

116TH CONGRESS  
1ST SESSION

# S. 321

To amend the Internal Revenue Code of 1986 to modify safe harbor requirements applicable to automatic contribution arrangements, and for other purposes.

---

## IN THE SENATE OF THE UNITED STATES

FEBRUARY 4, 2019

Ms. COLLINS (for herself and Ms. HASSAN) 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 modify safe harbor requirements applicable to automatic contribution arrangements, 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 “Retirement Security  
5 Act of 2019”.

6 **SEC. 2. MULTIPLE EMPLOYER PLANS.**

7 (a) **QUALIFICATION REQUIREMENTS.**—

1           (1) IN GENERAL.—Section 413 of the Internal  
2           Revenue Code of 1986 is amended by adding at the  
3           end the following new subsection:

4           “(e) APPLICATION OF QUALIFICATION REQUIRE-  
5           MENTS FOR CERTAIN MULTIPLE EMPLOYER PLANS WITH  
6           POOLED PLAN PROVIDERS.—

7           “(1) IN GENERAL.—Except as provided in para-  
8           graph (2), if a defined contribution plan to which  
9           subsection (c) applies—

10           “(A) is maintained by employers which  
11           have a common interest other than having  
12           adopted the plan, or

13           “(B) in the case of a plan not described in  
14           subparagraph (A), has a pooled plan provider,  
15           then the plan shall not be treated as failing to meet  
16           the requirements under this title applicable to a plan  
17           described in section 401(a) or to a plan that consists  
18           of individual retirement accounts described in sec-  
19           tion 408 (including by reason of subsection (c)  
20           thereof), whichever is applicable, merely because one  
21           or more employers of employees covered by the plan  
22           fail to take such actions as are required of such em-  
23           ployers for the plan to meet such requirements.

24           “(2) LIMITATIONS.—

1           “(A) IN GENERAL.—Paragraph (1) shall  
2 not apply to any plan unless the terms of the  
3 plan provide that in the case of any employer  
4 in the plan failing to take the actions described  
5 in paragraph (1)—

6           “(i) the assets of the plan attributable  
7 to employees of such employer (or bene-  
8 ficiaries of such employees) will be trans-  
9 ferred to a plan maintained only by such  
10 employer (or its successor), to an eligible  
11 retirement plan as defined in section  
12 402(c)(8)(B) for each individual whose ac-  
13 count is transferred, or to any other ar-  
14 rangement that the Secretary determines is  
15 appropriate, unless the Secretary deter-  
16 mines it is in the best interests of the em-  
17 ployees of such employer (and the bene-  
18 ficiaries of such employees) to retain the  
19 assets in the plan, and

20           “(ii) such employer (and not the plan  
21 with respect to which the failure occurred  
22 or any other employer in such plan) shall,  
23 except to the extent provided by the Sec-  
24 retary, be liable for any liabilities with re-  
25 spect to such plan attributable to employ-

1           ees of such employer (or beneficiaries of  
2           such employees).

3           “(B) FAILURES BY POOLED PLAN PRO-  
4           VIDERS.—If the pooled plan provider of a plan  
5           described in paragraph (1)(B) does not perform  
6           substantially all of the administrative duties  
7           which are required of the provider under para-  
8           graph (3)(A)(i) for any plan year, the Secretary  
9           may provide that the determination as to  
10          whether the plan meets the requirements under  
11          this title applicable to a plan described in sec-  
12          tion 401(a) or to a plan that consists of indi-  
13          vidual retirement accounts described in section  
14          408 (including by reason of subsection (c)  
15          thereof), whichever is applicable, shall be made  
16          in the same manner as would be made without  
17          regard to paragraph (1).

18          “(3) POOLED PLAN PROVIDER.—

19                 “(A) IN GENERAL.—For purposes of this  
20                 subsection, the term ‘pooled plan provider’  
21                 means, with respect to any plan, a person  
22                 who—

23                         “(i) is designated by the terms of the  
24                         plan as a named fiduciary (within the  
25                         meaning of section 402(a)(2) of the Em-

1            ployee Retirement Income Security Act of  
2            1974), as the plan administrator, and as  
3            the person responsible to perform all ad-  
4            ministrative duties (including conducting  
5            proper testing with respect to the plan and  
6            the employees of each employer in the  
7            plan) which are reasonably necessary to  
8            ensure that—

9                    “(I) the plan meets any require-  
10                    ment applicable under the Employee  
11                    Retirement Income Security Act of  
12                    1974 or this title to a plan described  
13                    in section 401(a) or to a plan that  
14                    consists of individual retirement ac-  
15                    counts described in section 408 (in-  
16                    cluding by reason of subsection (c)  
17                    thereof), whichever is applicable, and

18                    “(II) each employer in the plan  
19                    takes such actions as the Secretary or  
20                    such person determines are necessary  
21                    for the plan to meet the requirements  
22                    described in subclause (I), including  
23                    providing to such person any disclo-  
24                    sures or other information which the  
25                    Secretary may require or which such

