

117TH CONGRESS  
1ST SESSION

# S. 2602

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

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IN THE SENATE OF THE UNITED STATES

AUGUST 4, 2021

Mr. YOUNG (for himself and Mr. BOOKER) 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 2021”.

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 “(16) 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-

quirements 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,

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 dur-  
 24 ing the period described in subclause (I))”.

25 (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,

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, 2021.

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, 2021, 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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