for the plan to meet the requirements described in subclause (I), including providing to such person any disclosures or other information which the Secretary may require or which such person otherwise determines is necessary to administer the plan or to
allow the plan to meet such require-
ments,

“(ii) registers as a pooled plan pro-
vider with the Secretary, and provides such
other information to the Secretary as the
Secretary may require, before beginning
operations as a pooled plan provider,

“(iii) acknowledges in writing that
such person is a named fiduciary (within
the meaning of section 402(a)(2) of the
Employee Retirement Income Security Act
of 1974), and the plan administrator, with
respect to the plan, and

“(iv) is responsible for ensuring that
all persons who handle assets of, or who
are fiduciaries of, the plan are bonded in
accordance with section 412 of the Em-
ployee Retirement Income Security Act of
1974.

“(B) AUDITS, EXAMINATIONS AND INVEST-
IGATIONS.—The Secretary may perform au-
dits, examinations, and investigations of pooled
plan providers as may be necessary to enforce
and carry out the purposes of this subsection.

“(4) GUIDANCE.—
“(A) IN GENERAL.—The Secretary shall issue such guidance as the Secretary determines appropriate to carry out this subsection, including guidance—

“(i) to identify the administrative duties and other actions required to be performed by a pooled plan provider under this subsection,

“(ii) which describes the procedures to be taken to terminate a plan which fails to meet the requirements to be a plan described in paragraph (1), including the proper treatment of, and actions needed to be taken by, any participating employer of the plan and the assets and liabilities of the plan with respect to employees of that employer, and

“(iii) identifying appropriate cases to which the rules of paragraph (2)(A) will apply to employers failing to take the actions described in paragraph (1).

The Secretary shall take into account under clause (iii) whether the failure of an employer or pooled plan provider to provide any disclosures or other information, or to take any other
action, necessary to administer a plan or to allow a plan to meet requirements applicable to the plan under section 401(a) or 408, whichever is applicable, has continued over a period of time that clearly demonstrates a lack of commitment to compliance.

“(B) Prospective Application.—Any guidance issued by the Secretary under this paragraph shall not apply to any action or failure occurring before the issuance of such guidance.

“(5) Model Plan.—The Secretary shall, in consultation with the Secretary of Labor when appropriate, publish model plan language which meets the requirements of this subsection and of paragraphs (43) and (44) of section 3 of the Employee Retirement Income Security Act of 1974 and which may be adopted in order for a plan to be treated as a plan described in paragraph (1)(B).”.

(2) Conforming Amendment.—Paragraph (3) of section 413(b) of such Code is amended by striking “section 401(a)” and inserting “sections 401(a) and 408(e)”.
(3) **TECHNICAL AMENDMENT.**—Subsection (c) of section 408 of such Code is amended by inserting after paragraph (2) the following new paragraph:

“(3) There is a separate accounting for any interest of an employee or member (or spouse of an employee or member) in a Roth IRA.”.

(b) **NO COMMON INTEREST REQUIRED FOR POOLED EMPLOYER PLANS.**—Section 3(2) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002(2)) is amended by adding at the end the following:

“(C) A pooled employer plan shall be treated as—

“(i) a single employee pension benefit plan or single pension plan; and

“(ii) a plan to which section 210(a) applies.”.

(c) **POOLED EMPLOYER PLAN AND PROVIDER DEFINED.**—

(1) **IN GENERAL.**—Section 3 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002) is amended by adding at the end the following:

“(43) POOLED EMPLOYER PLAN.—

“(A) IN GENERAL.—The term ‘pooled employer plan’ means a plan—

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“(i) which is an individual account plan established or maintained for the purpose of providing benefits to the employees of 2 or more employers;

“(ii) which is a plan described in section 401(a) of the Internal Revenue Code of 1986 which includes a trust exempt from tax under section 501(a) of such Code or a plan that consists of individual retirement accounts described in section 408 of such Code (including by reason of subsection (c) thereof); and

“(iii) the terms of which meet the requirements of subparagraph (B).

Such term shall not include a plan with respect to which all of the participating employers have both a common interest other than having adopted the plan and control of the plan.

