

110TH CONGRESS  
1ST SESSION

# S. 1141

To amend the Internal Revenue Code of 1986 to allow employees not covered by qualified retirement plans to save for retirement through automatic payroll deposit IRAs, to facilitate similar saving by the self-employed, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

APRIL 18, 2007

Mr. BINGAMAN (for himself, Mr. SMITH, Mr. KERRY, Ms. SNOWE, and Mr. HARKIN) 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 allow employees not covered by qualified retirement plans to save for retirement through automatic payroll deposit IRAs, to facilitate similar saving by the self-employed, 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 “Automatic IRA Act  
5 of 2007”.

1 **SEC. 2. EMPLOYEES NOT COVERED BY QUALIFIED RETIRE-**  
 2 **MENT PLANS OR ARRANGEMENTS ENTITLED**  
 3 **TO PARTICIPATE IN PAYROLL DEPOSIT IRA**  
 4 **ARRANGEMENTS.**

5 (a) IN GENERAL.—Subpart A of part I of subchapter  
 6 A of chapter 1 of the Internal Revenue Code of 1986 (re-  
 7 lating to pension, profit-sharing, stock bonus plans, etc.)  
 8 is amended by inserting after section 408A the following  
 9 new section:

10 **“SEC. 408B. RIGHT TO PAYROLL DEPOSIT IRA ARRANGE-**  
 11 **MENTS AT WORK.**

12 “(a) REQUIREMENT TO PROVIDE PAYROLL DEPOSIT  
 13 IRA ARRANGEMENT.—Each employer (other than an em-  
 14 ployer described in subsection (e)) shall provide to each  
 15 applicable employee of the employer for any calendar year  
 16 the opportunity to participate in a payroll deposit IRA ar-  
 17 rangement which meets the requirements of this section.

18 “(b) PAYROLL DEPOSIT IRA ARRANGEMENT.—For  
 19 purposes of this section—

20 “(1) IN GENERAL.—The term ‘payroll deposit  
 21 IRA arrangement’ means a written arrangement of  
 22 an employer—

23 “(A) under which an applicable employee  
 24 eligible to participate in the arrangement may  
 25 elect to contribute to an individual retirement  
 26 plan established by or on behalf of the employee

1 by having the employer make periodic direct de-  
2 posit or other payroll deposit payments (includ-  
3 ing electronic payments) to the plan by payroll  
4 deduction, and

5 “(B) which meets the requirements of  
6 paragraph (2).

7 “(2) ADMINISTRATIVE REQUIREMENTS.—The  
8 requirements of this paragraph are met with respect  
9 to any payroll deposit IRA arrangement if—

10 “(A) the employer must make the pay-  
11 ments elected under paragraph (1)(A) on or be-  
12 fore the later of—

13 “(i) the due date for the deposit of  
14 tax required to be deducted and withheld  
15 under chapter 24 (relating to collection of  
16 income tax at source on wages) for the  
17 payroll period to which such payments re-  
18 late, or

19 “(ii) the 30th day following the last  
20 day of the month with respect to which the  
21 payments are to be made,

22 “(B) subject to a requirement for reason-  
23 able notice, an employee may elect to terminate  
24 participation in the arrangement at any time  
25 during a calendar year, except that if an em-

1           employee so terminates, the arrangement may pro-  
2           vide that the employee may not elect to resume  
3           participation until the beginning of the next cal-  
4           endar year,

5           “(C) each employee eligible to participate  
6           may elect, during the 60-day period or other pe-  
7           riod specified by the Secretary before the begin-  
8           ning of any calendar year (and during the 60-  
9           day period or other period specified by the Sec-  
10          retary before the first day the employee is eligi-  
11          ble to participate), to participate in the ar-  
12          rangement, or to modify the employee’s election  
13          under the arrangement (including the amounts  
14          subject to the arrangement and the manner in  
15          which such amounts are invested), for such  
16          year,

17          “(D) the employer provides—

18                 “(i) immediately before the beginning  
19                 of each period described in subparagraph  
20                 (C), a notice to each employee of the em-  
21                 ployee’s opportunity to make the election  
22                 and the maximum amount which may be  
23                 contributed to an individual retirement  
24                 plan on an annual basis, and

1           “(ii) if the arrangement includes an  
2           automatic enrollment arrangement, the no-  
3           tices required under subsection (h) with re-  
4           spect to the automatic enrollment arrange-  
5           ment,

6           “(E) subject to subsection (f), the arrange-  
7           ment provides that an employee may elect to  
8           have contributions made to any individual re-  
9           tirement plan specified by the employee, and

10           “(F) if the arrangement does not include  
11           an automatic enrollment arrangement—

12           “(i) the arrangement requires the em-  
13           ployer to take all reasonable actions to so-  
14           licit from all employees eligible to partici-  
15           pate in the arrangement an explicit elec-  
16           tion to either participate or not to partici-  
17           pate in the arrangement, and

18           “(ii) the arrangement provides that if  
19           an employee fails to make an explicit elec-  
20           tion under clause (i) within the time pre-  
21           scribed under the arrangement, the em-  
22           ployee will be treated as having made an  
23           election to participate in the arrangement  
24           (and amounts shall be invested on behalf  
25           of the participant) in the same manner as

1 if the arrangement had included an auto-  
2 matic enrollment arrangement under sub-  
3 section (g).

