

111<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# S. 3760

To amend the Internal Revenue Code of 1986 to expand personal savings and retirement savings coverage by allowing employees not covered by qualified retirement plans to save for retirement through automatic IRAs, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

AUGUST 5, 2010

Mr. BINGAMAN (for himself and Mr. KERRY) 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 expand personal savings and retirement savings coverage by allowing employees not covered by qualified retirement plans to save for retirement through automatic IRAs, 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 2010”.

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

5 (a) IN GENERAL.—Subchapter D of chapter 1 of the  
 6 Internal Revenue Code of 1986 (relating to pension, prof-  
 7 it-sharing, stock bonus plans, etc.) is amended by inserting  
 8 at the end the following new part:

9 **“PART IV—AUTOMATIC IRA ARRANGEMENTS**

“Sec. 438. Right to automatic IRA arrangements at work.

“Sec. 439. Automatic IRAs.

“Sec. 440. Rules relating to choice of IRA providers.

10 **“SEC. 438. RIGHT TO AUTOMATIC IRA ARRANGEMENTS AT**  
 11 **WORK.**

12 “(a) REQUIREMENT TO PROVIDE AUTOMATIC IRA  
 13 ARRANGEMENT.—If an applicable employer does not  
 14 maintain a qualified plan or arrangement (as defined in  
 15 subsection (i)) for any calendar year, the employer shall  
 16 make available an automatic IRA arrangement which  
 17 meets the requirements of this section to each qualifying  
 18 employee of the employer for the calendar year.

19 “(b) QUALIFYING EMPLOYEE DEFINED.—For pur-  
 20 poses of this section—

21 “(1) IN GENERAL.—The term ‘qualifying em-  
 22 ployee’ means any employee of the employer other  
 23 than an excludable employee.

1           “(2) EXCLUDABLE EMPLOYEE.—The term ‘ex-  
2           cludable employee’ means any employee who is in  
3           one of the following categories of employees that the  
4           employer elects to exclude from treatment as quali-  
5           fying employees—

6                   “(A) employees described in section  
7                   410(b)(3),

8                   “(B) employees who have not attained the  
9                   age of 18 before the beginning of the calendar  
10                  year, or

11                  “(C) employees who have not completed at  
12                  least 3 months of service with the employer.

13           “(3) EXCEPTION FOR EMPLOYEES OF GOVERN-  
14           MENTS AND CHURCHES.—The term ‘qualifying em-  
15           ployee’ shall not include an employee of—

16                   “(A) a government or entity described in  
17                   section 414(d), or

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

22           “(4) PLAN SPONSOR’S EMPLOYEES.—

23                   “(A) IN GENERAL.—If—

24                           “(i) an employer maintains 1 or more  
25                           qualified plans or arrangements, and

1           “(ii) the employees of a subsidiary, di-  
2           vision, or other major business unit of the  
3           employer are not generally eligible to par-  
4           ticipate in any such qualified plan or ar-  
5           rangement,  
6           then, except as provided in subparagraph (B),  
7           the employer shall make available an automatic  
8           IRA arrangement which meets the requirements  
9           of this section to all qualifying employees de-  
10          scribed in clause (ii) for the calendar year.

11           “(B) EXCEPTION FOR CERTAIN EMPLOY-  
12          EES.—An employer may exclude from coverage  
13          under the automatic IRA arrangement under  
14          subparagraph (A)—

15           “(i) any employee not eligible to par-  
16          ticipate in any qualified plan or arrange-  
17          ment solely because the employee has not  
18          satisfied the minimum age and service re-  
19          quirements for participation in the plan or  
20          arrangement,

21           “(ii) in the case of an employer which  
22          maintains a qualified plan or arrangement  
23          which consists of a section 403(b) annuity  
24          contract (including a custodial account),  
25          an arrangement described in section

1           408(p), or a simplified employee pension  
2           described in section 408(k), any employee  
3           who is permitted to be excluded from, or  
4           who is not required to be eligible to partici-  
5           pate in, any such plan, arrangement, or  
6           pension under section 403(b)(12),  
7           408(p)(4), or 408(k)(2), whichever is ap-  
8           plicable.

9           “(5) DESIGNATION OF QUALIFYING EMPLOY-  
10          EES.—The Secretary shall issue guidelines for deter-  
11          mining the class or classes of qualifying employees  
12          to be covered by an automatic IRA arrangement.  
13          Such guidelines shall permit employers to designate  
14          under paragraph (2) the classification or categories  
15          of employees who are not eligible for the arrange-  
16          ment.