“(B) REQUIREMENTS FOR PLAN TERMS.—

The requirements of this subparagraph are met with respect to any plan if the terms of the plan—

“(i) designate a pooled plan provider and provide that the pooled plan provider is a named fiduciary of the plan;
“(ii) designate one or more trustees meeting the requirements of section 408(a)(2) of the Internal Revenue Code of 1986 (other than a participating employer) to be responsible for collecting contributions to, and holding the assets of, the plan and require such trustees to implement written contribution collection procedures that are reasonable, diligent, and systematic;

“(iii) provide that each participating employer retains fiduciary responsibility for—

“(I) the selection and monitoring in accordance with section 404(a) of the person designated as the pooled plan provider and any other person who, in addition to the pooled plan provider, is designated as a named fiduciary of the plan; and

“(II) to the extent not otherwise delegated to another fiduciary by the pooled plan provider and subject to the provisions of section 404(c), the investment and management of that
portion of the plan’s assets attributable to the employees of that participating employer;

“(iv) provide that a participating employer, or a participant or beneficiary, is not subject to unreasonable restrictions, fees, or penalties with regard to ceasing participation, receipt of distributions, or otherwise transferring assets of the plan in accordance with section 208 or paragraph (44)(C)(i)(II);

“(v) require—

“(I) the pooled plan provider to provide to participating employers any disclosures or other information which the Secretary may require, including any disclosures or other information to facilitate the selection or any monitoring of the pooled plan provider by participating employers; and

“(II) each participating employer to take such actions as the Secretary or the pooled plan provider determines are necessary to administer the plan or for the plan to meet any require-
ment applicable under this Act or the Internal Revenue Code of 1986 to a plan described in section 401(a) of such Code or to a plan that consists of individual retirement accounts described in section 408 of such Code (including by reason of subsection (c) thereof), whichever is applicable, including providing any disclosures or other information which the Secretary may require or which the pooled plan provider otherwise determines is necessary to administer the plan or to allow the plan to meet such requirements; and

“(vi) provide that any disclosure or other information required to be provided under clause (v) may be provided in electronic form and will be designed to ensure only reasonable costs are imposed on pooled plan providers and participating employers.

“(C) EXCEPTIONS.—The term ‘pooled employer plan’ does not include—

“(i) a multiemployer plan; or
“(ii) a plan established before January 1, 2016, unless the plan administrator elects that the plan will be treated as a pooled employer plan and the plan meets the requirements of this title applicable to a pooled employer plan established on or after such date.

“(44) POOLED PLAN PROVIDER.—

“(A) IN GENERAL.—The term ‘pooled plan provider’ means a person who—

“(i) is designated by the terms of a pooled employer plan as a named fiduciary, as the plan administrator, and as the person responsible for the performance of all administrative duties (including conducting proper testing with respect to the plan and employees of each participating employer) which are reasonably necessary to ensure that—

“(I) the plan meets any requirement applicable under this Act or the Internal Revenue Code of 1986 to a plan described in section 401(a) of such Code or to a plan that consists of individual retirement accounts de-
scribed in section 408 of such Code

(including by reason of subsection (c)
thereof), whichever is applicable; and

“(II) each participating employer
takes such actions as the Secretary or
pooled plan provider determines are
necessary for the plan to meet the re-
quirements described in subclause (I),
including providing the disclosures
and information described in para-
graph (43)(B)(v)(II);

“(ii) registers as a pooled plan pro-
vider with the Secretary, and provides to
the Secretary such other information as
the Secretary may require, before begin-
ning operations as a pooled plan provider;

“(iii) acknowledges in writing that
such person is a named fiduciary, and the
plan administrator, with respect to the
pooled employer plan; and

“(iv) is responsible for ensuring that
all persons who handle assets of, or who
are fiduciaries of, the pooled employer plan
are bonded in accordance with section 412.
“(B) AUDITS, EXAMINATIONS AND INVESTIGATIONS.—The Secretary may perform audits, examinations, and investigations of pooled plan providers as may be necessary to enforce and carry out the purposes of this paragraph and paragraph (43).

“(C) GUIDANCE.—

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

“(I) to identify the administrative duties and other actions required to be performed by a pooled plan provider under either such paragraph; and

“(II) which requires in appropriate cases that if a participating employer fails to take the actions required under subparagraph (A)(i)(II)—

“(aa) the assets of the plan attributable to employees of the participating employer are trans-
ferred to a plan maintained only by the participating employer (or its successor), to an eligible retirement plan as defined in section 402(c)(8)(B) of the Internal Revenue Code of 1986 for each individual whose account is transferred, or to any other arrangement that the Secretary determines is appropriate in such guidance; and

“(bb) the participating employer described in item (aa) (and not the plan with respect to which the failure occurred or any other participating employer in such plan) shall, except to the extent provided in such guidance, be liable for any liabilities with respect to such plan attributable to employees of the participating employer.