4 “(c) APPLICABLE EMPLOYEE DEFINED; RELATED  
5 DEFINITIONS AND RULES.—For purposes of this sec-  
6 tion—

7 “(1) APPLICABLE EMPLOYEE.—

8 “(A) IN GENERAL.—The term ‘applicable  
9 employee’ means, with respect to any calendar  
10 year, any employee—

11 “(i) who was not eligible under a  
12 qualified plan or arrangement maintained  
13 by the employer for service for the pre-  
14 ceding calendar year, and

15 “(ii) with respect to whom it is rea-  
16 sonable to expect that the employee will  
17 not be eligible during the calendar year  
18 under such a qualified plan or arrange-  
19 ment.

20 “(B) SPECIAL RULES.—For purposes of  
21 subparagraph (A)(i)—

22 “(i) ELIGIBILITY.—An employee shall  
23 be treated as eligible under a plan for a  
24 preceding calendar year if, as of the last  
25 day of the last plan year ending in the pre-

1           ceding calendar year, the employee has sat-  
2           isfied the plan’s eligibility requirements.

3           “(ii) EXCLUDED PLANS.—A qualified  
4           plan or arrangement shall not be taken  
5           into account under this paragraph if—

6                   “(I) the plan or arrangement is  
7                   frozen as of the first day of the pre-  
8                   ceding calendar year, or

9                   “(II) in the case of a plan or ar-  
10                  rangement under which the only con-  
11                  tributions are discretionary on the  
12                  part of the sponsor, there has not  
13                  been an employer contribution made  
14                  to the plan or arrangement for the 2-  
15                  plan-year period ending with the last  
16                  plan year ending in the second pre-  
17                  ceding calendar year and it is not rea-  
18                  sonable to assume that an employer  
19                  contribution will be made for the plan  
20                  year ending in the preceding calendar  
21                  year.

22                  “(2) EXCLUDABLE EMPLOYEES.—An employer  
23                  may elect to exclude from treatment as applicable  
24                  employees under paragraph (1)—

1           “(A) employees described in section  
2           410(b)(3),

3           “(B) employees who have not attained the  
4           age of 18 before the beginning of the calendar  
5           year,

6           “(C) employees who have not completed at  
7           least 3 months of service with the employer,

8           “(D) in the case of an employer that main-  
9           tains a qualified plan or arrangement which  
10          generally excludes employees who have not sat-  
11          isfied the eligibility requirements described in  
12          section 410(a)(1)(A) (without regard to section  
13          410(a)(1)(B)), employees who have not yet sat-  
14          isfied such requirements,

15          “(E) employees who are eligible to make  
16          salary reduction contributions under an ar-  
17          rangement which meets the requirements of  
18          section 403(b), and

19          “(F) all employees of the employer if the  
20          employer maintains an arrangement described  
21          in section 408(p).

22          “(3) QUALIFIED PLAN OR ARRANGEMENT.—  
23          The term ‘qualified plan or arrangement’ means a  
24          plan, contract, pension, or trust described in section  
25          219(g)(5).



1           “(4) EXCEPTION FOR EMPLOYEES OF GOVERN-  
2           MENTS AND CHURCHES.—The term ‘applicable em-  
3           ployee’ shall not include an employee of—

4                   “(A) a government or entity described in  
5                   section 414(d), or

6                   “(B) a church or a convention or associa-  
7                   tion of churches which is exempt from tax  
8                   under section 501, including any employee de-  
9                   scribed in section 414(e)(3)(B).

10           “(5) DESIGNATION OF APPLICABLE EMPLOY-  
11           EES.—The Secretary shall issue guidelines for deter-  
12           mining the class or classes of employees to be cov-  
13           ered by a payroll deposit IRA arrangement. Such  
14           guidelines shall provide that if an employer elects  
15           under paragraph (2) to exclude employees from the  
16           arrangement, the employer shall specify the classi-  
17           fication or categories of employees who are not so  
18           covered.

19           “(d) PAYROLL DEPOSIT IRA CONTRIBUTIONS  
20           TREATED LIKE OTHER CONTRIBUTIONS TO INDIVIDUAL  
21           RETIREMENT PLANS.—

22                   “(1) TAX TREATMENT UNAFFECTED.—The fact  
23                   that a contribution to an individual retirement plan  
24                   is made on behalf of an employee under a payroll de-  
25                   posit IRA arrangement instead of being made di-

1       rectly by the employee shall not affect the deduct-  
2       ibility or other tax treatment of the contribution or  
3       of other amounts under this title.

4               “(2) PAYROLL SAVINGS CONTRIBUTIONS TAKEN  
5       INTO ACCOUNT.—Any contribution made on behalf  
6       of an employee under a payroll deposit IRA arrange-  
7       ment shall be taken into account in applying the lim-  
8       itations on contributions to individual retirement  
9       plans and the other provisions of this title applicable  
10      to individual retirement plans as if the contribution  
11      had been made directly by the employee.

