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## **BILL SEEKS 'OPEN' MEPS, NEW 401(K) SAFE HARBOR WITH HIGHER DEFERRAL RATES**

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Unrelated businesses of any size could band together to offer 401(k) benefits in a multiple-employer plan (MEP), under bipartisan legislation ([S 321](#)) proposed by Sens. Susan Collins, R-ME, and Margaret Hassan, D-NH. Other reforms in the Retirement Security Act of 2019 include a new 401(k) safe harbor design intended to boost savings and more flexible rules for current safe harbors. The bill also would enhance tax credits for small businesses to start plans or adopt automatic enrollment. This article highlights specific provisions in the legislation.

### **OPEN UP MEPS TO UNRELATED EMPLOYERS OF ANY SIZE**

Employers of all sizes could join “open” defined contribution MEPs, called “pooled employer plans.” The bill’s open MEP provisions are similar to others introduced in recent years. Key provisions include:

- The Labor Department’s rule that a MEP’s participating employers must have an employment-based common nexus or other genuine organizational relationship unrelated to the provision of benefits would not apply to pooled employer plans.
- Pooled plans would also be exempt from IRS’s “one bad apple” rule that says a violation of plan qualification rules by one participating employer can jeopardize the entire MEP’s tax qualification.
- A “pooled plan provider” — a person designated as the plan administrator and named fiduciary — would be responsible for performing all administrative duties for the plans.
- Participating employers would have no fiduciary responsibility beyond selecting and monitoring the pooled plan provider. Unlike some earlier open MEP bills, however, this measure wouldn’t relieve small employers from all fiduciary responsibility, including for selecting and monitoring pooled plan providers.

### **RELAX AND EXPAND 401(K) SAFE HARBORS, SMALL-EMPLOYER CREDIT**

The bill includes several provisions to encourage employers to offer safe harbor 401(k) plans and increase savings through automatic-enrollment arrangements.

**New auto-enrollment safe harbor.** The bill would create a new auto-enrollment safe harbor — called a “secure deferral arrangement” (SDA) — with higher minimum automatic deferral and matching contribution rates than qualified automatic-enrollment arrangements (QACAs). Like the existing safe harbors, an SDA would be exempt from nondiscrimination testing — the actual deferral percentage (ADP) test for employee deferrals and the actual contribution percentage (ACP) test for employer matching contributions — and the top-heavy plan rules.

**Remove current cap on automatic contributions.** The QACA safe harbor would no longer cap automatic contributions at 10% of pay.

**Relax nonelective 401(k) safe harbor rules.** Along with eliminating the nonelective 401(k) safe harbor notice, the bill would ease timing restrictions on plan amendments to adopt nonelective safe harbor designs. One proposed change would allow such amendments after the start of a plan year if the employer makes a 4% — rather than 3% — nonelective contribution.

**Enhance tax credits for small businesses.** The bill would increase the current tax credit for small employers to start a retirement plan and offer them a new credit for adding auto-enrollment (including the new SDA safe harbor) to a new or existing plan.

#### PROPOSALS JOIN GROWING LIST

The Retirement Security Act contains several provisions similar to those in a broader bipartisan retirement bill, the [Retirement Enhancement and Savings Act of 2019](#), recently introduced by Reps. Ron Kind, D-WI, and Mike Kelly, R-PA. Senate counterpart legislation is expected to be introduced soon.

Next steps for these reforms are unclear, but addressing retirement security has strong bipartisan support and interest. The proposals could advance this year — most likely as part of a larger package aimed at expanding retirement plan coverage, increasing savings and easing plan sponsors' administrative burdens.

#### RELATED RESOURCES

##### Non-Mercer Resources

- [HR 1007](#), Retirement Enhancement Savings Act of 2019 (Congress, Feb. 6, 2019)
- [S 321](#), Retirement Security Act of 2019 (Congress, Feb. 4, 2019)
- [Press Release](#): Bill to Help Americans Save for Retirement Introduced by Senators Collins, Hassan (Sen. Collins, Feb. 4, 2019)

##### Mercer Resources

- [2019 Legislative and Regulatory Outlook for Employer-Sponsored Retirement Plans](#) (Feb. 5, 2019)
- [2018 Small to Midsize 401\(k\) Plan Trend Watch: Delegation of ERISA Responsibility](#) (Nov. 28, 2018)

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