

116TH CONGRESS
1ST SESSION

S. 322

To amend the Internal Revenue Code of 1986 to promote retirement savings on behalf of small business employees by making improvements to SIMPLE retirement accounts and easing the transition from a SIMPLE plan to a 401(k) plan, and for other purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 4, 2019

Ms. COLLINS (for herself and Mr. WARNER) 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 promote retirement savings on behalf of small business employees by making improvements to SIMPLE retirement accounts and easing the transition from a SIMPLE plan to a 401(k) plan, 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 “SIMPLE Plan Mod-
5 ernization Act”.

1 **SEC. 2. CONTRIBUTION LIMIT FOR SIMPLE IRAS.**

2 (a) IN GENERAL.—Subparagraph (E) of section
3 408(p)(2) of the Internal Revenue Code of 1986 is amend-
4 ed—

5 (1) by striking “amount is” and all that follows
6 in clause (i) and inserting “dollar amount is—

7 “(I) \$16,000 in the case of an el-
8 igible employer described in clause
9 (iii) which had not more than 25 em-
10 ployees who received at least \$5,000
11 of compensation from the employer
12 for the preceding year,

13 “(II) \$16,000 in the case of an
14 eligible employer described in clause
15 (iii) which is not described in sub-
16 clause (I) and which elects, at such
17 time and in such manner as pre-
18 scribed by the Secretary, the applica-
19 tion of this subclause for the year,
20 and

21 “(III) \$10,000 in any other
22 case.”;

23 (2) by striking “ADJUSTMENT.—In the case of”
24 in clause (ii) and inserting “ADJUSTMENT.—

25 “(I) CERTAIN LARGE EMPLOY-
26 ERS.—In the case of”;

1 (3) by striking “clause (i)” in clause (ii) and in-
2 serting “clause (i)(III)”; and

3 (4) by adding at the end of clause (ii) the fol-
4 lowing new subclause:

5 “(II) OTHER EMPLOYERS.—In
6 the case of a year beginning after De-
7 cember 31, 2020, the Secretary shall
8 adjust annually the \$16,000 amount
9 in subclauses (I) and (II) of clause (i)
10 in the manner provided under sub-
11 clause (I) of this clause, except that
12 the base period taken into account
13 shall be the calendar quarter begin-
14 ning July 1, 2019.”.

15 (b) CATCH-UP CONTRIBUTIONS.—Paragraph (2) of
16 section 414(v) of the Internal Revenue Code of 1986 is
17 amended—

18 (1) in subparagraph (B)—

19 (A) by striking “the applicable” in clause
20 (ii) and inserting “except as provided in clause
21 (iii), the applicable”; and

22 (B) by adding at the end the following new
23 clause:

24 “(iii) In the case of an applicable em-
25 ployer plan—

1 “(I) which is maintained by an
2 eligible employer described in section
3 408(p)(2)(E)(i)(I), or

4 “(II) to which an election under
5 section 408(p)(2)(E)(i)(II) applies for
6 the year (including a plan described in
7 section 401(k)(11) which is main-
8 tained by an eligible employer de-
9 scribed in section 408(p)(2)(E)(i)(II)
10 and to which such election applies by
11 reason of subparagraphs (B)(i)(I) and
12 (E) of section 401(k)(11)),

13 the applicable dollar amount is \$4,500.”;

14 and

15 (2) in subparagraph (C), by striking “the
16 \$5,000 amount in subparagraph (B)(i) and the
17 \$2,500 amount in subparagraph (B)(ii)” and insert-
18 ing “each of the dollar amounts in subparagraph
19 (B)”.

20 (c) EMPLOYER MATCH.—Clause (ii) of section
21 408(p)(2)(C) of the Internal Revenue Code of 1986 is
22 amended—

23 (1) by striking “The term” in subclause (I) and
24 inserting “Except as provided in subclause (IV), the
25 term”;

1 (2) by adding at the end the following new sub-
2 clause:

3 “(IV) SPECIAL RULE FOR ELECT-
4 ING LARGER EMPLOYERS.—In the
5 case of an employer which had more
6 than 25 employees who received at
7 least \$5,000 of compensation from the
8 employer for the preceding year, and
9 which makes the election under sub-
10 paragraph (E)(i)(II) for any year,
11 subclause (I) shall be applied for such
12 year by substituting ‘4 percent’ for ‘3
13 percent.’”; and

14 (3) by striking “3 percent” each place it ap-
15 pears in subclauses (II) and (III) and inserting “the
16 applicable percentage”.

17 (d) INCREASE IN NONELECTIVE EMPLOYER CON-
18 TRIBUTION FOR ELECTING LARGER EMPLOYERS.—Sub-
19 paragraph (B) of section 408(p)(2) of the Internal Rev-
20 enue Code of 1986 is amended by adding at the end the
21 following new clause:

22 “(iii) SPECIAL RULE FOR ELECTING
23 LARGER EMPLOYERS.—In the case of an
24 employer which had more than 25 employ-
25 ees who received at least \$5,000 of com-

1 pensation from the employer for the pre-
2 ceding year, and which makes the election
3 under subparagraph (E)(i)(II) for any
4 year, clause (i) shall be applied for such
5 year by substituting ‘3 percent’ for ‘2 per-
6 cent’.”.