12      “(e) EXCEPTION FOR CERTAIN SMALL AND NEW  
13      EMPLOYERS.—

14               “(1) IN GENERAL.—The requirements of this  
15      section shall not apply for any calendar year to an  
16      employer if—

17                       “(A) the employer did not have more than  
18                       10 employees who received at least \$5,000 of  
19                       compensation from the employer for the pre-  
20                       ceding calendar year, or

21                       “(B) was not in existence at all times dur-  
22                       ing the 2 preceding calendar years and did not  
23                       have more than 100 employees who received at  
24                       least \$5,000 of compensation from the employer

1           on any day during either of the 2 preceding cal-  
2           endar years.

3           “(2) OPERATING RULES.—In determining the  
4           number of employees for purposes of this sub-  
5           section—

6                   “(A) any rule applicable in determining the  
7                   number of employees for purposes of section  
8                   408(p)(2)(C) shall be applicable under this sub-  
9                   section,

10                   “(B) all members of the same family  
11                   (within the meaning of section 318(a)(1)) shall  
12                   be treated as 1 individual, and

13                   “(C) any reference to an employer shall in-  
14                   clude a reference to any predecessor employer.

15           “(f) DEPOSITS TO INDIVIDUAL RETIREMENT PLANS  
16 OTHER THAN THOSE SELECTED BY EMPLOYEE.—

17                   “(1) IN GENERAL.—An employer shall not be  
18                   treated as failing to satisfy the requirements of this  
19                   section or any other provision of this title merely be-  
20                   cause the employer makes all contributions (or all  
21                   contributions on behalf of employees who do not  
22                   specify an individual retirement plan, trustee, or  
23                   issuer to receive the contributions) to individual re-  
24                   tirement plans specified in paragraph (2) or (4).

1           “(2) PLANS OF A DESIGNATED TRUSTEE OR  
2           ISSUER.—An employer may elect to have contribu-  
3           tions for all applicable employees participating in a  
4           payroll deposit IRA arrangement made to individual  
5           retirement plans of a designated trustee or issuer  
6           under the arrangement. The preceding sentence  
7           shall not apply unless each participant is notified in  
8           writing that the participant’s balance may be trans-  
9           ferred without cost or penalty to another individual  
10          retirement plan established by or on behalf of the  
11          participant.

12          “(3) PAYROLL TAX DEPOSIT PROCEDURE.—The  
13          Secretary, in consultation with the TSP II Board,  
14          shall establish a procedure under which an em-  
15          ployer—

16                 “(A) may include with each deposit of tax  
17                 required to be deducted and withheld under  
18                 chapter 24 the aggregate amounts, for the pe-  
19                 riod covered by the deposit, which applicable  
20                 employees have designated under subsection  
21                 (b)(1)(A) (or are deemed to have designated  
22                 under subsection (b)(2)(F)(ii) or under an auto-  
23                 matic enrollment arrangement described in sub-  
24                 section (g)) for contribution to individual retire-

1           ment plans, established on behalf of the employ-  
2           ees under paragraph (4), and

3           “(B) specifies, in such manner as the Sec-  
4           retary may prescribe, the following information  
5           for each applicable employee for whom a con-  
6           tribution is to be made:

7                   “(i) The employee’s name and TIN.

8                   “(ii) The amount of the contribution.

9                   “(iii) The investment options selected  
10           by the employee (or deemed to have been  
11           selected by the employee under such auto-  
12           matic enrollment arrangement) and the  
13           amount of the contribution allocated to  
14           each option.

15           “(4) ESTABLISHMENT AND MAINTENANCE OF  
16           ACCOUNTS UNDER PAYROLL TAX DEPOSIT PROCE-  
17           DURE.—

18                   “(A) IN GENERAL.—Subject to the provi-  
19           sions of this section and section 408C, the TSP  
20           II Board shall provide for the establishment  
21           and maintenance of individual retirement plans  
22           (including automatic IRAs) into which contribu-  
23           tions may be deposited under paragraph (3). To  
24           the maximum extent practicable, the TSP II  
25           Board shall—

1           “(i) enter into contracts with persons  
2           eligible to be trustees of individual retire-  
3           ment plans under section 408 to establish  
4           such plans, to provide the investment  
5           funds and investment management, and to  
6           provide notice, record keeping, and other  
7           administrative services, and

8           “(ii) ensure that the costs of invest-  
9           ment management and administration are  
10          kept to a minimum, including through con-  
11          sideration of the use of investments which  
12          involve passive management and which  
13          seek to replicate the performance of a por-  
14          tion of the market.

15          “(B) PAYROLL DEPOSIT FEATURES.—The  
16          TSP II Board shall establish procedures so that  
17          contributions may be made to individual retire-  
18          ment plans (including automatic IRAs) under  
19          paragraph (3) without undue administrative or  
20          paperwork requirements on participating em-  
21          ployers. Such procedures shall ensure that only  
22          1 such plan may be established for each TIN.

23          “(C) LIMITATION ON ROLLOVERS.—If—

1 “(i) any amount is paid or distributed  
 2 out of an individual retirement plan estab-  
 3 lished under this paragraph, and

4 “(ii) such amount is paid into an indi-  
 5 vidual retirement plan which was not es-  
 6 tablished under this paragraph,

7 the payment described in clause (ii) shall be  
 8 treated as a rollover contribution for purposes  
 9 of section 408(d)(3) if and only if the balance  
 10 to the credit of the individual in such individual  
 11 retirement plan or arrangement immediately be-  
 12 fore the payment described in clause (i) was at  
 13 least \$15,000.