The Secretary shall take into account under subclause (II) whether the failure of an employer or pooled plan provider to
provide any disclosures or other information, or to take any other action, necessary to administer a plan or to allow a plan to meet requirements described in subparagraph (A)(i)(II) has continued over a period of time that clearly demonstrates a lack of commitment to compliance. The Secretary may waive the requirements of subclause (II)(aa) in appropriate circumstances if the Secretary determines it is in the best interests of the employees of the participating employer described in such clause to retain the assets in the plan with respect to which the employer’s failure occurred.

“(ii) Prospective application.— Any guidance issued by the Secretary under this subparagraph shall not apply to any action or failure occurring before the issuance of such guidance.

“(D) Aggregation rules.—For purposes of this paragraph—

“(i) In general.—In determining whether a person meets the requirements of this paragraph to be a pooled plan pro-
vider with respect to any plan, all persons
who are members of the same controlled
group and who perform services for the
plan shall be treated as one person.

“(ii) Members of common group.—
Persons shall be treated as members of the
same controlled group if such persons are
treated as a single employer under sub-
section (c) or (d) of section 210.”.

(2) Bonding requirements for pooled em-
ployer plans.—The last sentence of section 412(a)
of the Employee Retirement Income Security Act of
1974 (29 U.S.C. 1112(a)) is amended by inserting
“or in the case of a pooled employer plan (as defined
in section 3(43)” after “section 407(d)(1))”.

(3) Conforming and technical amend-
ments.—Section 3 of the Employee Retirement In-
come Security Act of 1974 (29 U.S.C. 1002) is
amended—

(A) in paragraph (16)(B)—

(i) by striking “or” at the end of
clause (ii), and

(ii) by striking the period at the end
and inserting “, or (iv) in the case of a
pooled employer plan, the pooled plan provider.”; and
(B) by striking the second paragraph (41).
(d) Effective Date.—
(1) In general.—The amendments made by this section shall apply to years beginning after December 31, 2017.
(2) Rule of construction.—Nothing in the amendments made by subsection (a) shall be construed as limiting the authority of the Secretary of the Treasury or the Secretary’s delegate (determined without regard to such amendment) to provide for the proper treatment of a failure to meet any requirement applicable under the Internal Revenue Code of 1986 with respect to one employer (and its employees) in a multiple employer plan.

SEC. 3. POOLED EMPLOYER AND MULTIPLE EMPLOYER PLAN REPORTING.

(a) Additional Information.—Section 103 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1023) is amended—
(1) in subsection (a)(1)(B), by striking “applicable subsections (d), (e), and (f)” and inserting “applicable subsections (d), (e), (f), and (g)”; and
(2) by amending subsection (g) to read as follows:

“(g) ADDITIONAL INFORMATION WITH RESPECT TO POOLED EMPLOYER AND MULTIPLE EMPLOYER PLANS.—An annual report under this section for a plan year shall include—

“(1) with respect to any plan to which section 210(a) applies (including a pooled employer plan), a list of participating employers and a good faith estimate of the percentage of total contributions made by such participating employers during the plan year; and

“(2) with respect to a pooled employer plan, the identifying information for the person designated under the terms of the plan as the pooled plan provider.”.

(b) SIMPLIFIED ANNUAL REPORTS.—Section 104(a) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1024(a)) is amended by striking paragraph (2)(A) and inserting the following:

“(2)(A) With respect to annual reports required to be filed with the Secretary under this part, the Secretary may by regulation prescribe simplified annual reports for any pension plan that—

“(i) covers fewer than 100 participants; or
“(ii) is a plan described in section 210(a) that covers fewer than 1,000 participants, but only if no single participating employer has 100 or more participants covered by the plan.”.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to annual reports for plan years beginning after December 31, 2017.

SEC. 4. REMOVAL OF 10 PERCENT CAP FROM AUTOMATIC ENROLLMENT SAFE HARBOR AFTER 1ST PLAN YEAR.

(a) IN GENERAL.—Clause (iii) of section 401(k)(13)(C) of the Internal Revenue Code of 1986 is amended by striking “, does not exceed 10 percent, and is at least” and inserting “and is”.

