115TH CONGRESS
2D SESSION

S. 3197

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

JULY 11, 2018

Ms. COLLINS (for herself and Mr. WARNER) introduced the following bill; which was read twice and referred to the Committee on Finance

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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.

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

SECTION 1. SHORT TITLE.

This Act may be cited as the "SIMPLE Plan Modernization Act".

SEC. 2. CONTRIBUTION LIMIT FOR SIMPLE IRAS.

(a) IN GENERAL.—Subparagraph (E) of section 408(p)(2) of the Internal Revenue Code of 1986 is amended—

(1) by striking "amount is" and all that follows in clause (i) and inserting "dollar amount is—

"(I) $15,500 in the case of an eligible employer described in clause (iii) which had not more than 25 employees who received at least $5,000 of compensation from the employer for the preceding year,

"(II) $15,500 in the case of an eligible employer described in clause (iii) which is not described in subclause (I) and which elects, at such time and in such manner as prescribed by the Secretary, the application of this subclause for the year, and

"(III) $10,000 in any other case.",

(2) by striking "ADJUSTMENT.—In the case of" in clause (ii) and inserting "ADJUSTMENT.—

"(I) CERTAIN LARGE EMPLOYERS.—In the case of",

(3) by striking "clause (i)" in clause (ii) and inserting "clause (i)(III)", and

(4) by adding at the end of clause (ii) the following new subclause:

"(II) OTHER EMPLOYERS.—In the case of a year beginning after December 31, 2019, the Secretary shall adjust annually the $15,500 amount in subclauses (I) and (II) of clause (i) in the manner provided under subclause (I) of this clause, except that the base period taken into account shall be the calendar quarter beginning July 1, 2018.".

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

(1) in subparagraph (B)—

(A) by striking "the applicable" in clause (ii) and inserting "except as provided in clause (iii), the applicable", and

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

"(iii) In the case of an applicable employer plan—

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

"(II) to which an election under section 408(p)(2)(E)(i)(II) applies for the year (including a plan described in section 401(k)(11) which is maintained by an eligible employer described in section 408(p)(2)(E)(i)(II) and to which such election applies by reason of subparagraphs (B)(i)(I) and (E) of section 401(k)(11)),

the applicable dollar amount is $4,500.", and

(2) in subparagraph (C)—

(A) by striking "ADJUSTMENT.—In the case of" and inserting "ADJUSTMENT.—

"(i) IN GENERAL.—In the case of", and

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

"(ii) AMOUNT WITH RESPECT TO SMALL AND ELECTING EMPLOYERS.—In the case of a year beginning after December 31, 2019, the Secretary shall adjust annually the $4,500 amount in subparagraph (B)(iii) in the manner provided under clause (i), except that the base period taken into account shall be the calendar quarter beginning July 1, 2018.''.

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

(1) by striking ''The term'' in subclause (I) and inserting ''Except as provided in subclause (IV), the term'',

(2) by adding at the end the following new subclause:

''(IV) SPECIAL RULE FOR ELECTING LARGER EMPLOYERS.—In the case of an employer which had more than 25 employees who received at least $5,000 of compensation from the employer for the preceding year, and which makes the election under subparagraph (E)(i)(II) for any year, subclause (I) shall be applied for such year by substituting '4 percent' for '3 percent'.'', and

(3) by striking "3 percent" each place it appears in subclauses (II) and (III) and inserting "the applicable percentage".

(d) INCREASE IN NONELECTIVE EMPLOYER CONTRIBUTION FOR ELECTING LARGER EMPLOYERS.—Subparagraph (B) of section 408(p)(2) of the Internal Revenue Code of 1986 is amended by adding at the end the following new clause:

"(iii) SPECIAL RULE FOR ELECTING LARGER EMPLOYERS.—In the case of an employer which had more than 25 employees who received at least $5,000 of compensation from the employer for the preceding year, and which makes the election under subparagraph (E)(i)(II) for any year, clause (i) shall be applied for such year by substituting '3 percent' for '2 percent'.".

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

"(F) 2-YEAR GRACE PERIOD.—An eligible employer which had not more than 25 employees who received at least $5,000 of compensation from the employer for 1 or more years, and which has more than 25 such employees for any subsequent year, shall be treated for purposes of subparagraph (E)(i) as having 25 such employees for the 2 years following the last year the employer had not more than 25 such employees, and not as having made the election under subparagraph (E)(i)(II) for such 2 years. Rules similar to the second sentence of subparagraph (C)(i)(II) shall apply for purposes of this subparagraph.''.

(f) AMENDMENTS APPLY ONLY IF EMPLOYER HAS NOT HAD ANOTHER PLAN WITHIN 3 YEARS.—Subparagraph (E) of section 408(p)(2) of the Internal Revenue Code of 1986, as amended by subsection (a), is amended by adding at the end the following new clause:

``(iii) EMPLOYER HAS NOT HAD ANOTHER PLAN WITHIN 3 YEARS.—An eligible employer is described in this clause only if, during the 3-taxable-year period immediately preceding the 1st year the employer maintains the qualified salary reduction arrangement under this paragraph, neither the employer nor any member of any controlled group including the employer (or any predecessor of either) established or maintained any plan described in clause (i), (ii), or (iv) of section 219(g)(5)(A) with respect to which contributions were made, or benefits were accrued, for substantially the same employees as are eligible to participate in such qualified salary reduction arrangement.''.