14 “(g) COORDINATION WITH AUTOMATIC ENROLL-  
 15 MENT AND OTHER DEFAULT ELECTION PROVISIONS.—

16 “(1) IN GENERAL.—Contributions under a pay-  
 17 roll deposit IRA arrangement may be made pursuant  
 18 to an automatic enrollment arrangement.

19 “(2) AUTOMATIC ENROLLMENT ARRANGE-  
 20 MENT.—The term ‘automatic enrollment arrange-  
 21 ment’ means an arrangement under a payroll deposit  
 22 IRA arrangement and subject to rules prescribed by  
 23 the Secretary—

24 “(A) under which an individual may elect  
 25 to have the employer make payments as con-

1           tributions to an individual account plan on be-  
2           half of the individual, or to the individual di-  
3           rectly in cash,

4           “(B) under which the individual is treated  
5           as having elected to have the employer make  
6           such contributions in an amount equal to a  
7           specified percentage of compensation or dollar  
8           amount until the individual specifically elects  
9           not to have such contributions made (or specifi-  
10          cally elects to have such contributions made at  
11          a different percentage or in a different  
12          amount), and

13          “(C) which meets notice requirements sub-  
14          stantially similar to those described in section  
15          414(w)(4).

16          “(3) DEFAULT INVESTMENTS.—If an employee  
17          is deemed under an automatic enrollment arrange-  
18          ment to have made an election to participate in a  
19          payroll deposit IRA arrangement—

20                 “(A) the employee shall be deemed to have  
21                 made an election to make contributions in the  
22                 amount specified in paragraph (4),

23                 “(B) such contributions shall be trans-  
24                 ferred to—

25                         “(i) an automatic IRA, or



1           “(ii) if the employer has made an elec-  
2           tion under subsection (f)(2), to an indi-  
3           vidual retirement plan of the designated  
4           trustee or issuer but only if the require-  
5           ments of subparagraph (C) are met with  
6           respect to such individual retirement plan,  
7           and

8           “(C) such contributions shall be invested  
9           as provided in paragraph (5).

10          “(4) AMOUNT OF CONTRIBUTIONS.—

11                 “(A) IN GENERAL.—The amount specified  
12                 in this paragraph is 3 percent of compensation.

13                 “(B) AUTHORITY OF BOARD TO PROVIDE  
14                 FOR ANNUAL INCREASES.—The TSP II Board  
15                 may by regulation provide for annual increases  
16                 in the percentage of compensation an employee  
17                 is deemed to have elected under paragraph (2)  
18                 but in no event shall the percentage of com-  
19                 pensation an employee is deemed to have elect-  
20                 ed exceed 8 percent.

21                 “(C) CONTRIBUTION LIMIT.—The con-  
22                 tributions under paragraph (2) on behalf of an  
23                 employee for any calendar year shall not exceed  
24                 the dollar limits applicable to the employee for  
25                 the calendar year under section 219 or 408A.

1           “(5) INVESTMENT IN LIFE CYCLE FUND OR  
2 OTHER INVESTMENTS SPECIFIED BY THE BOARD.—  
3 Amounts contributed under paragraph (3) shall be  
4 invested in—

5           “(A) a life cycle fund similar to the life  
6 cycle funds offered under the Thrift Savings  
7 Fund established under subchapter III of chap-  
8 ter 84 of title 5, United States Code, or

9           “(B) such other investment or investments  
10 as the TSP II Board specifies in regulations  
11 (which shall be promulgated after taking into  
12 account, but not necessarily conforming to, reg-  
13 ulations prescribed by the Secretary of Labor  
14 under section 404(c)(5) of the Employee Retire-  
15 ment Income Security Act of 1974) and which  
16 entails asset allocation and extensive diversifica-  
17 tion.

18           “(6) COORDINATION WITH WITHHOLDING.—  
19 The Secretary shall modify the withholding exemp-  
20 tion certificate under section 3402(f) so that any no-  
21 tice and election requirements with respect to an  
22 automatic enrollment arrangement which is part of  
23 a payroll deposit IRA arrangement may be met  
24 through the use of such certificate.

1       “(h) MODEL NOTICE.—The Secretary, in consulta-  
2 tion with the TSP II Board, shall—

3               “(1) provide a model notice, written in a man-  
4 ner calculated to be understandable to the average  
5 worker, that is simple for employers to use—

6                       “(A) to notify employees of the require-  
7 ment under this section for the employer to pro-  
8 vide certain employees with the opportunity to  
9 participate in a payroll deposit IRA arrange-  
10 ment, and

11                      “(B) to satisfy the requirements of sub-  
12 section (b)(2)(D),

13               “(2) provide uniform forms for enrollment, in-  
14 cluding automatic enrollment, in a payroll deposit  
15 IRA arrangement, and

16               “(3) establish a web site or other electronic  
17 means for small employers to access and use to ob-  
18 tain information on payroll deposit IRA arrange-  
19 ments and to obtain required notices and forms.