(b) CONFORMING AMENDMENTS.—

(1) Subclause (I) of section 401(k)(13)(C)(iii) of the Internal Revenue Code of 1986 is amended by striking “3 percent” and inserting “at least 3 percent, but not greater than 10 percent,”.

(2) Subclause (II) of section 401(k)(13)(C)(iii) of such Code is amended by striking “4 percent” and inserting “at least 4 percent”.

(3) Subclause (III) of section 401(k)(13)(C)(iii) of such Code is amended by striking “5 percent” and inserting “at least 5 percent”.

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(4) Subclause (IV) of section 401(k)(13)(C)(iii) of such Code is amended by striking “6 percent” and inserting “at least 6 percent”.

(c) Effective Date.—The amendments made by this section shall apply to plan years beginning after December 31, 2017.

SEC. 5. RULES RELATING TO ELECTION OF SAFE HARBOR 401(k) STATUS.

(a) Limitation of Annual Safe Harbor Notice to Matching Contribution Plans.—

(1) In general.—Subparagraph (A) of section 401(k)(12) of the Internal Revenue Code of 1986 is amended by striking “if such arrangement” and all that follows and inserting “if such arrangement—

“(i) meets the contribution requirements of subparagraph (B) and the notice requirements of subparagraph (D), or

“(ii) meets the contribution requirements of subparagraph (C).”.

(2) Automatic contribution arrangements.—Subparagraph (B) of section 401(k)(13) of such Code is amended by striking “means” and all that follows and inserting “means a cash or deferred arrangement—
“(i) which is described in subparagraph (D)(i)(I) and meets the applicable requirements of subparagraphs (C) through (E), or

“(ii) which is described in subparagraph (D)(i)(II) and meets the applicable requirements of subparagraphs (C) and (D).”.

(b) NONELECTIVE CONTRIBUTIONS.—Section 401(k)(12) of the Internal Revenue Code of 1986 is amended by redesignating subparagraph (F) as subparagraph (G), and by inserting after subparagraph (E) the following new subparagraph:

“(F) TIMING OF PLAN AMENDMENT FOR EMPLOYER MAKING NONELECTIVE CONTRIBUTIONS.—

“(i) IN GENERAL.—Except as provided in clause (ii), a plan may be amended after the beginning of a plan year to provide that the requirements of subparagraph (C) shall apply to the arrangement for the plan year, but only if the amendment is adopted—
“(I) at any time before the 30th day before the close of the plan year, or

“(II) at any time before the last day under paragraph (8)(A) for distributing excess contributions for the plan year.

“(ii) Exception where plan provided for matching contributions.—Clause (i) shall not apply to any plan year if the plan provided at any time during the plan year that the requirements of subparagraph (B) or paragraph (13)(D)(i)(I) applied to the plan year.

“(iii) 4-percent contribution requirement.—Clause (i)(II) shall not apply to an arrangement unless the amount of the contributions described in subparagraph (C) which the employer is required to make under the arrangement for the plan year with respect to any employee is an amount equal to at least 4 percent of the employee’s compensation.”.
Section 401(k)(13) of the Internal Revenue Code of 1986 is amended by adding at the end the following:

"(F) **Timing of Plan Amendment for Employer Making Nonelective Contributions.**—

"(i) **In General.**—Except as provided in clause (ii), a plan may be amended after the beginning of a plan year to provide that the requirements of subparagraph (D)(i)(II) shall apply to the arrangement for the plan year, but only if the amendment is adopted—

"(I) at any time before the 30th day before the close of the plan year, or

"(II) at any time before the last day under paragraph (8)(A) for distributing excess contributions for the plan year.

"(ii) **Exception Where Plan Provided for Matching Contributions.**—

Clause (i) shall not apply to any plan year if the plan provided at any time during the plan year that the requirements of sub-
paragraph (D)(i)(I) or paragraph (12)(B)
applied to the plan year.

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

(d) EFFECTIVE DATE.—The amendments made by
this section shall apply to plan years beginning after De-

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

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

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

“(A) $500, or

“(B) the lesser of—
“(i) $250 for each employee of the eligible employer who is not a highly compensated employee (as defined in section 414(q)) and who is eligible to participate in the eligible employer plan maintained by the eligible employer, or
“(ii) $5,000, and”.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 2017.

SEC. 7. SMALL EMPLOYER AUTOMATIC ENROLLMENT CREDIT.

(a) IN GENERAL.—Subpart D of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 is amended by adding at the end the following new section:

“SEC. 45S. AUTO-ENROLLMENT OPTION FOR RETIREMENT SAVINGS OPTIONS PROVIDED BY SMALL EMPLOYERS.

