

**SEC. 902. INCREASING PARTICIPATION THROUGH AUTOMATIC CONTRIBUTION ARRANGEMENTS.**

(a) IN GENERAL.—Section 401(k) of the Internal Revenue Code of 1986 (relating to cash or deferred arrangement) is amended by adding at the end the following new paragraph:

“(13) ALTERNATIVE METHOD FOR AUTOMATIC CONTRIBUTION ARRANGEMENTS TO MEET NON-DISCRIMINATION REQUIREMENTS.—

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

“(B) QUALIFIED AUTOMATIC CONTRIBUTION ARRANGEMENT.—For purposes of this paragraph, the term ‘qualified automatic contribution arrangement’ means any cash or deferred arrangement which meets the requirements of subparagraphs (C) through (E).

“(C) AUTOMATIC DEFERRAL.—

“(i) IN GENERAL.—The requirements of this subparagraph are met if, under the arrangement, each employee eligible to participate in the arrangement is treated as having elected to have the employer make elective contributions in an amount equal to a qualified percentage of compensation.

“(ii) ELECTION OUT.—The election treated as having been made under clause (i) shall cease to apply with respect to any employee if such employee makes an affirmative election—

“(I) to not have such contributions made, or

“(II) to make elective contributions at a level specified in such affirmative election.

“(iii) QUALIFIED PERCENTAGE.—For purposes of this subparagraph, the term ‘qualified percentage’ means, with respect to any employee, any percentage determined under the arrangement if such percentage is applied uniformly, does not exceed 10 percent, and is at least—

“(I) 3 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 clause (i) is made with respect to such employee,

“(II) 4 percent during the first plan year following the plan year described in subclause (I),

“(III) 5 percent during the second plan year following the plan year described in subclause (I), and

“(IV) 6 percent during any subsequent plan year.

“(iv) **AUTOMATIC DEFERRAL FOR CURRENT EMPLOYEES NOT REQUIRED.**— Clause (i) may be applied without taking into account any employee who—

“(I) was eligible to participate in the arrangement (or a predecessor arrangement) immediately before the date on which such arrangement becomes a qualified automatic contribution arrangement (determined after application of this clause), and

“(II) had an election in effect on such date either to participate in the arrangement or to not participate in the arrangement.

“(D) **MATCHING OR NONELECTIVE CONTRIBUTIONS.**—

“(i) **IN GENERAL.**—The requirements of this subparagraph are met if, under the arrangement, the employer—

“(I) makes matching contributions on behalf of each employee who is not a highly compensated employee in an amount equal to the sum of 100 percent of the elective contributions of the employee to the extent that such contributions do not exceed 1 percent of compensation plus 50 percent of so much of such compensation as exceeds 1 percent but does not exceed 6 percent of compensation, or

“(II) is required, without regard to whether the employee makes an elective contribution or employee contribution, to make a contribution to a defined contribution plan on behalf of each employee who is not a highly compensated employee and who is eligible to participate in the arrangement in an amount equal to at least 3 percent of the employee’s compensation.

“(ii) **APPLICATION OF RULES FOR MATCHING CONTRIBUTIONS.**—The rules of clauses (ii) and (iii) of paragraph (12)(B) shall apply for purposes of clause (i)(I).

“(iii) WITHDRAWAL AND VESTING RESTRICTIONS.—An arrangement shall not be treated as meeting the requirements of clause (i) unless, with respect to employer contributions (including matching contributions) taken into account in determining whether the requirements of clause (i) are met—

“(I) any employee who has completed at least 2 years of service (within the meaning of section 411(a)) has a nonforfeitable right to 100 percent of the employee’s accrued benefit derived from such employer contributions, and

“(II) the requirements of subparagraph (B) of paragraph (2) are met with respect to all such employer contributions.

“(iv) APPLICATION OF CERTAIN OTHER RULES.—The rules of subparagraphs (E)(ii) and (F) of paragraph (12) shall apply for purposes of subclauses (I) and (II) of clause (i).