17          “(6) EMPLOYEE INCLUDES SELF-EMPLOYED.—  
18          For purposes of this part, an employer described in  
19          section 401(c)(4) may elect to treat self-employed in-  
20          dividuals (within the meaning of section 401(c)(1))  
21          as employees of the trade or business, except that if  
22          the employer has employees other than such individ-  
23          uals, the employer may only make the election under  
24          this paragraph if the employer makes available an  
25          automatic IRA arrangement to such other employees

1 in accordance with the rules of subsection (a) and  
2 paragraph (4).

3 “(c) AUTOMATIC IRA ARRANGEMENT.—For pur-  
4 poses of this section, the term ‘automatic IRA arrange-  
5 ment’ means an arrangement of an employer—

6 “(1) under which, in accordance with subsection  
7 (d)—

8 “(A) a qualifying employee may elect to  
9 have an amount contributed to a designated  
10 automatic IRA established on behalf of the em-  
11 ployee instead of having that amount paid to  
12 the employee directly in cash,

13 “(B) a qualifying employee is treated as  
14 having elected such contributions in the amount  
15 specified in subsection (d)(2) until the employee  
16 specifically elects not to have such contributions  
17 made (or specifically elects to have such con-  
18 tributions made at a different percentage or in  
19 a different amount), and

20 “(C) the contributions are invested as pro-  
21 vided in subsection (d)(3),

22 “(2) under which payments are to be made to  
23 the designated automatic IRA of each qualifying em-  
24 ployee by having the employer of the employee—

1           “(A) make periodic direct deposit or other  
2 payroll deposit payments (including electronic  
3 payments) to the plan by payroll deduction, or

4           “(B) in the case of employees not paid  
5 through regular periodic payments, make such  
6 deposit or payments in such manner as the Sec-  
7 retary may provide in guidance, including  
8 through available automatic debit or similar ar-  
9 rangements or the use of authorized inter-  
10 mediary entities such as business, professional,  
11 or trade associations,

12           “(3) under which the payments described in  
13 paragraph (1) are to be made by the employer on or  
14 before—

15           “(A) the last day of the month following  
16 the month in which the compensation would  
17 otherwise have been payable to the employee in  
18 cash, or

19           “(B) such later date as the Secretary may  
20 prescribe, except that the Secretary may not  
21 prescribe a date later than the due date for the  
22 deposit of tax required to be deducted and with-  
23 held under chapter 24 (relating to collection of  
24 income tax at source on wages) for the payroll  
25 period to which such payments relate, and

1           “(4) which meets the notice and election re-  
2           quirements of subsection (e).

3           “(d) DEFINITIONS AND RULES RELATING TO AUTO-  
4           MATIC ENROLLMENT REQUIREMENTS.—For purposes of  
5           this section—

6           “(1) DESIGNATED AUTOMATIC IRA.—

7                   “(A) IN GENERAL.—Except as provided in  
8                   subparagraph (B), the term ‘designated auto-  
9                   matic IRA’ means, with respect to any auto-  
10                  matic IRA arrangement of an employer, an  
11                  automatic IRA of a provider designated by, or  
12                  on behalf of, the employer under subsection (g).

13                  “(B) IRA SPECIFIED BY EMPLOYEE.—An  
14                  employer may also elect to allow each of its  
15                  qualifying employees to designate an individual  
16                  retirement plan (whether or not an automatic  
17                  IRA) established by or on behalf of the em-  
18                  ployee as the designated automatic IRA with  
19                  respect to that employee.

20                  “(C) SPECIAL RULES.—

21                   “(i) NOTICE REQUIREMENT.—If con-  
22                   tributions are made to designated auto-  
23                   matic IRAs that are designated by the em-  
24                   ployer in accordance with subparagraph  
25                   (A), the employer shall provide each par-



1            participating employee a standard written no-  
2            tice, as provided by the Secretary, that the  
3            employee's balance may be periodically  
4            transferred without cost or penalty from  
5            the designated automatic IRA to another  
6            individual retirement plan, or to a retire-  
7            ment bond described in section 440(d), es-  
8            tablished by or on behalf of the employee.