7 (e) TRANSITION RULE.—Paragraph (2) of section
8 408(p) of the Internal Revenue Code of 1986 is amended
9 by adding at the end the following new subparagraph:

10 “(F) 2-YEAR GRACE PERIOD.—An eligible
11 employer which had not more than 25 employ-
12 ees who received at least \$5,000 of compensa-
13 tion from the employer for 1 or more years, and
14 which has more than 25 such employees for any
15 subsequent year, shall be treated for purposes
16 of subparagraph (E)(i) as having 25 such em-
17 ployees for the 2 years following the last year
18 the employer had not more than 25 such em-
19 ployees, and not as having made the election
20 under subparagraph (E)(i)(II) for such 2 years.
21 Rules similar to the second sentence of sub-
22 paragraph (C)(i)(II) shall apply for purposes of
23 this subparagraph.”.

24 (f) AMENDMENTS APPLY ONLY IF EMPLOYER HAS
25 NOT HAD ANOTHER PLAN WITHIN 3 YEARS.—Subpara-

1 graph (E) of section 408(p)(2) of the Internal Revenue
2 Code of 1986, as amended by subsection (a), is amended
3 by adding at the end the following new clause:

4 “(iii) EMPLOYER HAS NOT HAD AN-
5 OTHER PLAN WITHIN 3 YEARS.—An eligi-
6 ble employer is described in this clause
7 only if, during the 3-taxable-year period
8 immediately preceding the 1st year the em-
9 ployer maintains the qualified salary re-
10 duction arrangement under this paragraph,
11 neither the employer nor any member of
12 any controlled group including the em-
13 ployer (or any predecessor of either) estab-
14 lished or maintained any plan described in
15 clause (i), (ii), or (iv) of section
16 219(g)(5)(A) with respect to which con-
17 tributions were made, or benefits were ac-
18 crued, for substantially the same employees
19 as are eligible to participate in such quali-
20 fied salary reduction arrangement.”.

21 (g) CONFORMING AMENDMENTS RELATING TO SIM-
22 PLE 401(k)s.—

23 (1) Subclause (I) of section 401(k)(11)(B)(i) of
24 the Internal Revenue Code of 1986 is amended by
25 inserting “(after the application of any election

1 under section 408(p)(2)(E)(i)(II))” before the
2 comma.

3 (2) Paragraph (11) of section 401(k) of such
4 Code is amended by adding at the end the following
5 new subparagraph:

6 “(E) EMPLOYERS ELECTING INCREASED
7 CONTRIBUTIONS.—In the case of an employer
8 which applies an election under section
9 408(p)(2)(E)(i)(II) for purposes of the con-
10 tribution requirements of this paragraph under
11 subparagraph (B)(i)(I), rules similar to the
12 rules of subparagraphs (B)(iii), (C)(ii)(IV), and
13 (F) of section 408(p)(2) shall apply for pur-
14 poses of subparagraphs (B)(i)(II) and (B)(ii) of
15 this paragraph.”.

16 (h) PLAN FORMS TO BE SHARED WITH SEC-
17 RETARY.—Subsection (p) of section 408 of the Internal
18 Revenue Code of 1986 is amended by adding at the end
19 the following new paragraph:

20 “(11) PLAN ARRANGEMENT AND NOTICES TO
21 BE SHARED WITH SECRETARY.—The trustee or
22 issuer (in the case of an individual retirement annu-
23 ity) of a simple retirement account shall provide to
24 the Secretary, at the time the qualified salary reduc-
25 tion arrangement is established (or not later than

1 December 31, 2020, in the case of arrangements in
2 effect on the date of the enactment of this para-
3 graph), a copy of the written arrangement described
4 in paragraph (2)(A).”.

5 (i) EFFECTIVE DATE.—The amendments made by
6 this section shall apply to taxable years beginning after
7 December 31, 2019.

8 (j) REPORTS BY SECRETARY.—

9 (1) IN GENERAL.—The Secretary of the Treas-
10 ury shall, not later than December 31, 2020, and
11 annually thereafter, report to the Committees on Fi-
12 nance and Health, Education, Labor, and Pensions
13 of the Senate and the Committees on Ways and
14 Means and Education and Labor of the House of
15 Representatives on the data described in paragraph
16 (2), together with any recommendations the Sec-
17 retary deems appropriate.

