

114TH CONGRESS  
1ST SESSION

# S. 266

To amend the Internal Revenue Code of 1986 to modify safe harbor requirements applicable to automatic contribution arrangements, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

JANUARY 27, 2015

Ms. COLLINS (for herself and Mr. NELSON) introduced the following bill;  
which was read twice and referred to the Committee on Finance

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## 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.**

4 This Act may be cited as the “Retirement Security  
5 Act of 2015”.

6 **SEC. 2. ELIMINATION OF DISINCENTIVE TO POOLING FOR**  
7 **MULTIPLE EMPLOYER PLANS.**

8 (a) IN GENERAL.—Not later than one year after the  
9 date of the enactment of this Act, the Secretary of the

1 Treasury shall prescribe final regulations under which a  
2 plan described in section 413(c) of the Internal Revenue  
3 Code of 1986 may be treated as satisfying the qualifica-  
4 tion requirements of section 401(a) of such Code despite  
5 the violation of such requirements with respect to one or  
6 more participating employers. Such rules may require that  
7 the portion of the plan attributable to such participating  
8 employers be spun off to plans maintained by such em-  
9 ployers.

10 **SEC. 3. MODIFICATION OF ERISA RULES RELATING TO**  
11 **MULTIPLE EMPLOYER DEFINED CONTRIBU-**  
12 **TION PLANS.**

13 (a) IN GENERAL.—

14 (1) REQUIREMENT OF COMMON INTEREST.—

15 Section 3(2) of the Employee Retirement Income Se-  
16 curity Act of 1974 is amended by adding at the end  
17 the following:

18 “(C)(i) A qualified multiple employer plan shall  
19 not fail to be treated as an employee pension benefit  
20 plan or pension plan solely because the employers  
21 sponsoring the plan share no common interest.

22 “(ii) For purposes of this subparagraph, the  
23 term ‘qualified multiple employer plan’ means a plan  
24 described in section 413(c) of the Internal Revenue  
25 Code of 1986 which—

1           “(I) is an individual account plan with re-  
2           spect to which the requirements of clauses (iii),  
3           (iv), and (v) are met, and

4           “(II) includes in its annual report required  
5           to be filed under section 104(a) the name and  
6           identifying information of each participating  
7           employer.

8           “(iii) The requirements of this clause are met  
9           if, under the plan, each participating employer re-  
10          tains fiduciary responsibility for—

11           “(I) the selection and monitoring of the  
12          named fiduciary, and

13           “(II) the investment and management of  
14          the portion of the plan’s assets attributable to  
15          employees of the employer to the extent not  
16          otherwise delegated to another fiduciary.

17           “(iv) The requirements of this clause are met if,  
18          under the plan, a participating employer is not sub-  
19          ject to unreasonable restrictions, fees, or penalties  
20          by reason of ceasing participation in, or otherwise  
21          transferring assets from, the plan.

22           “(v) The requirements of this clause are met if  
23          each participating employer in the plan is an eligible  
24          employer as defined in section 408(p)(2)(C)(i) of the  
25          Internal Revenue Code of 1986, applied—

1           “(I) by substituting ‘500’ for ‘100’ in sub-  
2           clause (I) thereof,

3           “(II) by substituting ‘5’ for ‘2’ each place  
4           it appears in subclause (II) thereof, and

5           “(III) without regard to the last sentence  
6           of subclause (II) thereof.”.

7           (2) SIMPLIFIED REPORTING FOR SMALL MUL-  
8           TIPLE EMPLOYER PLANS.—Section 104(a) of such  
9           Act (29 U.S.C. 1024(a)) is amended by adding at  
10          the end the following:

11          “(7)(A) In the case of any eligible small multiple em-  
12         ployer plan, the Secretary may by regulation—

13                 “(i) prescribe simplified summary plan descrip-  
14                 tions, annual reports, and pension benefit state-  
15                 ments for purposes of section 102, 103, or 105, re-  
16                 spectively, and

17                 “(ii) waive the requirement under section  
18                 103(a)(3) to engage an independent qualified public  
19                 accountant in cases where the Secretary determines  
20                 it appropriate.