9            “(ii) TREATMENT OF PERIODIC  
10           TRANSFERS.—For tax treatment of trans-  
11           fers described in clause (i), see subsection  
12           (f)(3).

13           “(D) CONTRIBUTIONS TO DESIGNATED  
14           AUTOMATIC IRAS.—An employer shall not be  
15           treated as failing to satisfy the requirements of  
16           this section or any other provision of this title  
17           merely because the employer makes all con-  
18           tributions (or all contributions on behalf of  
19           qualifying employees who do not specify a des-  
20           ignated automatic IRA under subparagraph  
21           (B)) to a designated automatic IRA or to a re-  
22           tirement bond described in section 440(d) and  
23           held on behalf of the employee.

24           “(2) AMOUNT OF CONTRIBUTIONS.—

1           “(A) IN GENERAL.—The amount specified  
2 in this paragraph is—

3                   “(i) 3 percent of compensation, or

4                   “(ii) such other percentage of com-  
5 pensation as is specified in regulations pre-  
6 scribed by the Secretary which is not less  
7 than 2 percent or more than 4 percent.

8           “(B) AUTHORITY OF SECRETARY TO PRO-  
9 VIDE FOR PERIODIC INCREASES.—In the case of  
10 qualifying employees under an automatic IRA  
11 arrangement for 2 or more consecutive years,  
12 the Secretary may by regulation provide for  
13 periodic (not more frequent than annual) in-  
14 creases in the percentage of compensation an  
15 employee is deemed to have elected under sub-  
16 paragraph (A).

17           “(C) PERMITTED ADDITIONAL PROCE-  
18 DURES TO LIMIT CONTRIBUTIONS.—An em-  
19 ployer—

20                   “(i) shall have no responsibility for  
21 any calendar year for determining whether,  
22 or ensuring that, the contributions with re-  
23 spect to any employee do not exceed the  
24 deductible amount in effect for taxable  
25 years beginning in the calendar year under

1 section 219(b)(5) (determined without re-  
2 gard to subparagraph (B) thereof), and

3 “(ii) shall not be treated as failing to  
4 satisfy the requirements of this section or  
5 any other provision of this title merely be-  
6 cause the employer chooses to limit the  
7 contributions under this subsection on be-  
8 half of a qualifying employee for any cal-  
9 endar year in a manner reasonably de-  
10 signed to avoid exceeding such deductible  
11 amount.

12 “(3) INVESTMENT OF ASSETS IN AUTOMATIC  
13 IRAS.—

14 “(A) INVESTMENT IN SPECIFIED OP-  
15 TIONS.—Amounts contributed under this sub-  
16 section for a calendar year shall, unless other-  
17 wise directed by the qualifying employee, be in-  
18 vested in—

19 “(i) the principal preservation invest-  
20 ment option of the designated automatic  
21 IRA described in section 439(c)(2)(A) if,  
22 as of the close of the preceding calendar  
23 year or at such other time as may be pre-  
24 scribed by the Secretary, the outstanding  
25 balance of such plan was less than the

1 amount described in paragraph (2)(C)(i),  
2 and

3 “(ii) if clause (i) does not apply, the  
4 blended investment option of the des-  
5 ignated automatic IRA described in section  
6 439(c)(2)(B),

7 except that the Secretary may provide by regu-  
8 lation or other guidance that, in the case of a  
9 designated automatic IRA to which clause (ii)  
10 applies, amounts previously invested in the  
11 principal preservation option shall be reinvested  
12 in the blended investment option.

13 “(B) TYPE OF AUTOMATIC IRA.—A quali-  
14 fying employee for whom a designated auto-  
15 matic IRA is established under paragraph  
16 (1)(A) may elect, at such time and in such  
17 manner and form as the Secretary may pre-  
18 scribe, whether to treat the plan as described,  
19 or not described, in section 408A. If no such  
20 election is made, the plan shall be treated as  
21 described in section 408A.

22 “(4) ALTERNATIVE AUTOMATIC ENROLLMENT  
23 PROCEDURE.—An arrangement shall not be treated  
24 as failing to meet the automatic enrollment require-  
25 ments under subsection (c)(1)(B) merely because the

1 employer, in accordance with guidance prescribed by  
2 the Secretary, elects to provide employees with com-  
3 munications informing the employees that the em-  
4 ployer wishes to obtain from each employee an af-  
5 firmative election either to contribute (including  
6 specification by the employee of the information nec-  
7 essary to permit the election to be implemented) or  
8 not to contribute to an automatic IRA, except that  
9 such employer shall treat any employee who fails to  
10 make such an election in the manner provided under  
11 subsection (c)(1)(B).