“(a) IN GENERAL.—For purposes of section 38, in the case of an eligible employer, the retirement auto-enrollment credit determined under this section for any taxable year is an amount equal to—
“(1) $500 for any taxable year occurring during the credit period, and
“(2) zero for any other taxable year.

“(b) CREDIT PERIOD.—For purposes of subsection (a)—

“(1) IN GENERAL.—The credit period with respect to any eligible employer is the 3-taxable-year period beginning with the first taxable year for which the employer includes an eligible automatic contribution arrangement (as defined in section 414(w)(3)) in a qualified employer plan (as defined in section 4972(d)) sponsored by the employer.

“(2) MAINTENANCE OF ARRANGEMENT.—No taxable year with respect to an employer shall be treated as occurring within the credit period unless the arrangement described in paragraph (1) is included in the plan for such year.

“(c) ELIGIBLE EMPLOYER.—For purposes of this section, the term ‘eligible employer’ has the meaning given such term in section 408(p)(2)(C)(i).”.

(b) CREDIT TO BE PART OF GENERAL BUSINESS CREDIT.—Subsection (b) of section 38 of the Internal Revenue Code of 1986 is amended by striking “plus” at the end of paragraph (35), by striking the period at the end of paragraph (36) and inserting “, plus”, and by adding at the end the following new paragraph:
“(37) in the case of an eligible employer (as defined in section 45S(c)), the retirement auto-enrollment credit determined under section 45S(a).”.

(c) CLERICAL AMENDMENT.—The table of sections for subpart D of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 is amended by inserting after the item relating to section 45R the following new item:

“Sec. 45S. Auto-enrollment option for retirement savings options provided by small employers.”.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2017.

SEC. 8. SECURE DEFERRAL 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) ALTERNATIVE METHOD FOR SECURE DEFERRAL ARRANGEMENTS TO MEET NONDISCRIMINATION REQUIREMENTS.—

“(A) IN GENERAL.—A secure deferral arrangement shall be treated as meeting the requirements of paragraph (3)(A)(ii).

“(B) SECURE DEFERRAL ARRANGEMENT.—For purposes of this paragraph, the term ‘secure deferral arrangement’ means any
cash or deferred arrangement which meets the
requirements of subparagraphs (C), (D), and
(E) of paragraph (13), except as modified by
this paragraph.

“(C) QUALIFIED PERCENTAGE.—For pur-
poses of this paragraph, with respect to any
employee, the term ‘qualified percentage’
means, in lieu of the meaning given such term
in paragraph (13)(C)(iii), any percentage deter-
dined under the arrangement if such percent-
age is applied uniformly and is—

“(i) at least 6 percent, but not greater
than 10 percent, during the period ending
on the last day of the first plan year which
begins after the date on which the first
elective contribution described in para-
graph (13)(C)(i) is made with respect to
such employee,

“(ii) at least 8 percent during the
first plan year following the plan year de-
scribed in clause (i), and

“(iii) at least 10 percent during any
subsequent plan year.

“(D) MATCHING CONTRIBUTIONS.—
“(i) IN GENERAL.—For purposes of this paragraph, an arrangement shall be treated as having met the requirements of paragraph (13)(D)(i) if and only if the employer makes matching contributions on behalf of each employee who is not a highly compensated employee in an amount equal to the sum of—

“(I) 100 percent of the elective contributions of the employee to the extent that such contributions do not exceed 1 percent of compensation,

“(II) 50 percent of so much of such contributions as exceed 1 percent but do not exceed 6 percent of compensation, plus

“(III) 25 percent of so much of such contributions as exceed 6 percent but do not exceed 10 percent of compensation.

“(ii) APPLICATION OF RULES FOR MATCHING CONTRIBUTIONS.—The rules of clause (ii) of paragraph (12)(B) and clauses (iii) and (iv) of paragraph (13)(D) shall apply for purposes of clause (i) but
the rule of clause (iii) of paragraph (12)(B) shall not apply for such purposes. The rate of matching contribution for each incremental deferral must be at least as high as the rate specified in clause (i), and may be higher, so long as such rate does not increase as an employee’s rate of elective contributions increases.”.