18 (2) DATA DESCRIBED.—For purposes of the re-
19 port required under paragraph (1), the Secretary of
20 the Treasury shall collect data and information on—

21 (A) the number of plans described in sec-
22 tion 408(p) or 401(k)(11) of the Internal Rev-
23 enue Code of 1986 that are maintained or es-
24 tablished during a year;

1 (B) the number of participants eligible to
2 participate in such plans for such year;

3 (C) median contribution amounts for the
4 participants described in subparagraph (B);

5 (D) the types of investments that are most
6 common under such plans; and

7 (E) the fee levels charged in connection
8 with the maintenance of accounts under such
9 plans.

10 Such data and information shall be collected sepa-
11 rately for each type of plan. For purposes of col-
12 lecting such data, the Secretary of the Treasury may
13 use such data as is otherwise available to the Sec-
14 retary for publication and may use such approaches
15 as are appropriate under the circumstances, includ-
16 ing the use of voluntary surveys and collaboration on
17 studies.

18 **SEC. 3. EMPLOYERS ALLOWED TO REPLACE SIMPLE RE-**
19 **TIREMENT ACCOUNTS WITH SAFE HARBOR**
20 **401(k) PLANS DURING A YEAR.**

21 (a) IN GENERAL.—Section 408(p) of the Internal
22 Revenue Code of 1986, as amended by section 2, is
23 amended by adding at the end the following new para-
24 graph:

1 “(12) REPLACEMENT OF SIMPLE RETIREMENT
2 ACCOUNTS WITH SAFE HARBOR PLANS DURING PLAN
3 YEAR.—

4 “(A) IN GENERAL.—Subject to the re-
5 quirements of this paragraph, an employer may
6 elect (in such form and manner as the Sec-
7 retary may prescribe) at any time during a year
8 to terminate the qualified salary reduction ar-
9 rangement under paragraph (2), but only if the
10 employer establishes and maintains (as of the
11 day after the termination date) a safe harbor
12 plan to replace the terminated arrangement.

13 “(B) COMBINED LIMITS ON CONTRIBU-
14 TIONS.—The terminated arrangement and safe
15 harbor plan shall both be treated as violating
16 the requirements of paragraph (2)(A)(ii) or sec-
17 tion 401(a)(30) (whichever is applicable) if the
18 aggregate elective contributions of the employee
19 under the terminated arrangement during its
20 last plan year and under the safe harbor plan
21 during its transition year exceed the sum of—

22 “(i) the applicable dollar amount for
23 such arrangement (determined on a full-
24 year basis) under this subsection (after the
25 application of section 414(v)) with respect

1 to the employee for such last plan year
2 multiplied by a fraction equal to the num-
3 ber of days in such plan year divided by
4 365, and

5 “(ii) the applicable dollar amount (as
6 so determined) under section 402(g)(1) for
7 such safe harbor plan on such elective con-
8 tributions during the transition year multi-
9 plied by a fraction equal to the number of
10 days in such transition year divided by
11 365.

12 “(C) TRANSITION YEAR.—For purposes of
13 this paragraph, the transition year is the period
14 beginning after the termination date and ending
15 on the last day of the calendar year during
16 which the termination occurs.

17 “(D) SAFE HARBOR PLAN.—For purposes
18 of this paragraph, the term ‘safe harbor plan’
19 means a qualified cash or deferred arrangement
20 which meets the requirements of paragraph
21 (11), (12), or (13) of section 401(k).”.

22 (b) WAIVER OF 2-YEAR WITHDRAWAL LIMITATION
23 IN CASE OF PLANS CONVERTING TO 401(k) OR 403(b).—

1 (1) IN GENERAL.—Paragraph (6) of section
2 72(t) of the Internal Revenue Code of 1986 is
3 amended—

4 (A) by striking “ACCOUNTS.—In the case
5 of” and inserting “**ACCOUNTS.**—

6 “(A) IN GENERAL.—In the case of”;

7 (B) by adding at the end the following new
8 subparagraph:

9 “(B) WAIVER IN CASE OF PLAN CONVER-
10 SION TO 401(k) OR 403(b).—In the case of an
11 employee of an employer which terminates the
12 qualified salary reduction arrangement of the
13 employer under section 408(p) and establishes
14 a qualified cash or deferred arrangement de-
15 scribed in section 401(k) or purchases annuity
16 contracts described in section 403(b), subpara-
17 graph (A) shall not apply to any amount which
18 is paid in a rollover contribution described in
19 section 408(d)(3) into a qualified trust under
20 section 401(k) (but only if such contribution is
21 subsequently subject to the rules of section
22 401(k)(2)(B)) or an annuity contract described
23 in section 403(b) (but only if such contribution
24 is subsequently subject to the rules of section
25 403(b)(11)) for the benefit of the employee.”.

1 (2) CONFORMING AMENDMENT.—Subparagraph
2 (G) of section 408(d)(3) of such Code is amended by
3 striking “72(t)(6)” and inserting “72(t)(6)(A)”.

4 (c) EFFECTIVE DATE.—The amendments made by
5 this section shall apply to plan years beginning after De-
6 cember 31, 2019.

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