12 “(e) ELECTION AND NOTICE REQUIREMENTS.—

13 “(1) ELECTION REQUIREMENTS.—Each auto-  
14 matic IRA arrangement shall permit—

15 “(A) each qualifying employee to elect,  
16 during the 60-day period or other period speci-  
17 fied by the Secretary before the beginning of  
18 any calendar year (and during the 60-day pe-  
19 riod or other period specified by the Secretary  
20 before the first day the employee is eligible to  
21 participate), to participate in the arrangement,  
22 or to modify the employee’s election under the  
23 arrangement (including the amounts subject to  
24 the arrangement and the manner in which such  
25 amounts are invested), for such year, and

1           “(B) subject to a requirement for reason-  
2           able notice, an employee to elect to terminate  
3           participation in the arrangement at any time  
4           during a calendar year, except that if an em-  
5           ployee so terminates, the employer may provide  
6           that the employee may not resume participation  
7           until the beginning of the next calendar year.

8           “(2) EMPLOYER NOTICE.—Under an automatic  
9           IRA arrangement, the employer shall provide, within  
10          a reasonable period before the beginning of each pe-  
11          riod described in paragraph (1)(A), a notice to each  
12          qualifying employee meeting the requirements of sec-  
13          tion 414(w)(4).

14          “(3) MODEL NOTICE, FORMS, AND WEBSITE.—  
15          The Secretary, in consultation with the Secretary of  
16          Labor, shall—

17                 “(A) provide a model notice, written in a  
18                 manner calculated to be understandable to the  
19                 average worker, that is simple for employers to  
20                 use, that meets the requirements of paragraph  
21                 (2), and that informs qualifying employees of  
22                 the automatic enrollment arrangement (includ-  
23                 ing the types of individual retirement plans to  
24                 which contributions may be deposited),

1           “(B) provide model forms for enrollment,  
2 including automatic enrollment, in an automatic  
3 IRA arrangement, and

4           “(C) establish an Internet website under  
5 section 440 that allows employers and individ-  
6 uals to obtain information on automatic IRA  
7 arrangements and on saving and investing for  
8 retirement, and to obtain required notices and  
9 forms.

10           “(4) COORDINATION WITH WITHHOLDING.—

11       The Secretary shall modify the withholding exemp-  
12 tion certificate under section 3402(f) so that, in the  
13 case of any qualifying employee covered under an  
14 automatic IRA arrangement, any notice and election  
15 requirements with respect to the arrangement may  
16 be met through the use of an attachment to such  
17 certificate or other modifications of the withholding  
18 exemption procedures.

19           “(f) AUTOMATIC IRA CONTRIBUTIONS TREATED  
20 LIKE OTHER CONTRIBUTIONS TO INDIVIDUAL RETIRE-  
21 MENT PLANS.—

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

1 directly 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 a qualifying employee under an automatic IRA  
7 arrangement shall be taken into account in applying  
8 the limitations on contributions to individual retire-  
9 ment plans and the other provisions of this title ap-  
10 plicable to individual retirement plans as if the con-  
11 tribution had been made directly by the employee.

12 “(3) ROLLOVER LIMIT NOT TO APPLY.—For  
13 purposes of section 408(d)(3)(B), there shall be dis-  
14 regarded any qualified rollover contribution which is  
15 a transfer described in subsection (d)(1)(C)(i).

16 “(g) DESIGNATION OF PROVIDER FOR EMPLOYER’S  
17 AUTOMATIC IRA ARRANGEMENT.—

18 “(1) IN GENERAL.—For purposes of subsection  
19 (d)(1)(A), the provider of an automatic IRA under  
20 any automatic IRA arrangement of an employer  
21 shall be the trustee or issuer of the individual retire-  
22 ment plan and shall be determined under one of the  
23 following methods:

24 “(A) PROVIDER DESIGNATED BY EM-  
25 PLOYER.—



1           “(i) IN GENERAL.—An employer may  
2           designate a single provider for the auto-  
3           matic IRA arrangement.