1 person otherwise determines are nec-  
2 essary to administer the plan or to  
3 allow the plan to meet such require-  
4 ments,

5 “(ii) registers as a pooled plan pro-  
6 vider with the Secretary, and provides such  
7 other information to the Secretary as the  
8 Secretary may require, before beginning  
9 operations as a pooled plan provider,

10 “(iii) acknowledges in writing that  
11 such person is a named fiduciary (within  
12 the meaning of section 402(a)(2) of the  
13 Employee Retirement Income Security Act  
14 of 1974), and the plan administrator, with  
15 respect to the plan, and

16 “(iv) is responsible for ensuring that  
17 all persons who handle assets of, or who  
18 are fiduciaries of, the plan are bonded in  
19 accordance with section 412 of the Em-  
20 ployee Retirement Income Security Act of  
21 1974.

22 “(B) AUDITS, EXAMINATIONS AND INVES-  
23 TIGATIONS.—The Secretary may perform au-  
24 dits, examinations, and investigations of pooled

1 plan providers as may be necessary to enforce  
2 and carry out the purposes of this subsection.

3 “(C) AGGREGATION RULES.—For purposes  
4 of this paragraph, in determining whether a  
5 person meets the requirements of this para-  
6 graph to be a pooled plan provider with respect  
7 to any plan, all persons who perform services  
8 for the plan and who are treated as a single  
9 employer under subsection (b), (c), (m), or (o)  
10 of section 414 shall be treated as one person.

11 “(D) TREATMENT OF EMPLOYERS AS PLAN  
12 SPONSORS.—Except with respect to the admin-  
13 istrative duties of the pooled plan provider de-  
14 scribed in subparagraph (A)(i), each employer  
15 in a plan which has a pooled plan provider shall  
16 be treated as the plan sponsor with respect to  
17 the portion of the plan attributable to employ-  
18 ees of such employer (or beneficiaries of such  
19 employees).

20 “(4) GUIDANCE.—The Secretary shall issue  
21 such guidance as the Secretary determines appro-  
22 priate to carry out this subsection, including guid-  
23 ance—

1           “(A) to identify the administrative duties  
2           and other actions required to be performed by  
3           a pooled plan provider under this subsection,

4           “(B) which describes the procedures to be  
5           taken to terminate a plan which fails to meet  
6           the requirements to be a plan described in para-  
7           graph (1), including the proper treatment of,  
8           and actions needed to be taken by, any em-  
9           ployer in the plan and the assets and liabilities  
10          of the plan attributable to employees of such  
11          employer (or beneficiaries of such employees),  
12          and

13          “(C) identifying appropriate cases to which  
14          the rules of paragraph (2)(A) will apply to em-  
15          ployers in the plan failing to take the actions  
16          described in paragraph (1).

17          The Secretary shall take into account under sub-  
18          paragraph (C) whether the failure of an employer or  
19          pooled plan provider to provide any disclosures or  
20          other information, or to take any other action, nec-  
21          essary to administer a plan or to allow a plan to  
22          meet requirements applicable to the plan under sec-  
23          tion 401(a) or 408, whichever is applicable, has con-  
24          tinued over a period of time that demonstrates a  
25          lack of commitment to compliance.



1           “(5) MODEL PLAN.—The Secretary shall pub-  
2           lish model plan language which meets the require-  
3           ments of this subsection and of paragraphs (43) and  
4           (44) of section 3 of the Employee Retirement In-  
5           come Security Act of 1974 and which may be adopt-  
6           ed in order for a plan to be treated as a plan de-  
7           scribed in paragraph (1)(B).”.

8           (2) CONFORMING AMENDMENT.—Section  
9           413(c)(2) of such Code is amended by striking “sec-  
10          tion 401(a)” and inserting “sections 401(a) and  
11          408(c)”.

12          (3) TECHNICAL AMENDMENT.—Section 408(c)  
13          of such Code is amended by inserting after para-  
14          graph (2) the following new paragraph:

15                 “(3) There is a separate accounting for any in-  
16                 terest of an employee or member (or spouse of an  
17                 employee or member) in a Roth IRA.”.

18          (b) NO COMMON INTEREST REQUIRED FOR POOLED  
19          EMPLOYER PLANS.—Section 3(2) of the Employee Retire-  
20          ment Income Security Act of 1974 (29 U.S.C. 1002(2))  
21          is amended by adding at the end the following:

22                         “(C) A pooled employer plan shall be treat-  
23                         ed as—

24                                 “(i) a single employee pension benefit  
25                                 plan or single pension plan; and

1                   “(ii) a plan to which section 210(a)  
2                   applies.”.