20       “(i) CROSS REFERENCE.—For provision preempting  
21 conflicting State laws, see section 2(g) of the Automatic  
22 IRA Act of 2007.”.

23       (b) NOTICE OF AVAILABILITY OF INVESTMENT  
24 GUIDELINES.—Section 408(i) of the Internal Revenue  
25 Code of 1986 (relating to reports) is amended by adding

1 at the end the following new sentence: “Any report fur-  
2 nished under paragraph (2) to an individual shall include  
3 notice of the availability of, and methods of acquiring, the  
4 basic investment guidelines prepared by the Secretary of  
5 Labor.”.

6 (c) DEVELOPMENT OF BASIC INVESTMENT GUIDE-  
7 LINES.—

8 (1) IN GENERAL.—The Secretary of Labor  
9 shall, in consultation with the Secretary of Treasury,  
10 develop and publish basic guidelines for investing for  
11 retirement. Except as otherwise provided by the Sec-  
12 retary of Labor, such guidelines shall include—

13 (A) information on the benefits of diver-  
14 sification,

15 (B) information on the essential dif-  
16 ferences, in terms of risk and return, between  
17 various pension plan investments, including  
18 stocks, bonds, mutual funds, and money market  
19 investments,

20 (C) information on how an individual’s  
21 pension plan investment allocations may differ  
22 depending on the individual’s age and years to  
23 retirement and on other factors determined by  
24 the Secretary of Labor,

1 (D) sources of information where individ-  
2 uals may learn more about pension rights, indi-  
3 vidual investing, and investment advice, and

4 (E) such other information related to indi-  
5 vidual investing as the Secretary of Labor de-  
6 termines appropriate.

7 (2) CALCULATION INFORMATION.—The guide-  
8 lines under paragraph (1) shall include addresses for  
9 Internet sites and worksheets which a participant or  
10 beneficiary in a pension plan may use to calculate—

11 (A) the retirement age value of the partici-  
12 pant's or beneficiary's nonforfeitable pension  
13 benefits under the plan (expressed as an annu-  
14 ity amount and determined by reference to var-  
15 ied historical annual rates of return and annu-  
16 ity interest rates), and

17 (B) other important amounts relating to  
18 retirement savings, including the amount which  
19 a participant or beneficiary would be required  
20 to save annually to provide a retirement income  
21 equal to various percentages of their current  
22 salary (adjusted for expected growth prior to  
23 retirement).

24 (3) PUBLIC COMMENT.—The Secretary of  
25 Labor shall provide at least 90 days for public com-

1       ment on proposed guidelines before publishing the  
2       final guidelines.

3               (4) RULES RELATING TO GUIDELINES.—The  
4       guidelines under paragraph (1)—

5                       (A) shall be written in a manner calculated  
6                       to be understood by the average plan partici-  
7                       pant, and

8                       (B) may be delivered in written, electronic,  
9                       or other appropriate manner to the extent such  
10                      manner would ensure that the guidelines are  
11                      reasonably accessible to participants and bene-  
12                      ficiaries.

13       (d) PENALTY FOR FAILURE TO PROVIDE ACCESS TO  
14       PAYROLL SAVINGS ARRANGEMENTS.—Chapter 43 of the  
15       Internal Revenue Code of 1986 (relating to qualified pen-  
16       sion, etc., plans) is amended by adding at the end the fol-  
17       lowing new section:

18       **“SEC. 4980H. REQUIREMENTS FOR EMPLOYERS TO PRO-**  
19                       **VIDE EMPLOYEES ACCESS TO PAYROLL DE-**  
20                       **POSIT IRA ARRANGEMENTS.**

21               “(a) GENERAL RULE.—There is hereby imposed a  
22       tax on any failure by an employer to meet the require-  
23       ments of subsection (d) for a calendar year.

24               “(b) AMOUNT.—

1           “(1) IN GENERAL.—The amount of the tax im-  
2           posed by subsection (a) on any failure for any cal-  
3           endar year shall be \$100 with respect to each em-  
4           ployee to whom such failure relates.

5           “(2) TAX NOT TO APPLY WHERE FAILURE NOT  
6           DISCOVERED AND REASONABLE DILIGENCE EXER-  
7           CISED.—No tax shall be imposed by subsection (a)  
8           on any failure during any period for which it is es-  
9           tablished to the satisfaction of the Secretary that the  
10          employer subject to liability for the tax did not know  
11          that the failure existed and exercised reasonable dili-  
12          gence to meet the requirements of subsection (d). In  
13          no event shall the tax be imposed with respect to  
14          any failure that ends before the expiration of 90  
15          days after the employer has responded or has had a  
16          reasonable opportunity to respond to a request for  
17          confirmation of compliance under subsection (c).

18          “(3) TAX NOT TO APPLY TO FAILURES COR-  
19          RECTED WITHIN 30 DAYS.—No tax shall be imposed  
20          by subsection (a) on any failure if—

21                  “(A) the employer subject to liability for  
22                  the tax under subsection (a) exercised reason-  
23                  able diligence to meet the requirements of sub-  
24                  section (d), and

1           “(B) the employer provides the payroll de-  
2           posit IRA arrangement described in section  
3           408B to each employee eligible to participate in  
4           the arrangement by the end of the 30-day pe-  
5           riod beginning on the first date the employer  
6           knew, or exercising reasonable diligence would  
7           have known, that such failure existed.

