S. 266

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

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

A BILL

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

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 Act of 2015”.

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

(a) IN GENERAL.—Not later than one year after the date of the enactment of this Act, the Secretary of the
Treasury shall prescribe final regulations under which a plan described in section 413(c) of the Internal Revenue Code of 1986 may be treated as satisfying the qualification requirements of section 401(a) of such Code despite the violation of such requirements with respect to one or more participating employers. Such rules may require that the portion of the plan attributable to such participating employers be spun off to plans maintained by such employers.

SEC. 3. MODIFICATION OF ERISA RULES RELATING TO MULTIPLE EMPLOYER DEFINED CONTRIBUTION PLANS.

(a) IN GENERAL.—

(1) REQUIREMENT OF COMMON INTEREST.—

Section 3(2) of the Employee Retirement Income Security Act of 1974 is amended by adding at the end the following:

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

“(ii) For purposes of this subparagraph, the term ‘qualified multiple employer plan’ means a plan described in section 413(c) of the Internal Revenue Code of 1986 which—
“(I) is an individual account plan with respect to which the requirements of clauses (iii), (iv), and (v) are met, and

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

“(iii) The requirements of this clause are met if, under the plan, each participating employer retains fiduciary responsibility for—

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

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

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

“(v) The requirements of this clause are met if each participating employer in the plan is an eligible employer as defined in section 408(p)(2)(C)(i) of the Internal Revenue Code of 1986, applied—
“(I) by substituting ‘500’ for ‘100’ in sub-
clause (I) thereof,

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

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

(2) SIMPLIFIED REPORTING FOR SMALL MULTIPLE EMPLOYER PLANS.—Section 104(a) of such
Act (29 U.S.C. 1024(a)) is amended by adding at the end the following:

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

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

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

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

“(i) a qualified multiple employer plan, as de-
defined in section 3(2)(C)(ii), or
“(ii) any other plan described in section 413(c) of the Internal Revenue Code of 1986 that satisfies the requirements of clause (v) of section 3(2)(C).”.

(b) Effective Date.—The amendments made by this section shall apply to years beginning after December 31, 2015.

SEC. 4. 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 purposes 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-
mined 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 em-
ployer 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, 2015.
SEC. 5. 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 is amended by adding at the end the following new section:

“SEC. 45S. 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 is amended—

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

(2) by striking the period at the end of paragraph (36) and inserting “, plus”, and
by adding at the end the following new paragraph:

“(37) the safe harbor adoption credit determined under section 45S.”.

(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 adding after the item relating to section 45R the following new item:

“Sec. 45S. 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, 2015.

SEC. 6. 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. 7. 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 Internal Revenue Code of 1986 to file (and claim such credit on) Form 1040EZ.