3           (c) POOLED EMPLOYER PLAN AND PROVIDER DE-  
4 FINED.—

5           (1) IN GENERAL.—Section 3 of the Employee  
6           Retirement Income Security Act of 1974 (29 U.S.C.  
7           1002) is amended by adding at the end the fol-  
8           lowing:

9           “(43) POOLED EMPLOYER PLAN.—

10           “(A) IN GENERAL.—The term ‘pooled em-  
11           ployer plan’ means a plan—

12           “(i) which is an individual account  
13           plan established or maintained for the pur-  
14           pose of providing benefits to the employees  
15           of 2 or more employers;

16           “(ii) which is a plan described in sec-  
17           tion 401(a) of the Internal Revenue Code  
18           of 1986 which includes a trust exempt  
19           from tax under section 501(a) of such  
20           Code or a plan that consists of individual  
21           retirement accounts described in section  
22           408 of such Code (including by reason of  
23           subsection (c) thereof); and

24           “(iii) the terms of which meet the re-  
25           quirements of subparagraph (B).

1           Such term shall not include a plan maintained  
2           by employers which have a common interest  
3           other than having adopted the plan.

4           “(B) REQUIREMENTS FOR PLAN TERMS.—  
5           The requirements of this subparagraph are met  
6           with respect to any plan if the terms of the  
7           plan—

8                   “(i) designate a pooled plan provider  
9                   and provide that the pooled plan provider  
10                  is a named fiduciary of the plan;

11                   “(ii) designate one or more trustees  
12                  meeting the requirements of section  
13                  408(a)(2) of the Internal Revenue Code of  
14                  1986 (other than an employer in the plan)  
15                  to be responsible for collecting contribu-  
16                  tions to, and holding the assets of, the  
17                  plan and require such trustees to imple-  
18                  ment written contribution collection proce-  
19                  dures that are reasonable, diligent, and  
20                  systematic;

21                   “(iii) provide that each employer in  
22                  the plan retains fiduciary responsibility  
23                  for—

24                           “(I) the selection and monitoring  
25                           in accordance with section 404(a) of

1 the person designated as the pooled  
2 plan provider and any other person  
3 who, in addition to the pooled plan  
4 provider, is designated as a named fi-  
5 duciary of the plan; and

6 “(II) to the extent not otherwise  
7 delegated to another fiduciary by the  
8 pooled plan provider and subject to  
9 the provisions of section 404(c), the  
10 investment and management of the  
11 portion of the plan’s assets attrib-  
12 utable to the employees of the em-  
13 ployer (or beneficiaries of such em-  
14 ployees);

15 “(iv) provide that employers in the  
16 plan, and participants and beneficiaries,  
17 are not subject to unreasonable restric-  
18 tions, fees, or penalties with regard to  
19 ceasing participation, receipt of distribu-  
20 tions, or otherwise transferring assets of  
21 the plan in accordance with section 208 or  
22 paragraph (44)(C)(i)(II);

23 “(v) require—

24 “(I) the pooled plan provider to  
25 provide to employers in the plan any

1 disclosures or other information which  
2 the Secretary may require, including  
3 any disclosures or other information  
4 to facilitate the selection or any moni-  
5 toring of the pooled plan provider by  
6 employers in the plan; and

7 “(II) each employer in the plan  
8 to take such actions as the Secretary  
9 or the pooled plan provider determines  
10 are necessary to administer the plan  
11 or for the plan to meet any require-  
12 ment applicable under this Act or the  
13 Internal Revenue Code of 1986 to a  
14 plan described in section 401(a) of  
15 such Code or to a plan that consists  
16 of individual retirement accounts de-  
17 scribed in section 408 of such Code  
18 (including by reason of subsection (c)  
19 thereof), whichever is applicable, in-  
20 cluding providing any disclosures or  
21 other information which the Secretary  
22 may require or which the pooled plan  
23 provider otherwise determines are nec-  
24 essary to administer the plan or to

1 allow the plan to meet such require-  
2 ments; and

3 “(vi) provide that any disclosure or  
4 other information required to be provided  
5 under clause (v) may be provided in elec-  
6 tronic form and will be designed to ensure  
7 only reasonable costs are imposed on  
8 pooled plan providers and employers in the  
9 plan.

10 “(C) EXCEPTIONS.—The term ‘pooled em-  
11 ployer plan’ does not include—

12 “(i) a multiemployer plan; or

13 “(ii) a plan established before the  
14 date of the enactment of the Retirement  
15 Security Act of 2019, unless the plan ad-  
16 ministrator elects that the plan will be  
17 treated as a pooled employer plan and the  
18 plan meets the requirements of this title  
19 applicable to a pooled employer plan estab-  
20 lished on or after such date.

21 “(D) TREATMENT OF EMPLOYERS AS PLAN  
22 SPONSORS.—Except with respect to the admin-  
23 istrative duties of the pooled plan provider de-  
24 scribed in paragraph (44)(A)(i), each employer  
25 in a pooled employer plan shall be treated as

1 the plan sponsor with respect to the portion of  
2 the plan attributable to employees of such em-  
3 ployer (or beneficiaries of such employees).