21          “(B) For purposes of this paragraph, the term ‘eligi-  
22         ble small multiple employer plan’ means, with respect to  
23         any plan year—

24                 “(i) a qualified multiple employer plan, as de-  
25                 fined in section 3(2)(C)(ii), or

1           “(ii) any other plan described in section 413(c)  
2           of the Internal Revenue Code of 1986 that satisfies  
3           the requirements of clause (v) of section 3(2)(C).”.

4           (b) EFFECTIVE DATE.—The amendments made by  
5 this section shall apply to years beginning after December  
6 31, 2015.

7 **SEC. 4. SECURE DEFERRAL ARRANGEMENTS.**

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

11           “(14) ALTERNATIVE METHOD FOR SECURE DE-  
12           FERRAL ARRANGEMENTS TO MEET NONDISCRIMINA-  
13           TION REQUIREMENTS.—

14           “(A) IN GENERAL.—A secure deferral ar-  
15           rangement shall be treated as meeting the re-  
16           quirements of paragraph (3)(A)(ii).

17           “(B) SECURE DEFERRAL ARRANGE-  
18           MENT.—For purposes of this paragraph, the  
19           term ‘secure deferral arrangement’ means any  
20           cash or deferred arrangement which meets the  
21           requirements of subparagraphs (C), (D), and  
22           (E) of paragraph (13), except as modified by  
23           this paragraph.

24           “(C) QUALIFIED PERCENTAGE.—For pur-  
25           poses of this paragraph, with respect to any

1 employee, the term ‘qualified percentage’  
2 means, in lieu of the meaning given such term  
3 in paragraph (13)(C)(iii), any percentage deter-  
4 mined under the arrangement if such percent-  
5 age is applied uniformly and is—

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

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

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

18 “(D) MATCHING CONTRIBUTIONS.—

19 “(i) IN GENERAL.—For purposes of  
20 this paragraph, an arrangement shall be  
21 treated as having met the requirements of  
22 paragraph (13)(D)(i) if and only if the em-  
23 ployer makes matching contributions on  
24 behalf of each employee who is not a highly

1 compensated employee in an amount equal  
2 to the sum of—

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

7 “(II) 50 percent of so much of  
8 such contributions as exceed 1 percent  
9 but do not exceed 6 percent of com-  
10 pensation, plus

11 “(III) 25 percent of so much of  
12 such contributions as exceed 6 percent  
13 but do not exceed 10 percent of com-  
14 pensation.

15 “(ii) APPLICATION OF RULES FOR  
16 MATCHING CONTRIBUTIONS.—The rules of  
17 clause (ii) of paragraph (12)(B) and  
18 clauses (iii) and (iv) of paragraph (13)(D)  
19 shall apply for purposes of clause (i) but  
20 the rule of clause (iii) of paragraph  
21 (12)(B) shall not apply for such purposes.  
22 The rate of matching contribution for each  
23 incremental deferral must be at least as  
24 high as the rate specified in clause (i), and  
25 may be higher, so long as such rate does

1 not increase as an employee's rate of elec-  
2 tive contributions increases.”.

3 (b) MATCHING CONTRIBUTIONS AND EMPLOYEE  
4 CONTRIBUTIONS.—Subsection (m) of section 401 of the  
5 Internal Revenue Code of 1986 is amended by redesignig-  
6 nating paragraph (13) as paragraph (14) and by inserting  
7 after paragraph (12) the following new paragraph:

8 “(13) ALTERNATIVE METHOD FOR SECURE DE-  
9 FERRAL ARRANGEMENTS.—A defined contribution  
10 plan shall be treated as meeting the requirements of  
11 paragraph (2) with respect to matching contribu-  
12 tions and employee contributions if the plan—

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

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

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

22 (c) EFFECTIVE DATE.—The amendments made by  
23 this section shall apply to plan years beginning after De-  
24 cember 31, 2015.



