

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.

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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

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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.

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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