4 “(44) POOLED PLAN PROVIDER.—

5 “(A) IN GENERAL.—The term ‘pooled plan  
6 provider’ means a person who—

7 “(i) is designated by the terms of a  
8 pooled employer plan as a named fiduciary,  
9 as the plan administrator, and as the per-  
10 son responsible for the performance of all  
11 administrative duties (including conducting  
12 proper testing with respect to the plan and  
13 the employees of each employer in the  
14 plan) which are reasonably necessary to  
15 ensure that—

16 “(I) the plan meets any require-  
17 ment applicable under this Act or the  
18 Internal Revenue Code of 1986 to a  
19 plan described in section 401(a) of  
20 such Code or to a plan that consists  
21 of individual retirement accounts de-  
22 scribed in section 408 of such Code  
23 (including by reason of subsection (c)  
24 thereof), whichever is applicable; and

1           “(II) each employer in the plan  
2           takes such actions as the Secretary or  
3           pooled plan provider determines are  
4           necessary for the plan to meet the re-  
5           quirements described in subclause (I),  
6           including providing the disclosures  
7           and information described in para-  
8           graph (43)(B)(v)(II);

9           “(ii) registers as a pooled plan pro-  
10          vider with the Secretary, and provides to  
11          the Secretary such other information as  
12          the Secretary may require, before begin-  
13          ning operations as a pooled plan provider;

14          “(iii) acknowledges in writing that  
15          such person is a named fiduciary, and the  
16          plan administrator, with respect to the  
17          pooled employer plan; and

18          “(iv) is responsible for ensuring that  
19          all persons who handle assets of, or who  
20          are fiduciaries of, the pooled employer plan  
21          are bonded in accordance with section 412.

22          “(B) AUDITS, EXAMINATIONS AND INVES-  
23          TIGATIONS.—The Secretary may perform au-  
24          dits, examinations, and investigations of pooled  
25          plan providers as may be necessary to enforce



1 and carry out the purposes of this paragraph  
2 and paragraph (43).

3 “(C) GUIDANCE.—The Secretary shall  
4 issue such guidance as the Secretary determines  
5 appropriate to carry out this paragraph and  
6 paragraph (43), including guidance—

7 “(i) to identify the administrative du-  
8 ties and other actions required to be per-  
9 formed by a pooled plan provider under ei-  
10 ther such paragraph; and

11 “(ii) which requires in appropriate  
12 cases that if an employer in the plan fails  
13 to take the actions required under sub-  
14 paragraph (A)(i)(II)—

15 “(I) the assets of the plan attrib-  
16 utable to employees of such employer  
17 (or beneficiaries of such employees)  
18 are transferred to a plan maintained  
19 only by such employer (or its suc-  
20 cessor), to an eligible retirement plan  
21 as defined in section 402(c)(8)(B) of  
22 the Internal Revenue Code of 1986  
23 for each individual whose account is  
24 transferred, or to any other arrange-

1                   ment that the Secretary determines is  
2                   appropriate in such guidance; and

3                   “(II) such employer (and not the  
4                   plan with respect to which the failure  
5                   occurred or any other employer in  
6                   such plan) shall, except to the extent  
7                   provided in such guidance, be liable  
8                   for any liabilities with respect to such  
9                   plan attributable to employees of such  
10                  employer (or beneficiaries of such em-  
11                  ployees).

12                 The Secretary shall take into account under  
13                 clause (ii) whether the failure of an employer or  
14                 pooled plan provider to provide any disclosures  
15                 or other information, or to take any other ac-  
16                 tion, necessary to administer a plan or to allow  
17                 a plan to meet requirements described in sub-  
18                 paragraph (A)(i)(II) has continued over a pe-  
19                 riod of time that demonstrates a lack of com-  
20                 mitment to compliance. The Secretary may  
21                 waive the requirements of subclause (ii)(I) in  
22                 appropriate circumstances if the Secretary de-  
23                 termines it is in the best interests of the em-  
24                 ployees of the employer referred to in such  
25                 clause (and the beneficiaries of such employees)

1 to retain the assets in the plan with respect to  
2 which the employer's failure occurred.

3 “(D) AGGREGATION RULES.—For purposes  
4 of this paragraph, in determining whether a  
5 person meets the requirements of this para-  
6 graph to be a pooled plan provider with respect  
7 to any plan, all persons who perform services  
8 for the plan and who are treated as a single  
9 employer under subsection (b), (c), (m), or (o)  
10 of section 414 of the Internal Revenue Code of  
11 1986 shall be treated as one person.”.

12 (2) BONDING REQUIREMENTS FOR POOLED EM-  
13 PLOYER PLANS.—The last sentence of section 412(a)  
14 of the Employee Retirement Income Security Act of  
15 1974 (29 U.S.C. 1112(a)) is amended by inserting  
16 “or in the case of a pooled employer plan (as defined  
17 in section 3(43))” after “section 407(d)(1))”.

18 (3) CONFORMING AND TECHNICAL AMEND-  
19 MENTS.—Section 3 of the Employee Retirement In-  
20 come Security Act of 1974 (29 U.S.C. 1002) is  
21 amended—

22 (A) in paragraph (16)(B)—

23 (i) by striking “or” at the end of  
24 clause (ii); and

1 (ii) by striking the period at the end  
2 and inserting “, or (iv) in the case of a  
3 pooled employer plan, the pooled plan pro-  
4 vider.”; and

5 (B) by striking the second paragraph (41).