4           “(ii) EXEMPTION FROM ERISA.—If  
5           the provider designated by the employer is  
6           included on the list of providers contained  
7           in the website established under section  
8           440(b), see the exemption under section  
9           3(2)(C) of the Employee Retirement In-  
10          come Security Act of 1974 of the arrange-  
11          ment from such Act.

12          “(B) ELECTION TO USE DEFAULT PRO-  
13          VIDER.—An employer may elect to have the  
14          provider selected on the employer’s behalf under  
15          the procedures established under section 440(e).

16          “(C) ELECTION TO INVEST IN RETIRE-  
17          MENT BONDS.—An employer may elect to have  
18          the provider be the Secretary by electing to  
19          have contributions under an automatic IRA ar-  
20          rangement invested in retirement bonds de-  
21          scribed in section 440(d).

22          “(2) MULTIPLE EMPLOYER ARRANGEMENTS  
23          AND USE OF RECORD KEEPERS.—An employer shall  
24          be treated as meeting the requirements of this sub-  
25          section if, in accordance with the procedures estab-

1 lished under section 440(e), the provider is selected  
2 through the use of a record keeper described in sec-  
3 tion 440(e)(1)(A), a sponsor of a multiple employer  
4 arrangement described in section 440(e)(1)(B), or  
5 another intermediary authorized by the Secretary  
6 under section 440(e)(1)(C).

7 “(h) APPLICABLE EMPLOYER.—For purposes of this  
8 section—

9 “(1) IN GENERAL.—The term ‘applicable em-  
10 ployer’ means, with respect to any calendar year, an  
11 employer which had at least the applicable number  
12 of employees who received at least \$5,000 of com-  
13 pensation (as defined in section 408(p)(6)(A)) from  
14 the employer for the preceding calendar year.

15 “(2) EMPLOYERS NOT IN EXISTENCE.—Such  
16 term shall not include an employer which was not in  
17 existence at all times during the calendar year and  
18 the preceding calendar year.

19 “(3) OPERATING RULES.—In determining the  
20 number of employees for purposes of this sub-  
21 section—

22 “(A) any rule applicable in determining the  
23 number of employees for purposes of section  
24 408(p)(2)(C) shall be applicable under this sub-  
25 section,

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

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

6           “(4) APPLICABLE NUMBER.—For purposes of  
 7           paragraph (1), the term ‘applicable number’ means  
 8           the number of employees determined in accordance  
 9           with the following table:

<b>“If the calendar year is:</b>	<b>The applicable number for the preceding calendar year is:</b>
2012 .....	100
2013 .....	50
2014 .....	25
2015 or thereafter .....	10.

10          “(i) QUALIFIED PLAN OR ARRANGEMENT.—For pur-  
 11          poses of this section—

12               “(1) IN GENERAL.—The term ‘qualified plan or  
 13               arrangement’ means a plan, contract, pension, or  
 14               trust described in section 219(g)(5).

15               “(2) EXCLUDED PLANS.—Such term shall not  
 16               include a plan or arrangement if—

17                       “(A) the plan or arrangement is frozen as  
 18                       of the first day of the preceding calendar year,  
 19                       or

20                       “(B) in the case of a plan or arrangement  
 21                       under which the only contributions are discre-  
 22                       tionary on the part of the sponsor, there has

1 not been an employer contribution made to the  
2 plan or arrangement for the 2-plan-year period  
3 ending with the last plan year ending in the  
4 second preceding calendar year and it is not  
5 reasonable to assume that an employer con-  
6 tribution will be made for the plan year ending  
7 in the preceding calendar year.

8 “(j) **AUTHORITY.**—The Secretary may prescribe rules  
9 to prevent avoidance of the requirements of this section  
10 through the use of insubstantial, frozen, or suspended  
11 plans or arrangements or by other means.

12 **“SEC. 439. AUTOMATIC IRAS.**

13 “(a) **GENERAL RULE.**—For purposes of this title—

14 “(1) an automatic IRA shall be treated in the  
15 same manner as an individual retirement plan, and

16 “(2) the determination of whether the auto-  
17 matic IRA is described in section 408 or 408A shall  
18 be made on the basis of whether it meets the re-  
19 quirements of either such section.

20 “(b) **AUTOMATIC IRA.**—For purposes of this section,  
21 the term ‘automatic IRA’ means an individual retirement  
22 plan (as defined in section 7701(a)(37)) which meets the  
23 investment and fee requirements set forth in this section.