(b) Matching Contributions and Employee Contributions.—Subsection (m) of section 401 of the Internal Revenue Code of 1986 is amended by redesignating paragraph (13) as paragraph (14) and by inserting after paragraph (12) the following new paragraph:

“(13) Alternative Method for Secure Deferral Arrangements.—A defined contribution plan shall be treated as meeting the requirements of paragraph (2) with respect to matching contributions and employee contributions if the plan—

“(A) is a secure deferral arrangement (as defined in subsection (k)(14)),

“(B) meets the requirements of clauses (ii) and (iii) of paragraph (11)(B), and

“(C) provides that matching contributions on behalf of any employee may not be made with respect to an employee’s contributions or
elective deferrals in excess of 10 percent of the employee’s compensation.”.

(c) Effective Date.—The amendments made by this section shall apply to plan years beginning after December 31, 2017.

SEC. 9. CREDIT FOR EMPLOYERS WITH RESPECT TO MODIFIED SAFE HARBOR REQUIREMENTS.

(a) In General.—Subpart D of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986, as amended by section 7, is further amended by adding at the end the following new section:

“SEC. 45T. CREDIT FOR SMALL EMPLOYERS WITH RESPECT TO MODIFIED SAFE HARBOR REQUIREMENTS FOR AUTOMATIC CONTRIBUTION ARRANGEMENTS.

“(a) General Rule.—For purposes of section 38, in the case of a small employer, the safe harbor adoption credit determined under this section for any taxable year is the amount equal to the total of the employer’s matching contributions under section 401(k)(14)(D) during the taxable year on behalf of employees who are not highly compensated employees, subject to the limitations of subsection (b).

“(b) Limitations.—
“(1) **LIMITATION WITH RESPECT TO COMPENSATION.**—The credit determined under subsection (a) with respect to contributions made on behalf of an employee who is not a highly compensated employee shall not exceed 2 percent of the compensation of such employee for the taxable year.

“(2) **LIMITATION WITH RESPECT TO YEARS OF PARTICIPATION.**—Credit shall be determined under subsection (a) with respect to contributions made on behalf of an employee who is not a highly compensated employee only during the first 5 years such employee participates in the qualified automatic contribution arrangement.

“(c) **DEFINITIONS.**—

“(1) **IN GENERAL.**—Any term used in this section which is also used in section 401(k)(14) shall have the same meaning as when used in such section.

“(2) **SMALL EMPLOYER.**—The term ‘small employer’ means an eligible employer (as defined in section 408(p)(2)(C)(i)).

“(d) **DENIAL OF DOUBLE BENEFIT.**—No deduction shall be allowable under this title for any contribution with respect to which a credit is allowed under this section.”.
(b) CREDIT TO BE PART OF GENERAL BUSINESS CREDIT.—Subsection (b) of section 38 of the Internal Revenue Code of 1986, as amended by section 7, is further amended—

(1) by striking “plus” at the end of paragraph (36),

(2) by striking the period at the end of paragraph (37) and inserting “, plus”, and

(3) by adding at the end the following new paragraph:

“(38) the safe harbor adoption credit determined under section 45T.”.

(c) CLERICAL AMENDMENT.—The table of sections for subpart D of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986, as amended by section 7, is further amended by adding after the item relating to section 45S the following new item:

“Sec. 45T. Credit for small employers with respect to modified safe harbor requirements for automatic contribution arrangements.”.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years that include any portion of a plan year beginning after December 31, 2017.

SEC. 10. MODIFICATION OF REGULATIONS.

The Secretary of the Treasury shall promulgate regulations or other guidance that—
(1) simplify and clarify the rules regarding the timing of participant notices required under section 401(k)(13)(E) of the Internal Revenue Code of 1986, with specific application to—

(A) plans that allow employees to be eligible for participation immediately upon beginning employment, and

(B) employers with multiple payroll and administrative systems, and

(2) simplify and clarify the automatic escalation rules under sections 401(k)(13)(C)(iii) and 401(k)(14)(C) of the Internal Revenue Code of 1986 in the context of employers with multiple payroll and administrative systems.

Such regulations or guidance shall address the particular case of employees within the same plan who are subject to different notice timing and different percentage requirements, and provide assistance for plan sponsors in managing such cases.

SEC. 11. OPPORTUNITY TO CLAIM THE SAVER’S CREDIT ON FORM 1040EZ.

The Secretary of the Treasury shall modify the forms for the return of tax of individuals in order to allow individuals claiming the credit under section 25B of the Inter-
nal Revenue Code of 1986 to file (and claim such credit on) Form 1040EZ.