6 (d) EFFECTIVE DATE.—

7 (1) IN GENERAL.—The amendments made by  
8 this section shall apply to years beginning after De-  
9 cember 31, 2019.

10 (2) RULE OF CONSTRUCTION.—Nothing in the  
11 amendments made by subsection (a) shall be con-  
12 strued as limiting the authority of the Secretary of  
13 the Treasury or the Secretary’s delegate (determined  
14 without regard to such amendment) to provide for  
15 the proper treatment of a failure to meet any re-  
16 quirement applicable under the Internal Revenue  
17 Code of 1986 with respect to one employer (and its  
18 employees) in a multiple employer plan.

19 **SEC. 3. POOLED EMPLOYER AND MULTIPLE EMPLOYER**  
20 **PLAN REPORTING.**

21 (a) ADDITIONAL INFORMATION.—Section 103 of the  
22 Employee Retirement Income Security Act of 1974 (29  
23 U.S.C. 1023) is amended—

1 (1) in subsection (a)(1)(B), by striking “applicable  
2 subsections (d), (e), and (f)” and inserting  
3 “applicable subsections (d), (e), (f), and (g)”; and

4 (2) by amending subsection (g) to read as follows:  
5

6 “(g) ADDITIONAL INFORMATION WITH RESPECT TO  
7 POOLED EMPLOYER AND MULTIPLE EMPLOYER  
8 PLANS.—An annual report under this section for a plan  
9 year shall include—

10 “(1) with respect to any plan to which section  
11 210(a) applies (including a pooled employer plan), a  
12 list of participating employers and a good faith estimate  
13 of the percentage of total contributions made  
14 by such participating employers during the plan  
15 year; and

16 “(2) with respect to a pooled employer plan, the  
17 identifying information for the person designated  
18 under the terms of the plan as the pooled plan provider.”.

20 (b) SIMPLIFIED ANNUAL REPORTS.—Section 104(a)  
21 of the Employee Retirement Income Security Act of 1974  
22 (29 U.S.C. 1024(a)) is amended by striking paragraph  
23 (2)(A) and inserting the following:

24 “(2)(A) With respect to annual reports required  
25 to be filed with the Secretary under this part, the

1 Secretary may by regulation prescribe simplified an-  
2 nual reports for any pension plan that—

3 “(i) covers fewer than 100 participants; or

4 “(ii) is a plan described in section 210(a)  
5 that covers fewer than 1,000 participants, but  
6 only if no single participating employer has 100  
7 or more participants covered by the plan.”.

8 (c) EFFECTIVE DATE.—The amendments made by  
9 this section shall apply to annual reports for plan years  
10 beginning after December 31, 2019.

11 **SEC. 4. REMOVAL OF 10 PERCENT CAP FROM AUTOMATIC**  
12 **ENROLLMENT SAFE HARBOR AFTER 1ST**  
13 **PLAN YEAR.**

14 (a) IN GENERAL.—Clause (iii) of section  
15 401(k)(13)(C) of the Internal Revenue Code of 1986 is  
16 amended by striking “, does not exceed 10 percent, and  
17 is at least” and inserting “and is”.

18 (b) CONFORMING AMENDMENTS.—

19 (1) Subclause (I) of section 401(k)(13)(C)(iii)  
20 of the Internal Revenue Code of 1986 is amended by  
21 striking “3 percent” and inserting “at least 3 per-  
22 cent, but not greater than 10 percent,”.

23 (2) Subclause (II) of section 401(k)(13)(C)(iii)  
24 of such Code is amended by striking “4 percent”  
25 and inserting “at least 4 percent”.

1           (3) Subclause (III) of section 401(k)(13)(C)(iii)  
 2 of such Code is amended by striking “5 percent”  
 3 and inserting “at least 5 percent”.

4           (4) Subclause (IV) of section 401(k)(13)(C)(iii)  
 5 of such Code is amended by striking “6 percent”  
 6 and inserting “at least 6 percent”.

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

10 **SEC. 5. RULES RELATING TO ELECTION OF SAFE HARBOR**

11                           **401(k) STATUS.**

12           (a) LIMITATION OF ANNUAL SAFE HARBOR NOTICE  
 13 TO MATCHING CONTRIBUTION PLANS.—

14           (1) IN GENERAL.—Subparagraph (A) of section  
 15 401(k)(12) of the Internal Revenue Code of 1986 is  
 16 amended by striking “if such arrangement” and all  
 17 that follows and inserting “if such arrangement—

18                           “(i) meets the contribution require-  
 19                           ments of subparagraph (B) and the notice  
 20                           requirements of subparagraph (D), or

21                           “(ii) meets the contribution require-  
 22                           ments of subparagraph (C).”.

23           (2) AUTOMATIC CONTRIBUTION ARRANGE-  
 24 MENTS.—Subparagraph (B) of section 401(k)(13) of  
 25 such Code is amended by striking “means” and all

1 that follows and inserting “means a cash or deferred  
2 arrangement—

3 “(i) which is described in subpara-  
4 graph (D)(i)(I) and meets the applicable  
5 requirements of subparagraphs (C)  
6 through (E), or

7 “(ii) which is described in subpara-  
8 graph (D)(i)(II) and meets the applicable  
9 requirements of subparagraphs (C) and  
10 (D).”.

