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.

Be it enacted by the Senate and House of Representa-
tives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Starter-K Act of 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
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 and is not less than 3 or more than 15 percent.

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

“(I) the only contributions which may be made are elective contributions of employees described in subparagraph (C), and

“(II) the aggregate amount of such elective contributions which may be made with respect to any employee for any calendar year shall not exceed $6,000.

“(ii) COST-OF-LIVING ADJUSTMENT.—In the case of any calendar year beginning after December 31, 2023, the $6,000 amount under clause (i) shall be adjusted in the same manner as under section 402(g)(4), except that ‘2022’ shall be substituted for ‘2005’.

“(iii) CROSS REFERENCE.—For catch-up contributions for individuals age 50 or over, see section 414(v)(2)(B)(ii).

“(E) ELIGIBLE EMPLOYER.—For purposes of this paragraph—
“(i) IN GENERAL.—The term ‘eligible employer’ means any employer which, during the first plan year of the cash or deferred arrangement described in subparagraph (B), does not maintain any other qualified plan. An employer treated as an eligible employer under the preceding sentence shall be treated as an eligible employer with respect to the arrangement for any subsequent plan year without regard to whether it maintains another 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)).”.

(b) CERTAIN ANNUITY CONTRACTS.—Subsection (b) of section 403 of the Internal Revenue Code of 1986 is amended by adding at the end the following new paragraph:

“(15) SAFE HARBOR DEFERRAL-ONLY PLANS FOR EMPLOYERS WITH NO RETIREMENT PLAN.—
“(A) IN GENERAL.—A safe harbor deferral-only plan maintained by an eligible employer shall be treated as meeting the requirements of paragraph (12).

“(B) SAFE HARBOR DEFERRAL-ONLY PLAN.—For purposes of this paragraph, the term ‘safe harbor deferral-only plan’ means any plan 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 section 401(k)(13).

“(C) AUTOMATIC DEFERRAL.—

“(i) IN GENERAL.—The requirements of this subparagraph are met if, under the plan, each eligible employee 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
eligible employee if such eligible 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 plan if such percentage is applied uniformly and is not less than 3 or more than 15 percent.

“(D) CONTRIBUTION LIMITATIONS.—

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

“(I) the only contributions which may be made are elective contributions of eligible employees, and

“(II) the aggregate amount of such elective contributions which may be made with respect to any employee
for any calendar year shall not exceed $6,000.

“(ii) COST-OF-LIVING ADJUSTMENT.—In the case of any calendar year beginning after December 31, 2023, the $6,000 amount under clause (i) shall be adjusted in the same manner as under section 402(g)(4), except that ‘2022’ shall be substituted for ‘2005’.

“(iii) CROSS REFERENCE.—For catch-up contributions for individuals age 50 or over, see section 414(v)(2)(B)(ii).

“(E) ELIGIBLE EMPLOYER.—For purposes of this paragraph—

“(i) IN GENERAL.—The term ‘eligible employer’ means any employer which, during the first plan year of the plan described in subparagraph (B), does not maintain any other qualified plan. An employer treated as an eligible employer under the preceding sentence shall be treated as an eligible employer with respect to the plan for any subsequent plan year without regard to whether it maintains another qualified plan.
“(ii) QUALIFIED PLAN.—The term ‘qualified plan’ means a plan, contract, pension, account, or trust described in sub-paragraph (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).”.

(e) 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)”. 
(d) **Simplified Reporting.**—Section 104(a)(2)(A) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1024(a)(2)) is amended by striking “or” at the end of clause (i), by redesignating clause (ii) as clause (iii), and by inserting after clause (i) the following new clause:

“(ii) is a starter 401(k) deferral-only arrangement described in section 401(k)(16)(B) of the Internal Revenue Code of 1986 or a safe harbor deferral-only plan described in section 403(b)(15) of such Code; or”.

(e) **Starter and Safe Harbor Plans Not Treated as Top-Heavy Plans.**—Subparagraph (H) of section 416(g)(4) of the Internal Revenue Code of 1986 is amended—

(1) by striking “ARRANGEMENTS” in the heading and inserting “ARRANGEMENTS OR PLANS”,

(2) by striking “, and” at the end of clause (i) and inserting “and matching contributions with respect to which the requirements of section 401(m)(11) or 401(m)(12) are met, or”, and

(3) by striking clause (ii) and inserting after 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.