24 “(c) **INVESTMENT OPTIONS.**—

1           “(1) IN GENERAL.—The Secretary of Labor  
2           and the Secretary, in consultation with the Chair-  
3           man of the Securities and Exchange Commission,  
4           shall, not later than 18 months after the date of the  
5           enactment of this section, prescribe regulations  
6           which set forth the requirements for each of the  
7           classes of investments described in paragraph (2)  
8           and procedures for determining which assets meet  
9           the requirements for each of such classes.

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

16           “(A) PRINCIPAL PRESERVATION.—A class  
17           of assets or fund that is designed to protect the  
18           principal of the individual on an ongoing basis,  
19           including passbook savings, certificates of de-  
20           posit, insurance contracts, mutual funds,  
21           United States savings bonds (which may be in-  
22           dexed for inflation), or similar classes of assets.

23           “(B) BLENDED INVESTMENT OPTION.—A  
24           broadly diversified class of assets or fund, as  
25           specified in such regulations, that is substan-

1           tially similar to target date, life cycle, balanced  
2           or similar funds, as so specified.

3           “(C) THIRD OPTION.—A broadly diversi-  
4           fied class of assets or fund providing a some-  
5           what higher investment in equities than the in-  
6           vestment options under subparagraph (B), as  
7           specified in such regulations.

8           “(3) USE OF LOW-COST FUNDS; AVOIDANCE OF  
9           COMPLEXITY.—The Secretary of Labor and the Sec-  
10          retary shall, in the regulations prescribed under  
11          paragraph (1), provide that the investment options  
12          under subparagraphs (A), (B), and (C) thereof be  
13          based on low-cost investment options, which may in-  
14          clude index funds, and provide that such investment  
15          options avoid undue complexity.

16          “(4) FLEXIBILITY.—The Secretary of Labor  
17          and the Secretary, in consultation with the Chair-  
18          man of the Securities and Exchange Commission,  
19          shall periodically review the investment options  
20          under paragraph (2) to ensure that such options in-  
21          clude appropriate alternative investment options that  
22          become available after the initial investment options  
23          are established. The Secretary of Labor and the Sec-  
24          retary, in consultation with the Chairman of the Se-  
25          curities and Exchange Commission, may revise such

1 options if the Secretary of Labor and the Secretary  
2 determine necessary, but only to the extent that the  
3 new options—

4 “(A) are consistent with the risk-return  
5 profiles of the investment classes described in  
6 paragraph (2), and

7 “(B) are low-cost investment options as  
8 provided in paragraph (3).

9 “(d) INVESTMENT FEES.—

10 “(1) IN GENERAL.—The Secretary of Labor  
11 and the Secretary, in consultation with the Chair-  
12 man of the Securities and Exchange Commission,  
13 shall include in the regulations under subsection  
14 (c)(1)—

15 “(A) clear and uniform methods for report-  
16 ing the fees imposed with respect to the invest-  
17 ment options provided under subsection (c), and

18 “(B) a prohibition on charging additional  
19 fees solely on the basis that the balance in an  
20 automatic IRA is small.

21 “(2) AVAILABILITY.—The Secretary shall pro-  
22 vide for the information described in paragraph  
23 (1)(A) to be furnished or made available to employ-  
24 ers and employees, and included on the Internet  
25 website established under section 440, in such a

1 manner that employers and employees will be able to  
2 easily compare fees of all providers under the var-  
3 ious investment options.

4 “(3) FEES.—For purposes of this subsection,  
5 the term ‘fee’ includes any fee, commission, asset  
6 management charge, compensation for services, or  
7 any other charge or expense specified in the regula-  
8 tions described in paragraph (1) which is imposed  
9 with respect to the automatic IRA.

10 **“SEC. 440. RULES RELATING TO CHOICE OF INVESTMENT**  
11 **PROVIDERS.**

12 “(a) IN GENERAL.—The Secretary shall establish a  
13 program to assist in the implementation of this part. Such  
14 program shall include—

15 “(1) the establishment of an Internet website  
16 meeting the requirements of subsection (b),

17 “(2) the establishment of an arrangement meet-  
18 ing the requirements of subsection (c) for the default  
19 assignment of automatic IRA providers to employ-  
20 ers, and

21 “(3) procedures for record keepers, multiple  
22 employer arrangements, and other intermediaries de-  
23 scribed in section 440(e) to administer any auto-  
24 matic IRA arrangement of an employer required  
25 under this section.