11 (b) NONELECTIVE CONTRIBUTIONS.—Section  
12 401(k)(12) of the Internal Revenue Code of 1986 is  
13 amended by redesignating subparagraph (F) as subpara-  
14 graph (G), and by inserting after subparagraph (E) the  
15 following new subparagraph:

16 “(F) TIMING OF PLAN AMENDMENT FOR  
17 EMPLOYER MAKING NONELECTIVE CONTRIBU-  
18 TIONS.—

19 “(i) IN GENERAL.—Except as pro-  
20 vided in clause (ii), a plan may be amend-  
21 ed after the beginning of a plan year to  
22 provide that the requirements of subpara-  
23 graph (C) shall apply to the arrangement  
24 for the plan year, but only if the amend-  
25 ment is adopted—



1                   “(I) at any time before the 30th  
2                   day before the close of the plan year,  
3                   or

4                   “(II) at any time before the last  
5                   day under paragraph (8)(A) for dis-  
6                   tributing excess contributions for the  
7                   plan year.

8                   “(ii) EXCEPTION WHERE PLAN PRO-  
9                   VIDED FOR MATCHING CONTRIBUTIONS.—  
10                  Clause (i) shall not apply to any plan year  
11                  if the plan provided at any time during the  
12                  plan year that the requirements of sub-  
13                  paragraph (B) or paragraph (13)(D)(i)(I)  
14                  applied to the plan year.

15                  “(iii) 4-PERCENT CONTRIBUTION RE-  
16                  QUIREMENT.—Clause (i)(II) shall not  
17                  apply to an arrangement unless the  
18                  amount of the contributions described in  
19                  subparagraph (C) which the employer is  
20                  required to make under the arrangement  
21                  for the plan year with respect to any em-  
22                  ployee is an amount equal to at least 4  
23                  percent of the employee’s compensation.”.

1           (c) AUTOMATIC CONTRIBUTION ARRANGEMENTS.—  
2 Section 401(k)(13) of the Internal Revenue Code of 1986  
3 is amended by adding at the end the following:

4                   “(F) TIMING OF PLAN AMENDMENT FOR  
5 EMPLOYER MAKING NONELECTIVE CONTRIBU-  
6 TIONS.—

7                   “(i) IN GENERAL.—Except as pro-  
8 vided in clause (ii), a plan may be amend-  
9 ed after the beginning of a plan year to  
10 provide that the requirements of subpara-  
11 graph (D)(i)(II) shall apply to the arrange-  
12 ment for the plan year, but only if the  
13 amendment is adopted—

14                   “(I) at any time before the 30th  
15 day before the close of the plan year,  
16 or

17                   “(II) at any time before the last  
18 day under paragraph (8)(A) for dis-  
19 tributing excess contributions for the  
20 plan year.

21                   “(ii) EXCEPTION WHERE PLAN PRO-  
22 VIDED FOR MATCHING CONTRIBUTIONS.—  
23 Clause (i) shall not apply to any plan year  
24 if the plan provided at any time during the  
25 plan year that the requirements of sub-

1 paragraph (D)(i)(I) or paragraph (12)(B)  
 2 applied to the plan year.

3 “(iii) 4-PERCENT CONTRIBUTION RE-  
 4 QUIREMENT.—Clause (i)(II) shall not  
 5 apply to an arrangement unless the  
 6 amount of the contributions described in  
 7 subparagraph (D)(i)(II) which the em-  
 8 ployer is required to make under the ar-  
 9 rangement for the plan year with respect  
 10 to any employee is an amount equal to at  
 11 least 4 percent of the employee’s com-  
 12 pensation.”.

13 (d) EFFECTIVE DATE.—The amendments made by  
 14 this section shall apply to plan years beginning after De-  
 15 cember 31, 2019.

16 **SEC. 6. INCREASE IN CREDIT LIMITATION FOR SMALL EM-**  
 17 **PLOYER PENSION PLAN STARTUP COSTS.**

18 (a) IN GENERAL.—Paragraph (1) of section 45E(b)  
 19 of the Internal Revenue Code of 1986 is amended to read  
 20 as follows:

21 “(1) for the first credit year and each of the 2  
 22 taxable years immediately following the first credit  
 23 year, the greater of—

24 “(A) \$500, or

25 “(B) the lesser of—

1                   “(i) \$250 for each employee of the eli-  
 2                   gible employer who is not a highly com-  
 3                   pensated employee (as defined in section  
 4                   414(q)) and who is eligible to participate  
 5                   in the eligible employer plan maintained by  
 6                   the eligible employer, or

7                   “(ii) \$5,000, and”.

8           (b) **EFFECTIVE DATE.**—The amendment made by  
 9 this section shall apply to taxable years beginning after  
 10 December 31, 2019.