1 **SEC. 5. CREDIT FOR EMPLOYERS WITH RESPECT TO MODI-**  
 2 **FIED SAFE HARBOR REQUIREMENTS.**

3 (a) IN GENERAL.—Subpart D of part IV of sub-  
 4 chapter A of chapter 1 of the Internal Revenue Code of  
 5 1986 is amended by adding at the end the following new  
 6 section:

7 **“SEC. 45S. CREDIT FOR SMALL EMPLOYERS WITH RESPECT**  
 8 **TO MODIFIED SAFE HARBOR REQUIREMENTS**  
 9 **FOR AUTOMATIC CONTRIBUTION ARRANGE-**  
 10 **MENTS.**

11 “(a) GENERAL RULE.—For purposes of section 38,  
 12 in the case of a small employer, the safe harbor adoption  
 13 credit determined under this section for any taxable year  
 14 is the amount equal to the total of the employer’s match-  
 15 ing contributions under section 401(k)(14)(D) during the  
 16 taxable year on behalf of employees who are not highly  
 17 compensated employees, subject to the limitations of sub-  
 18 section (b).

19 “(b) LIMITATIONS.—

20 “(1) LIMITATION WITH RESPECT TO COM-  
 21 PENSATION.—The credit determined under sub-  
 22 section (a) with respect to contributions made on be-  
 23 half of an employee who is not a highly compensated  
 24 employee shall not exceed 2 percent of the com-  
 25 pensation of such employee for the taxable year.

1           “(2) LIMITATION WITH RESPECT TO YEARS OF  
2 PARTICIPATION.—Credit shall be determined under  
3 subsection (a) with respect to contributions made on  
4 behalf of an employee who is not a highly com-  
5 pensated employee only during the first 5 years such  
6 employee participates in the qualified automatic con-  
7 tribution arrangement.

8           “(c) DEFINITIONS.—

9           “(1) IN GENERAL.—Any term used in this sec-  
10 tion which is also used in section 401(k)(14) shall  
11 have the same meaning as when used in such sec-  
12 tion.

13           “(2) SMALL EMPLOYER.—The term ‘small em-  
14 ployer’ means an eligible employer (as defined in  
15 section 408(p)(2)(C)(i)).

16           “(d) DENIAL OF DOUBLE BENEFIT.—No deduction  
17 shall be allowable under this title for any contribution with  
18 respect to which a credit is allowed under this section.”.

19           (b) CREDIT TO BE PART OF GENERAL BUSINESS  
20 CREDIT.—Subsection (b) of section 38 of the Internal  
21 Revenue Code of 1986 is amended—

22           (1) by striking “plus” at the end of paragraph  
23 (35),

24           (2) by striking the period at the end of para-  
25 graph (36) and inserting “, plus”, and

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

3           “(37) the safe harbor adoption credit deter-  
4 mined under section 45S.”.

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

“Sec. 45S. Credit for small employers with respect to modified safe harbor re-  
quirements for automatic contribution arrangements.”.

10          (d) EFFECTIVE DATE.—The amendments made by  
11 this section shall apply to taxable years that include any  
12 portion of a plan year beginning after December 31, 2015.

13 **SEC. 6. MODIFICATION OF REGULATIONS.**

14          The Secretary of the Treasury shall promulgate regu-  
15 lations or other guidance that—

16           (1) simplify and clarify the rules regarding the  
17 timing of participant notices required under section  
18 401(k)(13)(E) of the Internal Revenue Code of  
19 1986, with specific application to—

20           (A) plans that allow employees to be eligi-  
21 ble for participation immediately upon begin-  
22 ning employment, and

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

1           (2) simplify and clarify the automatic escalation  
2 rules under sections 401(k)(13)(C)(iii) and  
3 401(k)(14)(C) of the Internal Revenue Code of 1986  
4 in the context of employers with multiple payroll and  
5 administrative systems.

6 Such regulations or guidance shall address the particular  
7 case of employees within the same plan who are subject  
8 to different notice timing and different percentage require-  
9 ments, and provide assistance for plan sponsors in man-  
10 aging such cases.

11 **SEC. 7. OPPORTUNITY TO CLAIM THE SAVER'S CREDIT ON**  
12 **FORM 1040EZ.**

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

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