(g) CONFORMING AMENDMENTS RELATING TO SIMPLE 401(k)S.—

(1) Subclause (I) of section 401(k)(11)(B)(i) of the Internal Revenue Code of 1986 is amended by inserting ''(after the application of any election under section 408(p)(2)(E)(i)(II))'' before the comma.

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

''(E) EMPLOYERS ELECTING INCREASED CONTRIBUTIONS.—In the case of an employer which applies an election under section 408(p)(2)(E)(i)(II) for purposes of the contribution requirements of this paragraph under subparagraph (B)(i)(I), rules similar to the rules of subparagraphs (B)(iii), (C)(ii)(IV), and (F) of section 408(p)(2) shall apply for purposes of subparagraphs (B)(i)(II) and (B)(ii) of this paragraph.''.

(h) PLAN FORMS TO BE SHARED WITH SECRETARY.—Subsection (p) of section 408 of the Internal Revenue Code of 1986 is amended by adding at the end the following new paragraph:

"(11) PLAN ARRANGEMENT AND NOTICES TO BE SHARED WITH SECRETARY.—The trustee or issuer (in the case of an individual retirement annuity) of a simple retirement account shall provide to the Secretary, at the time the qualified salary reduction arrangement is established (or not later than December 31, 2019, in the case of arrangements in effect on the date of the enactment of this paragraph), a copy of the written arrangement described in paragraph (2)(A).''.

(i) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2018.

(j) REPORTS BY SECRETARY.—

(1) IN GENERAL.—The Secretary of the Treasury shall, not later than December 31, 2019, and annually thereafter, report to the Committees on Finance and Health, Education, Labor, and Pensions of the Senate and the Committees on Ways and

Means and Education and the Workforce of the House of Representatives on the data described in paragraph (2), together with any recommendations the Secretary deems appropriate.

(2) DATA DESCRIBED.—For purposes of the report required under paragraph (1), the Secretary of the Treasury shall collect data and information on—

(A) the number of plans described in section 408(p) or 401(k)(11) of the Internal Revenue Code of 1986 that are maintained or established during a year,

(B) the number of participants eligible to participate in such plans for such year,

(C) median contribution amounts for the participants described in subparagraph (B),

(D) the types of investments that are most common under such plans, and

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

Such data and information shall be collected separately for each type of plan. For purposes of collecting such data, the Secretary of the Treasury may use such data as is otherwise available to the Secretary for publication and may use such approaches as are appropriate under the circumstances, including the use of voluntary surveys and collaboration on studies.

SEC. 3. EMPLOYERS ALLOWED TO REPLACE SIMPLE RETIREMENT ACCOUNTS WITH SAFE HARBOR 401(k) PLANS DURING A YEAR.

(a) IN GENERAL.—Section 408(p) of the Internal Revenue Code of 1986, as amended by section 2, is amended by adding at the end the following new paragraph:

"(12) REPLACEMENT OF SIMPLE RETIREMENT ACCOUNTS WITH SAFE HARBOR PLANS DURING PLAN YEAR.—

"(A) IN GENERAL.—Subject to the requirements of this paragraph, an employer may elect (in such form and manner as the Secretary may prescribe) at any time during a year to terminate the qualified salary reduction arrangement under paragraph (2), but only if the employer establishes and maintains (as of the day after the termination date) a safe harbor plan to replace the terminated arrangement.

"(B) COMBINED LIMITS ON CONTRIBUTIONS.—The terminated arrangement and safe harbor plan shall both be treated as violating the requirements of paragraph (2)(A)(ii) or section 401(a)(30) (whichever is applicable) if the aggregate elective contributions of the employee under the terminated arrangement during its last plan year and under the safe harbor plan during its transition year exceed the sum of—

"(i) the applicable dollar amount for such arrangement (determined on a full-year basis) under this subsection (after the application of section 414(v)) with respect to the employee for such last plan year multiplied by a fraction equal to the number of days in such plan year divided by 365, and

"(ii) the applicable dollar amount (as so determined) under section 402(g)(1) for such safe harbor plan on such elective contributions during the transition year multiplied by a fraction equal to the number of days in such transition year divided by 365.

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

"(D) SAFE HARBOR PLAN.—For purposes of this paragraph, the term 'safe harbor plan' means a qualified cash or deferred arrangement which meets the requirements of paragraph (11), (12), or (13) of section 401(k).".

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

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

(A) by striking "ACCOUNTS.—In the case of" and inserting "**ACCOUNTS**.—

"(A) IN GENERAL.—In the case of", and

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

"(B) WAIVER IN CASE OF PLAN CONVERSION TO 401(k) OR 403(b).—In the case of an employee of an employer which terminates the qualified salary reduction arrangement of the employer under section 408(p) and establishes a qualified cash or deferred arrangement described in section 401(k) or purchases annuity contracts described in section 403(b), subparagraph (A) shall not apply to any amount which is paid in a rollover contribution described in section 408(d)(3) into a qualified trust under section 401(k) (but only if such contribution is subsequently subject to the rules of section 401(k)(2)(B)) or an annuity contract described in section 403(b) (but only if such contribution is subsequently subject to the rules of section 403(b)(11)) for the benefit of the employee.''.

(2) CONFORMING AMENDMENT.—Subparagraph (G) of section 408(d)(3) of such Code is amended by striking ''72(t)(6)'' and inserting ''72(t)(6)(A)''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to plan years beginning after December 31, 2018.

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