11 **SEC. 7. SMALL EMPLOYER AUTOMATIC ENROLLMENT**  
 12 **CREDIT.**

13           (a) **IN GENERAL.**—Subpart D of part IV of sub-  
 14 chapter A of chapter 1 of the Internal Revenue Code of  
 15 1986 is amended by adding at the end the following new  
 16 section:

17 **“SEC. 45T. AUTO-ENROLLMENT OPTION FOR RETIREMENT**  
 18 **SAVINGS OPTIONS PROVIDED BY SMALL EM-**  
 19 **PLOYERS.**

20           “(a) **IN GENERAL.**—For purposes of section 38, in  
 21 the case of an eligible employer, the retirement auto-en-  
 22 rollment credit determined under this section for any tax-  
 23 able year is an amount equal to—

24                   “(1) \$500 for any taxable year occurring during  
 25                   the credit period, and

1           “(2) zero for any other taxable year.

2           “(b) CREDIT PERIOD.—For purposes of subsection  
3 (a)—

4           “(1) IN GENERAL.—The credit period with re-  
5 spect to any eligible employer is the 3-taxable-year  
6 period beginning with the first taxable year for  
7 which the employer includes an eligible automatic  
8 contribution arrangement (as defined in section  
9 414(w)(3)) in a qualified employer plan (as defined  
10 in section 4972(d)) sponsored by the employer.

11           “(2) MAINTENANCE OF ARRANGEMENT.—No  
12 taxable year with respect to an employer shall be  
13 treated as occurring within the credit period unless  
14 the arrangement described in paragraph (1) is in-  
15 cluded in the plan for such year.

16           “(c) ELIGIBLE EMPLOYER.—For purposes of this  
17 section, the term ‘eligible employer’ has the meaning given  
18 such term in section 408(p)(2)(C)(i).”.

19           (b) CREDIT TO BE PART OF GENERAL BUSINESS  
20 CREDIT.—Subsection (b) of section 38 of the Internal  
21 Revenue Code of 1986 is amended by striking “plus” at  
22 the end of paragraph (31), by striking the period at the  
23 end of paragraph (32) and inserting “, plus”, and by add-  
24 ing at the end the following new paragraph:



1 cash or deferred arrangement which meets the  
2 requirements of subparagraphs (C), (D), and  
3 (E) of paragraph (13), except as modified by  
4 this paragraph.

5 “(C) QUALIFIED PERCENTAGE.—For pur-  
6 poses of this paragraph, with respect to any  
7 employee, the term ‘qualified percentage’  
8 means, in lieu of the meaning given such term  
9 in paragraph (13)(C)(iii), any percentage deter-  
10 mined under the arrangement if such percent-  
11 age is applied uniformly and is—

12 “(i) at least 6 percent, but not greater  
13 than 10 percent, during the period ending  
14 on the last day of the first plan year which  
15 begins after the date on which the first  
16 elective contribution described in para-  
17 graph (13)(C)(i) is made with respect to  
18 such employee,

19 “(ii) at least 8 percent during the  
20 first plan year following the plan year de-  
21 scribed in clause (i), and

22 “(iii) at least 10 percent during any  
23 subsequent plan year.

24 “(D) MATCHING CONTRIBUTIONS.—

1           “(i) IN GENERAL.—For purposes of  
2 this paragraph, an arrangement shall be  
3 treated as having met the requirements of  
4 paragraph (13)(D)(i) if and only if the em-  
5 ployer makes matching contributions on  
6 behalf of each employee who is not a highly  
7 compensated employee in an amount equal  
8 to the sum of—

9                   “(I) 100 percent of the elective  
10 contributions of the employee to the  
11 extent that such contributions do not  
12 exceed 2 percent of compensation,

13                   “(II) 50 percent of so much of  
14 such contributions as exceed 2 percent  
15 but do not exceed 6 percent of com-  
16 pensation, plus

17                   “(III) 20 percent of so much of  
18 such contributions as exceed 6 percent  
19 but do not exceed 10 percent of com-  
20 pensation.

21           “(ii) APPLICATION OF RULES FOR  
22 MATCHING CONTRIBUTIONS.—The rules of  
23 clause (ii) of paragraph (12)(B) and  
24 clauses (iii) and (iv) of paragraph (13)(D)  
25 shall apply for purposes of clause (i) but



1 the rule of clause (iii) of paragraph  
2 (12)(B) shall not apply for such purposes.  
3 The rate of matching contribution for each  
4 incremental deferral must be at least as  
5 high as the rate specified in clause (i), and  
6 may be higher, so long as such rate does  
7 not increase as an employee's rate of elec-  
8 tive contributions increases.”.

