117TH CONGRESS
2D SESSION

S. ______

To amend the Internal Revenue Code of 1986 to provide for starter 401(k)s for employers with no retirement plans, and for other purposes.

IN THE SENATE OF THE UNITED STATES

Mr. BARRASSO (for himself and Mr. CARPER) introduced the following bill; which was read twice and referred to the Committee on ______________

A BILL

To amend the Internal Revenue Code of 1986 to provide for starter 401(k)s for employers with no retirement plans, 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 ''Starter-K Act of
5 2022''.

SEC. 2. STARTER 401(k) PLANS FOR EMPLOYERS WITH NO RETIREMENT PLAN.

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

"(16) STARTER 401(k) DEFERRAL-ONLY PLANS FOR EMPLOYERS WITH NO RETIREMENT PLAN.—

"(A) IN GENERAL.—A starter 401(k) deferral-only arrangement maintained by an eligible employer shall be treated as meeting the requirements of paragraph (3)(A)(ii).

"(B) STARTER 401(k) DEFERRAL-ONLY ARRANGEMENT.—For purposes of this paragraph, the term 'starter 401(k) deferral-only arrangement' means any cash or deferred arrangement which meets—

"(i) the automatic deferral requirements of subparagraph (C),

"(ii) the contribution limitations of subparagraph (D), and

"(iii) the requirements of subparagraph (E) of paragraph (13).

"(C) AUTOMATIC DEFERRAL.—

"(i) IN GENERAL.—The requirements of this subparagraph are met if, under the arrangement, each employee eligible to

1 participate in the arrangement is treated
2 as having elected to have the employer
3 make elective contributions in an amount
4 equal to a qualified percentage of com-
5 pensation.
6 "(ii) ELECTION OUT.—The election
7 treated as having been made under clause
8 (i) shall cease to apply with respect to any
9 employee if such employee makes an af-
10 firmative election—
11 "(I) to not have such contribu-
12 tions made, or
13 "(II) to make elective contribu-
14 tions at a level specified in such af-
15 firmative election.
16 "(iii) QUALIFIED PERCENTAGE.—For
17 purposes of this subparagraph, the term
18 'qualified percentage' means, with respect
19 to any employee, any percentage deter-
20 mined under the arrangement if such per-
21 centage is applied uniformly and is not less
22 than 3 or more than 15 percent.
23 "(D) CONTRIBUTION LIMITATIONS.—

1 "(i) IN GENERAL.—The requirements
2 of this subparagraph are met if, under the
3 arrangement—
4 "(I) the only contributions which
5 may be made are elective contribu-
6 tions of employees described in sub-
7 paragraph (C), and
8 "(II) the aggregate amount of
9 such elective contributions which may
10 be made with respect to any employee
11 for any calendar year shall not exceed
12 $6,000.
13 "(ii) COST-OF-LIVING ADJUSTMENT.—
14 In the case of any calendar year beginning
15 after December 31, 2023, the $6,000
16 amount under clause (i) shall be adjusted
17 in the same manner as under section
18 402(g)(4), except that '2022' shall be sub-
19 stituted for '2005'.
20 "(iii) CROSS REFERENCE.—For catch-
21 up contributions for individuals age 50 or
22 over, see section 414(v)(2)(B)(ii).
23 "(E) ELIGIBLE EMPLOYER.—For purposes
24 of this paragraph—

1 "(i) IN GENERAL.—The term 'eligible
2 employer' means any employer which, dur-
3 ing the first plan year of the cash or de-
4 ferred arrangement described in subpara-
5 graph (B), does not maintain any other
6 qualified plan. An employer treated as an
7 eligible employer under the preceding sen-
8 tence shall be treated as an eligible em-
9 ployer with respect to the arrangement for
10 any subsequent plan year without regard
11 to whether it maintains another qualified
12 plan.
13 "(ii) QUALIFIED PLAN.—The term
14 'qualified plan' means a plan, contract,
15 pension, account, or trust described in sub-
16 paragraph (A) or (B) of paragraph (5) of
17 section 219(g) (determined without regard
18 to the last sentence of such paragraph
19 (5)).".
20 (b) CERTAIN ANNUITY CONTRACTS.—Subsection (b)
21 of section 403 of the Internal Revenue Code of 1986 is
22 amended by adding at the end the following new para-
23 graph:
24 "(15) SAFE HARBOR DEFERRAL-ONLY PLANS
25 FOR EMPLOYERS WITH NO RETIREMENT PLAN.—

1 "(A) IN GENERAL.—A safe harbor defer-
2 ral-only plan maintained by an eligible employer
3 shall be treated as meeting the requirements of
4 paragraph (12).
5 "(B) SAFE HARBOR DEFERRAL-ONLY
6 PLAN.—For purposes of this paragraph, the
7 term 'safe harbor deferral-only plan' means any
8 plan which meets—
9 "(i) the automatic deferral require-
10 ments of subparagraph (C),
11 "(ii) the contribution limitations of
12 subparagraph (D), and
13 "(iii) the requirements of subpara-
14 graph (E) of section 401(k)(13).
15 "(C) AUTOMATIC DEFERRAL.—
16 "(i) IN GENERAL.—The requirements
17 of this subparagraph are met if, under the
18 plan, each eligible employee is treated as
19 having elected to have the employer make
20 elective contributions in an amount equal
21 to a qualified percentage of compensation.
22 "(ii) ELECTION OUT.—The election
23 treated as having been made under clause
24 (i) shall cease to apply with respect to any