“(E) NOTICE REQUIREMENTS.—

“(i) IN GENERAL.—The requirements of this subparagraph are met if, within a reasonable period before each plan year, each employee eligible to participate in the arrangement for such year receives written notice of the employee’s rights and obligations under the arrangement which—

“(I) is sufficiently accurate and comprehensive to apprise the employee of such rights and obligations, and

“(II) is written in a manner calculated to be understood by the average employee to whom the arrangement applies.

“(ii) TIMING AND CONTENT REQUIREMENTS.—A notice shall not be treated as meeting the requirements of clause (i) with respect to an employee unless—

“(I) the notice explains the employee’s right under the arrangement to elect not to have elective contributions made on the employee’s behalf (or to elect to have such contributions made at a different percentage),

“(II) in the case of an arrangement under which the employee may elect among 2 or more investment options, the notice explains how contributions made under the arrangement will be invested in the absence of any investment election by the employee, and

“(III) the employee has a reasonable period of time after receipt of the notice described in subclauses (I) and (II) and before the first elective contribution is made to make either such election.”.

(b) **MATCHING CONTRIBUTIONS.**—Section 401(m) of such Code (relating to nondiscrimination test for matching contributions and employee contributions) is amended by redesignating paragraph (12) as paragraph (13) and by inserting after paragraph (11) the following new paragraph:

“(12) **ALTERNATIVE METHOD FOR AUTOMATIC CONTRIBUTION ARRANGEMENTS.**—A defined contribution plan shall be treated as meeting the requirements of paragraph (2) with respect to matching contributions if the plan—

“(A) is a qualified automatic contribution arrangement (as defined in subsection (k)(13)), and

“(B) meets the requirements of paragraph (11)(B).”.

(c) **EXCLUSION FROM DEFINITION OF TOP-HEAVY PLANS.**—

(1) **ELECTIVE CONTRIBUTION RULE.**—Clause (i) of section 416(g)(4)(H) of such Code is amended by inserting “or 401(k)(13)” after “section 401(k)(12)”.

(2) **MATCHING CONTRIBUTION RULE.**—Clause (ii) of section 416(g)(4)(H) of such Code is amended by inserting “or 401(m)(12)” after “section 401(m)(11)”.

(d) **TREATMENT OF WITHDRAWALS OF CONTRIBUTIONS DURING FIRST 90 DAYS.**—

(1) **IN GENERAL.**—Section 414 of the Internal Revenue Code of 1986 is amended by adding at the end the following new subsection:

“(w) **SPECIAL RULES FOR CERTAIN WITHDRAWALS FROM ELIGIBLE AUTOMATIC CONTRIBUTION ARRANGEMENTS.**—

“(1) **IN GENERAL.**—If an eligible automatic contribution arrangement allows an employee to elect to make permissible withdrawals—

“(A) the amount of any such withdrawal shall be includible in the gross income of the employee for the taxable year of the employee in which the distribution is made,

“(B) no tax shall be imposed under section 72(t) with respect to the distribution, and

“(C) the arrangement shall not be treated as violating any restriction on distributions under this title solely by reason of allowing the withdrawal.

In the case of any distribution to an employee by reason of an election under this paragraph, employer matching contributions shall be forfeited or subject to such other treatment as the Secretary may prescribe.

“(2) PERMISSIBLE WITHDRAWAL.—For purposes of this subsection—

“(A) IN GENERAL.—The term ‘permissible withdrawal’ means any withdrawal from an eligible automatic contribution arrangement meeting the requirements of this paragraph which—

“(i) is made pursuant to an election by an employee, and

“(ii) consists of elective contributions described in paragraph (3)(B) (and earnings attributable thereto).

“(B) TIME FOR MAKING ELECTION.—Subparagraph (A) shall not apply to an election by an employee unless the election is made no later than the date which is 90 days after the date of the first elective contribution with respect to the employee under the arrangement.