1 “(b) INTERNET WEBSITE.—

2 “(1) IN GENERAL.—The Secretary shall develop  
3 an Internet website or other electronic means by  
4 which—

5 “(A) employers can obtain information on  
6 automatic IRA arrangements, including the re-  
7 quired notices and forms described in section  
8 438(e)(3)(C),

9 “(B) providers of automatic IRAs may reg-  
10 ister for inclusion in a list of providers of auto-  
11 matic IRAs from which employers may des-  
12 ignate for purposes of section 438(g)(1)(A),

13 “(C) employers may elect to have contribu-  
14 tions under an automatic IRA arrangement  
15 made to a provider selected under the default  
16 provider program established under subsection  
17 (c), and

18 “(D) employers may elect to have contribu-  
19 tions under an automatic IRA arrangement  
20 made to the retirement bond program estab-  
21 lished under subsection (d).

22 “(2) REGISTRATION.—A provider seeking to  
23 register under paragraph (1)(B) shall provide such  
24 information as the Secretary may require in order to  
25 ensure that an employer may easily compare and se-

1 lect a provider from among providers that serve the  
2 employer’s geographic area and that are appropriate  
3 for the employer taking into account other relevant  
4 characteristics of the employer.

5 “(3) SECRETARY MAY LIMIT REGISTRATION.—  
6 The Secretary—

7 “(A) may by regulation provide standards  
8 for inclusion on the website list described in  
9 paragraph (1)(B), and

10 “(B) shall establish procedures for a pro-  
11 vider to certify that it meets those standards.

12 “(c) DEFAULT ASSIGNMENT OF AUTOMATIC IRA  
13 PROVIDERS.—

14 “(1) IN GENERAL.—The Secretary shall include  
15 in the program under subsection (a) an arrangement  
16 under which employers electing under section  
17 438(g)(1)(B) to be included in the program would  
18 be randomly assigned a provider from the partici-  
19 pating providers selected under paragraph (2) to es-  
20 tablish automatic IRAs for its employees under the  
21 automatic IRA arrangement.

22 “(2) ESTABLISHMENT.—The Secretary,  
23 through a competitive process, shall select providers  
24 of automatic IRAs for participation in the arrange-  
25 ment under this subsection from among providers

1 who apply for inclusion in such arrangement. The  
2 Secretary shall select such providers, and the num-  
3 ber of such providers, taking into account—

4 “(A) the extent of the provider’s willing-  
5 ness to accept all employers that are in the geo-  
6 graphic area the provider serves, that elect to  
7 participate in the arrangement under paragraph  
8 (1), and that are randomly assigned to the pro-  
9 vider,

10 “(B) the investment options offered  
11 through the provider’s automatic IRA, particu-  
12 larly the value such options offer to participants  
13 (taking into account the relative fees), and

14 “(C) whether or not inclusion of the pro-  
15 vider will avoid concentration of assets in too  
16 few providers.

17 “(3) ALTERNATE ARRANGEMENT.—The Sec-  
18 retary may establish an alternate arrangement to  
19 carry out the responsibilities of the participating  
20 providers under this subsection if the Secretary de-  
21 termines such arrangement would reduce adminis-  
22 trative costs and burdens.

23 “(d) RETIREMENT BOND PROGRAM.—

1           “(1) IN GENERAL.—The Secretary shall include  
2           in the program under subsection (a) an arrangement  
3           under which—

4                   “(A) employers may elect for purposes of  
5                   section 438(g)(1)(C) to have all payments de-  
6                   scribed in section 438(c)(1) with respect to a  
7                   qualifying employee be deposited for investment  
8                   in a retirement bond described in paragraph (3)  
9                   in the name of such qualifying employee, and

10                   “(B) if the value of the retirement bond as  
11                   of the time specified in clause (i) of section  
12                   438(d)(3)(A) exceeds the amount specified in  
13                   such clause, the Secretary shall, unless other-  
14                   wise directed by the qualifying employee after  
15                   receiving written notice, redeem such bond and  
16                   transfer the proceeds from such redemption  
17                   (and any subsequent deposits described in sub-  
18                   paragraph (A)) to the blended investment op-  
19                   tion of the automatic IRA described in section  
20                   439(c)(2)(B) established for such employee by a  
21                   provider selected under subsection (c) as the  
22                   provider for employees of that employer.