1 eligible employee if such eligible employee
2 makes an affirmative election—
3 ‘‘(I) to not have such contribu-
4 tions made, or
5 ‘‘(II) to make elective contribu-
6 tions at a level specified in such af-
7 firmative election.
8 ‘‘(iii) QUALIFIED PERCENTAGE.—For
9 purposes of this subparagraph, the term
10 ‘qualified percentage’ means, with respect
11 to any employee, any percentage deter-
12 mined under the plan if such percentage is
13 applied uniformly and is not less than 3 or
14 more than 15 percent.
15 ‘‘(D) CONTRIBUTION LIMITATIONS.—
16 ‘‘(i) IN GENERAL.—The requirements
17 of this subparagraph are met if, under the
18 plan—
19 ‘‘(I) the only contributions which
20 may be made are elective contribu-
21 tions of eligible employees, and
22 ‘‘(II) the aggregate amount of
23 such elective contributions which may
24 be made with respect to any employee

1 for any calendar year shall not exceed
2 $6,000.
3 ''(ii) COST-OF-LIVING ADJUSTMENT.—
4 In the case of any calendar year beginning
5 after December 31, 2023, the $6,000
6 amount under clause (i) shall be adjusted
7 in the same manner as under section
8 402(g)(4), except that '2022' shall be sub-
9 stituted for '2005'.
10 ''(iii) CROSS REFERENCE.—For catch-
11 up contributions for individuals age 50 or
12 over, see section 414(v)(2)(B)(ii).
13 ''(E) ELIGIBLE EMPLOYER.—For purposes
14 of this paragraph—
15 ''(i) IN GENERAL.—The term 'eligible
16 employer' means any employer which, dur-
17 ing the first plan year of the plan de-
18 scribed in subparagraph (B), does not
19 maintain any other qualified plan. An em-
20 ployer treated as an eligible employer
21 under the preceding sentence shall be
22 treated as an eligible employer with respect
23 to the plan for any subsequent plan year
24 without regard to whether it maintains an-
25 other qualified plan.

"(ii) QUALIFIED PLAN.—The term 'qualified plan' means a plan, contract, pension, account, or trust described in subparagraph (A) or (B) of paragraph (5) of section 219(g) (determined without regard to the last sentence of such paragraph (5)).

"(F) ELIGIBLE EMPLOYEE.—For purposes of this paragraph, the term 'eligible employee' means any employee of the employer other than an employee who is permitted to be excluded under paragraph (12)(A).".

(c) CATCH-UP CONTRIBUTIONS FOR INDIVIDUALS AGE 50 AND OVER.—

(1) Section 414(v)(2)(B) of the Internal Revenue Code of 1986 is amended by inserting ", 401(k)(16), 403(b)(15)," after "401(k)(11)" each place it appears.

(2) Section 414(v)(3)(B) of such Code is amended—

(A) by inserting ", 401(k)(16)" after "401(k)(11)", and

(B) by inserting ", 403(b)(15)" after "403(b)(12)".

1 (d) SIMPLIFIED REPORTING.—Section 104(a)(2)(A)
2 of the Employee Retirement Income Security Act of 1974
3 (29 U.S.C. 1024(a)(2)) is amended by striking "or" at
4 the end of clause (i), by redesignating clause (ii) as clause
5 (iii), and by inserting after clause (i) the following new
6 clause:

7 "(ii) is a starter 401(k) deferral-only
8 arrangement described in section
9 401(k)(16)(B) of the Internal Revenue
10 Code of 1986 or a safe harbor deferral-
11 only plan described in section 403(b)(15)
12 of such Code; or".

13 (e) STARTER AND SAFE HARBOR PLANS NOT
14 TREATED AS TOP-HEAVY PLANS.—Subparagraph (H) of
15 section 416(g)(4) of the Internal Revenue Code of 1986
16 is amended—

17 (1) by striking "ARRANGEMENTS" in the head-
18 ing and inserting "ARRANGEMENTS OR PLANS",

19 (2) by striking ", and" at the end of clause (i)
20 and inserting "and matching contributions with re-
21 spect to which the requirements of section
22 401(m)(11) or 401(m)(12) are met, or", and

23 (3) by striking clause (ii) and inserting after
24 clause (i) the following new clause:

"(ii) a starter 401(k) deferral-only arrangement described in section 401(k)(16)(B) or a safe harbor deferral-only plan described in section 403(b)(15).".

(f) PLANS NOT SUBJECT TO EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974.—Applicable to plan years beginning after December 31, 2022, the Secretary of Labor shall update Field Assistance Bulletin No. 2010-01 to specify that the hiring of a new plan administrator or third-party administrator by a plan which is not previously subject to title I of the Employee Retirement Income Security Act of 1974 shall not cause such plan to be subject to such title.

(g) EFFECTIVE DATE.—The amendments made by this section shall apply to plan years beginning after December 31, 2022.