9 (b) MATCHING CONTRIBUTIONS AND EMPLOYEE  
10 CONTRIBUTIONS.—Subsection (m) of section 401 of the  
11 Internal Revenue Code of 1986 is amended by redesignig-  
12 nating paragraph (13) as paragraph (14) and by inserting  
13 after paragraph (12) the following new paragraph:

14 “(13) ALTERNATIVE METHOD FOR SECURE DE-  
15 FERRAL ARRANGEMENTS.—A defined contribution  
16 plan shall be treated as meeting the requirements of  
17 paragraph (2) with respect to matching contribu-  
18 tions and employee contributions if the plan—

19 “(A) is a secure deferral arrangement (as  
20 defined in subsection (k)(15)),

21 “(B) meets the requirements of clauses (ii)  
22 and (iii) of paragraph (11)(B), and

23 “(C) provides that matching contributions  
24 on behalf of any employee may not be made  
25 with respect to an employee's contributions or

1 elective deferrals in excess of 10 percent of the  
2 employee’s compensation.”.

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

6 **SEC. 9. CREDIT FOR EMPLOYERS WITH RESPECT TO MODI-**  
7 **FIED SAFE HARBOR REQUIREMENTS.**

8 (a) IN GENERAL.—Subpart D of part IV of sub-  
9 chapter A of chapter 1 of the Internal Revenue Code of  
10 1986, as amended by section 7, is further amended by  
11 adding at the end the following new section:

12 **“SEC. 45U. CREDIT FOR SMALL EMPLOYERS WITH RESPECT**  
13 **TO MODIFIED SAFE HARBOR REQUIREMENTS**  
14 **FOR AUTOMATIC CONTRIBUTION ARRANGE-**  
15 **MENTS.**

16 “(a) GENERAL RULE.—For purposes of section 38,  
17 in the case of a small employer, the safe harbor adoption  
18 credit determined under this section for any taxable year  
19 is the amount equal to the total of the employer’s match-  
20 ing contributions under section 401(k)(15)(D) during the  
21 taxable year on behalf of employees who are not highly  
22 compensated employees, subject to the limitations of sub-  
23 section (b).

24 “(b) LIMITATIONS.—

1           “(1) LIMITATION WITH RESPECT TO COM-  
2           PENSATION.—The credit determined under sub-  
3           section (a) with respect to contributions made on be-  
4           half of an employee who is not a highly compensated  
5           employee shall not exceed 2 percent of the com-  
6           pensation of such employee for the taxable year.

7           “(2) LIMITATION WITH RESPECT TO YEARS OF  
8           PARTICIPATION.—Credit shall be determined under  
9           subsection (a) with respect to contributions made on  
10          behalf of an employee who is not a highly com-  
11          pensated employee only during the first 5 years such  
12          employee participates in the qualified automatic con-  
13          tribution arrangement.

14          “(c) DEFINITIONS.—

15               “(1) IN GENERAL.—Any term used in this sec-  
16               tion which is also used in section 401(k)(15) shall  
17               have the same meaning as when used in such sec-  
18               tion.

19               “(2) SMALL EMPLOYER.—The term ‘small em-  
20               ployer’ means an eligible employer (as defined in  
21               section 408(p)(2)(C)(i)).

22          “(d) DENIAL OF DOUBLE BENEFIT.—No deduction  
23          shall be allowable under this title for any contribution with  
24          respect to which a credit is allowed under this section.”.

1 (b) CREDIT TO BE PART OF GENERAL BUSINESS  
2 CREDIT.—Subsection (b) of section 38 of the Internal  
3 Revenue Code of 1986, as amended by section 7, is further  
4 amended—

5 (1) by striking “plus” at the end of paragraph  
6 (32);

7 (2) by striking the period at the end of para-  
8 graph (33) and inserting “, plus”; and

9 (3) by adding at the end the following new  
10 paragraph:

11 “(34) the safe harbor adoption credit deter-  
12 mined under section 45U.”.

13 (c) CLERICAL AMENDMENT.—The table of sections  
14 for subpart D of part IV of subchapter A of chapter 1  
15 of the Internal Revenue Code of 1986, as amended by sec-  
16 tion 7, is further amended by adding after the item relat-  
17 ing to section 45T the following new item:

“Sec. 45U. Credit for small employers with respect to modified safe harbor re-  
quirements for automatic contribution arrangements.”.

18 (d) EFFECTIVE DATE.—The amendments made by  
19 this section shall apply to taxable years that include any  
20 portion of a plan year beginning after December 31, 2019.

21 **SEC. 10. MODIFICATION OF REGULATIONS.**

22 The Secretary of the Treasury shall promulgate regu-  
23 lations or other guidance that—

1           (1) simplify and clarify the rules regarding the  
2 timing of participant notices required under section  
3 401(k)(13)(E) of the Internal Revenue Code of  
4 1986, with specific application to—

5           (A) plans that allow employees to be eligi-  
6 ble for participation immediately upon begin-  
7 ning employment; and

8           (B) employers with multiple payroll and  
9 administrative systems; and

10          (2) simplify and clarify the automatic escalation  
11 rules under sections 401(k)(13)(C)(iii) and  
12 401(k)(15)(C) of the Internal Revenue Code of 1986  
13 in the context of employers with multiple payroll and  
14 administrative systems.

15 Such regulations or guidance shall address the particular  
16 case of employees within the same plan who are subject  
17 to different notice timing and different percentage require-  
18 ments, and provide assistance for plan sponsors in man-  
19 aging such cases.

○