8           “(4) WAIVER BY SECRETARY.—In the case of a  
9           failure which is due to reasonable cause and not to  
10          willful neglect, the Secretary may waive part or all  
11          of the tax imposed by subsection (a) to the extent  
12          that the payment of such tax would be excessive or  
13          otherwise inequitable relative to the failure involved.

14          “(c) PROCEDURES FOR NOTICE.—Not later than 6  
15          months after the date of the enactment of this section,  
16          the Secretary shall prescribe and implement procedures  
17          for obtaining from employers confirmation that such em-  
18          ployers are in compliance with the requirements of sub-  
19          section (d). The Secretary, in the Secretary’s discretion,  
20          may prescribe that the confirmation shall be obtained on  
21          an annual or less frequent basis, and may use for this  
22          purpose the annual report or quarterly report for employ-  
23          ment taxes, or such other means as the Secretary may  
24          deem advisable.



1       “(d) REQUIREMENT TO PROVIDE EMPLOYEE ACCESS  
2 TO PAYROLL DEPOSIT IRA ARRANGEMENTS.—The re-  
3 quirements of this subsection are met if the employer  
4 meets the requirements of section 408B.”.

5       (e) COORDINATION WITH ERISA FIDUCIARY DU-  
6 TIES.—Section 404(c)(2) of Employee Retirement Income  
7 Security Act of 1974 (29 U.S.C. 1104(c)(2)) is amend-  
8 ed—

9           (1) by inserting “or an individual retirement  
10 plan designated by the employer under section 408B  
11 of such Code” after “1986”,

12           (2) by inserting “(7 days after notice has been  
13 given to an employee that an individual retirement  
14 plan has been established on behalf of the employee  
15 under section 408B of such Code)” after “estab-  
16 lished” in subparagraph (C), and

17           (3) by inserting “or with respect to an indi-  
18 vidual retirement plan designated by an employer  
19 under section 408B of such Code” after “arrange-  
20 ment” in the last sentence.

21       (f) CONFORMING AMENDMENTS.—

22           (1) The table of sections for subpart A of part  
23 I of subchapter A of chapter 1 of the Internal Rev-  
24 enue Code of 1986 is amended by inserting after the

1 item relating to section 408A the following new  
2 item:

“Sec. 408B. Right to payroll deposit IRA arrangements at work.”.

3 (2) The table of sections for chapter 43 of such  
4 Code is amended by adding at the end the following  
5 new item:

“Sec. 4980H. Requirements for employers to provide employees access to payroll deposit IRA arrangements.”.

6 (g) PREEMPTION OF CONFLICTING STATE LAWS.—

7 The amendments made by this section shall supersede any  
8 law of a State that would directly or indirectly prohibit  
9 or restrict the establishment or operation of a payroll de-  
10 posit IRA arrangement meeting the requirements of sec-  
11 tion 408B of the Internal Revenue Code of 1986 (includ-  
12 ing the inclusion in any such arrangement of an automatic  
13 enrollment arrangement as defined in section 408B(g) of  
14 such Code).

15 (h) EFFECTIVE DATE.—The amendments made by  
16 this section shall apply to calendar years beginning after  
17 December 31, 2008.

18 **SEC. 3. CREDIT FOR SMALL EMPLOYERS MAINTAINING**  
19 **PAYROLL DEPOSIT IRA ARRANGEMENTS.**

20 (a) IN GENERAL.—Subpart D of part IV of sub-  
21 chapter A of chapter 1 of the Internal Revenue Code of  
22 1986 (relating to business related credits) is amended by  
23 adding at the end the following new section:

1 **“SEC. 450. SMALL EMPLOYER PAYROLL DEPOSIT IRA AR-**  
2 **RANGEMENT COSTS.**

3 “(a) GENERAL RULE.—For purposes of section 38,  
4 in the case of an eligible employer maintaining a payroll  
5 deposit IRA arrangement meeting the requirements of sec-  
6 tion 408B (without regard to whether or not the employer  
7 is required to maintain the arrangement), the small em-  
8 ployer payroll deposit IRA arrangement cost credit deter-  
9 mined under this section for any taxable year is the  
10 amount determined under subsection (b).

11 “(b) AMOUNT OF CREDIT.—

12 “(1) IN GENERAL.—The amount of the credit  
13 determined under this section for any taxable year  
14 with respect to an eligible employer shall be equal to  
15 the lesser of—

16 “(A) \$25 multiplied by the number of ap-  
17 plicable employees (within the meaning of sec-  
18 tion 408B(c)) for whom contributions are made  
19 under the payroll deposit IRA arrangement re-  
20 ferred to in subsection (a) for the calendar year  
21 in which the taxable year begins, or

22 “(B) \$250.

23 “(2) DURATION OF CREDIT.—No credit shall be  
24 determined under this section for any taxable year  
25 other than a taxable year which begins in the first  
26 2 calendar years in which the eligible employer

1 maintains a payroll deposit IRA arrangement meet-  
2 ing the requirements of section 408B.