“(C) AMOUNT OF DISTRIBUTION.—Subparagraph (A) shall not apply to any election by an employee unless the amount of any distribution by reason of the election is equal to the amount of elective contributions made with respect to the first payroll period to which the eligible automatic contribution arrangement applies to the employee and any succeeding payroll period beginning before the effective date of the election (and earnings attributable thereto).

“(3) ELIGIBLE AUTOMATIC CONTRIBUTION ARRANGEMENT.—For purposes of this subsection, the term ‘eligible automatic contribution arrangement’ means an arrangement under an applicable employer plan—

“(A) under which a participant may elect to have the employer make payments as contributions under the plan on behalf of the participant, or to the participant directly in cash,

“(B) under which the participant is treated as having elected to have the employer make such contributions in an amount equal to a uniform percentage of compensation provided under the plan

until the participant specifically elects not to have such contributions made (or specifically elects to have such contributions made at a different percentage),

“(C) under which, in the absence of an investment election by the participant, contributions described in subparagraph (B) are invested in accordance with regulations prescribed by the Secretary of Labor under section 404(c)(5) of the Employee Retirement Income Security Act of 1974, and

“(D) which meets the requirements of paragraph (4).

“(4) NOTICE REQUIREMENTS.—

“(A) IN GENERAL.—The administrator of a plan containing an arrangement described in paragraph (3) shall, within a reasonable period before each plan year, give to each employee to whom an arrangement described in paragraph (3) applies for such plan year notice of the employee’s rights and obligations under the arrangement which—

“(i) is sufficiently accurate and comprehensive to apprise the employee of such rights and obligations, and

“(ii) is written in a manner calculated to be understood by the average employee to whom the arrangement applies.

“(B) TIME AND FORM OF NOTICE.—A notice shall not be treated as meeting the requirements of subparagraph (A) with respect to an employee unless—

“(i) the notice includes an explanation of the employee’s right under the arrangement to elect not to have elective contributions made on the employee’s behalf (or to elect to have such contributions made at a different percentage),

“(ii) the employee has a reasonable period of time after receipt of the notice described in clause (i) and before the first elective contribution is made to make such election, and

“(iii) the notice explains how contributions made under the arrangement will be invested in the absence of any investment election by the employee.

“(5) APPLICABLE EMPLOYER PLAN.—For purposes of this subsection, the term ‘applicable employer plan’ means—

“(A) an employees’ trust described in section 401(a) which is exempt from tax under section 501(a),

“(B) a plan under which amounts are contributed by an individual’s employer for an annuity contract described in section 403(b), and

“(C) an eligible deferred compensation plan described in section 457(b) which is maintained by an eligible employer described in section 457(e)(1)(A).

“(6) SPECIAL RULE.—A withdrawal described in paragraph (1) (subject to the limitation of paragraph (2)(C)) shall not be taken into account for purposes of section 401(k)(3).”.

(2) VESTING CONFORMING AMENDMENTS.—

(A) Section 411(a)(3)(G) of such Code is amended by inserting “an erroneous automatic contribution under section 414(w),” after “402(g)(2)(A),”.

(B) The heading of section 411(a)(3)(G) of such Code is amended by inserting “**OR ERRONEOUS AUTOMATIC CONTRIBUTION**” before the period.

(C) Section 401(k)(8)(E) of such Code is amended by inserting “an erroneous automatic contribution under section 414(w),” after “402(g)(2)(A),”.

(D) The heading of section 401(k)(8)(E) of such Code is amended by inserting “**OR ERRONEOUS AUTOMATIC CONTRIBUTION**” before the period.

(E) Section 203(a)(3)(F) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1053(a)(3)(F)) is amended by inserting “an erroneous automatic contribution under section 414(w) of such Code,” after “402(g)(2)(A) of such Code,”.