3 “(3) COORDINATION WITH SMALL EMPLOYER  
4 STARTUP CREDIT.—No credit shall be allowed under  
5 this section for any taxable year if a credit is deter-  
6 mined under section 45E for the taxable year.

7 “(c) ELIGIBLE EMPLOYER.—For purposes of this  
8 section, the term ‘eligible employer’ means, with respect  
9 to any calendar year in which the taxable year begins, an  
10 employer which maintains a payroll deposit IRA arrange-  
11 ment meeting the requirements of section 408B and  
12 which, on each day during the preceding calendar year,  
13 had no more than 100 employees.”.

14 (b) CREDIT ALLOWED AS PART OF GENERAL BUSI-  
15 NESS CREDIT.—Section 38(b) of the Internal Revenue  
16 Code of 1986 (defining current year business credit) is  
17 amended by striking “plus” at the end of paragraph (30),  
18 by striking the period at the end of paragraph (31) and  
19 inserting “, plus”, and by adding at the end the following  
20 new paragraph:

21 “(32) in the case of an eligible employer (as de-  
22 fined in section 45O(c)) maintaining a payroll de-  
23 posit IRA arrangement meeting the requirements of  
24 section 408B, the small employer payroll deposit

1 IRA arrangement cost credit determined under sec-  
2 tion 450(a).”

3 (c) CLERICAL AMENDMENT.—The table of sections  
4 for subpart D of part IV of subchapter A of chapter 1  
5 of the Internal Revenue Code of 1986 is amended by add-  
6 ing at the end the following new item:

“Sec. 450. Small employer payroll deposit IRA arrangement costs.”.

7 (d) EFFECTIVE DATE.—The amendments made by  
8 this section shall apply to taxable years beginning after  
9 December 31, 2008.

10 **SEC. 4. ESTABLISHMENT OF AUTOMATIC IRAS.**

11 (a) IN GENERAL.—Subpart A of part I of subchapter  
12 A of chapter 1 of the Internal Revenue Code of 1986 (re-  
13 lating to pension, profit-sharing, stock bonus plans, etc.),  
14 as amended by section 2, is amended by inserting after  
15 section 408B the following new section:

16 **“SEC. 408C. AUTOMATIC IRAS.**

17 “(a) GENERAL RULE.—An automatic IRA shall be  
18 treated for purposes of this title in the same manner as  
19 an individual retirement plan. An automatic IRA may also  
20 be treated as a Roth IRA for purposes of this title if it  
21 meets the requirements of section 408A.

22 “(b) AUTOMATIC IRA.—For purposes of this section,  
23 the term ‘automatic IRA’ means an individual retirement  
24 plan (as defined in section 7701(a)(37)) which meets the

1 investment and fee requirements under the regulations  
2 under subsection (c).

3 “(c) INVESTMENT AND FEE REQUIREMENTS.—

4 “(1) IN GENERAL.—The TSP II Board, in con-  
5 sultation with the Secretary and the Secretary of  
6 Labor, shall, not later than 1 year after the date of  
7 the enactment of this section, prescribe regulations  
8 which set forth the requirements of this subsection  
9 which an individual retirement plan must meet in  
10 order to be treated as an automatic IRA.

11 “(2) INVESTMENT OPTIONS.—The regulations  
12 under paragraph (1) shall provide that an automatic  
13 IRA shall allow the individual on whose behalf the  
14 individual retirement plan is established to invest  
15 contributions to, and earnings of, the plan in all of  
16 the following investment options:

17 “(A) Options which are similar to all in-  
18 vestment options which are available (at the  
19 time the plan is established) to a participant in  
20 the Thrift Savings Fund established under sub-  
21 chapter III of chapter 84 of title 5, United  
22 States Code.

23 “(B) Any other investment option specified  
24 in the regulations.

1 Such regulations shall specify which of the invest-  
2 ment options shall be treated as default investment  
3 options for purposes of section 408B(g)(5).

4 “(3) INVESTMENT FEES.—

5 “(A) IN GENERAL.—The regulations under  
6 paragraph (1) shall provide that an automatic  
7 IRA shall not charge any investment fees  
8 which, in the aggregate, are not reasonable (as  
9 determined under such regulations).

10 “(B) INVESTMENT FEES.—For purposes of  
11 this paragraph, the term ‘investment fees’ in-  
12 cludes any fee, commission, asset management  
13 fee, compensation for services, or any other  
14 charge or fee specified in the regulations under  
15 paragraph (1) which is imposed with respect to  
16 the automatic IRA.”.

17 (b) STUDIES OF SPOUSAL CONSENT REQUIREMENTS  
18 AND PROMOTION OF CERTAIN LIFETIME INCOME AR-  
19 RANGEMENTS.—

20 (1) IN GENERAL.—The Secretary of the Treas-  
21 ury and the Secretary of Labor shall jointly conduct  
22 a separate study of the feasibility and desirability of  
23 each of the following:

24 (A) Extending to automatic IRAs spousal  
25 consent requirements similar to, or based on,

1 those that apply under the Federal employees'  
2 Thrift Savings Plan, including consideration of  
3 whether modifications of such requirements are  
4 necessary to apply them to automatic IRAs.

5 (B) Promoting the use of low-cost annu-  
6 ities, longevity insurance, or other guaranteed  
7 lifetime income arrangements in automatic  
8 IRAs, including consideration of—

9 (i) appropriate means of arranging  
10 for, or encouraging, individuals to receive  
11 at least a portion of their distributions in  
12 some form of low-cost guaranteed lifetime  
13 income, and

14 (ii) issues presented by possible addi-  
15 tional differences in, or uniformity of, pro-  
16 visions governing different IRAs.

17 (2) REPORT.—Not later than 18 months after  
18 the date of the enactment of this Act, the Secre-  
19 taries shall report the results of each study con-  
20 ducted under subsection (a), together with any rec-  
21 ommendations for legislative changes, to the Com-  
22 mittees on Finance and Health, Education, Labor,  
23 and Pensions of the Senate and the Committees on  
24 Ways and Means and Education and Labor of the  
25 House of Representatives.



1 (c) MANDATORY TRANSFERS.—Section  
 2 401(a)(31)(B) of the Internal Revenue Code of 1986 is  
 3 amended—

4 (1) by inserting “(including an automatic  
 5 IRA)” after “individual retirement plan” each place  
 6 it appears, and

7 (2) by adding at the end the following new sen-  
 8 tence: “Any amount so transferred (and any earn-  
 9 ings thereon) shall be invested in a default invest-  
 10 ment described in section 408B(g)(5).”

11 (d) CLERICAL AMENDMENT.—The table of sections  
 12 for subpart A of part I of subchapter A of chapter 1 of  
 13 the Internal Revenue Code of 1986 is amended by insert-  
 14 ing after the item relating to section 408B the following  
 15 new item:

“Sec. 408C. Automatic IRAs.”.

16 (e) EFFECTIVE DATE.—The amendments made by  
 17 this section shall apply to calendar years beginning on or  
 18 after the date on which proposed and temporary or final  
 19 regulations described in section 408C(c) of the Internal  
 20 Revenue Code of 1986 (as added by this Act) are issued.

21 **SEC. 5. ESTABLISHMENT OF TSP II BOARD.**

22 (a) ESTABLISHMENT.—There is established in the ex-  
 23 ecutive branch of the Government a TSP II Board. The  
 24 board shall be established and maintained in the same  
 25 manner as the Federal Retirement Thrift Investment

1 Board under subchapter VII of chapter 84 of title 5,  
2 United States Code.

3 (b) EXECUTIVE DIRECTOR.—The TSP II Board shall  
4 appoint an Executive Director in a similar manner and  
5 with similar functions as the Executive Director of the  
6 Federal Retirement Thrift Investment Board under sec-  
7 tion 8474 of title 5, United States Code.

8 (c) DUTIES OF BOARD.—The TSP II Board shall es-  
9 tablish policies and procedures for—

10 (1) establishment and maintenance of individual  
11 retirement plans under section 408B(f)(3) of the In-  
12 ternal Revenue Code of 1986,

13 (2) the investment and management of con-  
14 tributions to such individual retirement plans,

15 (3) the amount of contributions, and the invest-  
16 ment of such contributions, under automatic enroll-  
17 ment arrangements under section 408B(g) of such  
18 Code, including the designation of investment funds  
19 in which such contributions may be invested, and

20 (4) the establishment of automatic IRAs under  
21 section 408C of such Code, including the issuance of  
22 regulations under subsection (c) of such section.

23 (d) BEST PRACTICES.—The TSP II Board shall, on  
24 a continual basis, prescribe and encourage best practices  
25 (including cost efficiencies and innovations) in enrollment,

1 investment, distribution, and other procedures or arrange-  
2 ments relating to retirement savings and investment. In  
3 carrying out its responsibilities under this section, the  
4 TSP II Board may implement (by contract or otherwise)  
5 pilot projects to help assess the efficacy and workability  
6 of specific practices and arrangements.

7 (e) EXPANSION OF USE OF IRAS BY SELF-EM-  
8 PLOYED AND OTHER INDIVIDUALS.—The TSP II Board  
9 shall establish procedures to disseminate information  
10 (through use of the Internet and other appropriate means)  
11 to facilitate and encourage—

12 (1) the use by self-employed and other individ-  
13 uals of automatic debit and similar arrangements for  
14 investment in individual retirement plans, including  
15 automatic IRAs,

16 (2) efforts by voluntary associations to promote  
17 savings in individual retirement plans, including  
18 automatic IRAs, by their members and others, and

19 (3) the direct deposit of Federal and State in-  
20 come tax refunds in individual retirement plans, in-  
21 cluding automatic IRAs.

22 (f) EXCLUSIVE INTEREST.—The members of the  
23 TSP II Board shall discharge their responsibilities solely  
24 in the interest of participants and beneficiaries under indi-

1 vidual retirement plans described in section 408B of the  
2 Internal Revenue Code of 1986.

3 (g) OTHER PROVISIONS MADE APPLICABLE.—The  
4 provisions of subsections (f)(3), (g), (i), and (j) of section  
5 8472 of title 5, United States Code, shall apply to the  
6 TSP II Board.

○