(e) EXCESS CONTRIBUTIONS.—

(1) EXPANSION OF CORRECTIVE DISTRIBUTION PERIOD FOR AUTOMATIC CONTRIBUTION ARRANGEMENTS.—Subsection (f) of section 4979 of the Internal Revenue Code of 1986 is amended—

(A) by inserting “(6 months in the case of an excess contribution or excess aggregate contribution to an eligible automatic contribution arrangement (as defined in section 414(w)(3)))” after “212 months” in paragraph (1), and

(B) by striking “212 MONTHS OF” in the heading and inserting “SPECIFIED PERIOD AFTER”.

(2) YEAR OF INCLUSION.—Paragraph (2) of section 4979(f) of such Code is amended to read as follows:

“(2) YEAR OF INCLUSION.—Any amount distributed as provided in paragraph (1) shall be treated as earned and received by the recipient in the recipient’s taxable year in which such distributions were made.”.

(3) SIMPLIFICATION OF ALLOCABLE EARNINGS.—

(A) SECTION 4979.—Paragraph (1) of section 4979(f) of such Code is amended by adding “through the end of the plan year for which the contribution was made” after “thereto”.

(B) SECTION 401(k) AND 401(M).—

(i) Clause (i) of section 401(k)(8)(A) of such Code is amended by adding “through the end of such year” after “such contributions”.

(ii) Subparagraph (A) of section 401(m)(6) of such Code is amended by adding “through the end of such year” after “to such contributions”.

(f) PREEMPTION OF CONFLICTING STATE REGULATION.—

(1) IN GENERAL.—Section 514 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1144) is amended by adding at the end the following new subsection:

“(e)(1) Notwithstanding any other provision of this section, this title shall supersede any law of a State which would directly or indirectly prohibit or restrict the inclusion in any plan of an automatic contribution arrangement. The Secretary may prescribe regulations which would establish minimum standards that such an arrangement would be required to satisfy in order for this subsection to apply in the case of such arrangement.

“(2) For purposes of this subsection, the term ‘automatic contribution arrangement’ means an arrangement——

“(A) under which a participant may elect to have the plan sponsor make payments as contributions under the plan on behalf of the participant, or to the participant directly in cash,

“(B) under which a participant is treated as having elected to have the plan sponsor make such contributions in an amount equal to a uniform percentage of compensation provided under the plan until the participant specifically elects not to have such contributions made (or specifically elects to have such contributions made at a different percentage), and

“(C) under which such contributions are invested in accordance with regulations prescribed by the Secretary under section 404(c)(5).

“(3)(A) The plan administrator of an automatic contribution arrangement shall, within a reasonable period before such plan year, provide to each participant to whom the arrangement applies for such plan year notice of the participant’s rights and obligations under the arrangement which—

“(i) is sufficiently accurate and comprehensive to apprise the participant of such rights and obligations, and

“(ii) is written in a manner calculated to be understood by the average participant to whom the arrangement applies.

“(B) A notice shall not be treated as meeting the requirements of subparagraph (A) with respect to a participant unless—

“(i) the notice includes an explanation of the participant’s right under the arrangement not to have elective contributions made on the participant’s behalf (or to elect to have such contributions made at a different percentage),

“(ii) the participant has a reasonable period of time, after receipt of the notice described in clause

(i) and before the first elective contribution is made, to make such election, and

“(iii) the notice explains how contributions made under the arrangement will be invested in the absence of any investment election by the participant.”.

(2) ENFORCEMENT.—Section 502(c)(4) of such Act (29 U.S.C. 1132(c)(4)) is amended by striking “or section 302(b)(7)(F)(vi)” inserting “, section 302(b)(7)(F)(vi), or section 514(e)(3)”.

(g) EFFECTIVE DATE.—The amendments made by this section shall apply to plan years beginning after December 31, 2007, except that the amendments made by subsection (f) shall take effect on the date of the enactment of this Act.