23           “(2) DETAILS OF ARRANGEMENT.—

24                   “(A) SIMPLIFICATION.—The Secretary  
25                   shall ensure that under the arrangement no

1 more than 1 retirement bond of each type (tra-  
2 ditional or Roth) is issued for each TIN and  
3 that contributions may be applied to the pur-  
4 chase of retirement bonds without undue ad-  
5 ministrative or paperwork requirements.

6 “(B) TREATMENT OF CONTRIBUTIONS.—

7 For purposes of this title—

8 “(i) any payment invested under the  
9 arrangement shall be treated as if it were  
10 contributed to and held under an indi-  
11 vidual retirement plan established on be-  
12 half of the employee and as if the provider  
13 of the individual retirement plan were de-  
14 scribed in section 408(a)(2), and

15 “(ii) for purposes of section  
16 408(d)(3)(B), the transfer under para-  
17 graph (1)(B) or subparagraph (C) shall be  
18 disregarded.

19 “(C) FORWARDING OF CERTAIN PAY-  
20 MENTS.—If—

21 “(i) an employer has elected to make  
22 contributions to the Secretary, and

23 “(ii) either—

1                   “(I) an employee has designated  
2                   a provider to receive automatic payroll  
3                   deduction contributions, or

4                   “(II) the Secretary has trans-  
5                   ferred the proceeds of a redeemed re-  
6                   tirement bond to the provider selected  
7                   under the procedures under paragraph  
8                   (1)(B),

9                   then the Secretary shall periodically for-  
10                  ward the amount contributed to the des-  
11                  ignated or selected provider.

12                  “(D) NOTICE.—The Secretary shall pro-  
13                  vide notice to a qualifying employee within a  
14                  reasonable period before a redemption under  
15                  paragraph (1)(B) that informs the employee of  
16                  the option to direct the Secretary not to redeem  
17                  such bond or to transfer the proceeds of the re-  
18                  demption to an individual retirement plan of a  
19                  provider selected by the employee.

20                  “(3) RETIREMENT BONDS.—For purposes of  
21                  this subsection, the term ‘retirement bond’ means a  
22                  bond issued under chapter 31 of title 31, which by  
23                  its terms, or by regulations or other guidance pre-  
24                  scribed by the Secretary under such chapter—

1           “(A) provides for interest to be credited at  
2 rates that take into account the expected dura-  
3 tion of the funds invested in retirement bonds,

4           “(B) provides for the interest to be deter-  
5 mined or adjusted in a manner and with suffi-  
6 cient frequency to provide substantial protection  
7 from inflation,

8           “(C) is designed for investment under an  
9 automatic IRA, and

10           “(D) is not transferable.

11           “(e) ALTERNATIVE STRUCTURES.—

12           “(1) IN GENERAL.—The Secretary may, under  
13 the program established under subsection (a), estab-  
14 lish procedures under which the responsibilities for  
15 implementing an automatic IRA arrangement under  
16 this part may be carried out through—

17           “(A) record keepers (including persons  
18 performing recordkeeping services in connection  
19 with their investment products, payroll proc-  
20 essors, or payroll software providers) that meet  
21 such requirements as the Secretary and the  
22 Secretary of Labor may establish and that con-  
23 tract with providers of automatic IRAs,

24           “(B) sponsors of arrangements involving  
25 multiple employers, or

1           “(C) other intermediaries authorized by  
2 the Secretary and the Secretary of Labor.

3           “(2) OTHER RULES.—

4           “(A) BONDING.—The requirements under  
5 paragraph (1)(A) may include bonding require-  
6 ments similar to the requirements under section  
7 412 of the Employee Retirement Income Secu-  
8 rity Act of 1974 for persons who handle money  
9 or other property of automatic IRAs.

10           “(B) SEPARATE ACCOUNTS.—For purposes  
11 of this part, each separate account under a  
12 trust created or organized in the United States  
13 by a person described in paragraph (1) or a  
14 provider of an automatic IRA shall, except to  
15 the extent provided by the Secretary, be treated  
16 as an individual retirement account described in  
17 section 408(a) if the trust would be described in  
18 section 408(c) had it been created or organized  
19 by an employer.

20           “(3) RULE OF CONSTRUCTION.—Nothing in  
21 this subsection shall be construed to prohibit a per-  
22 son described in paragraph (1) that otherwise quali-  
23 fies as a trustee or issuer of an automatic IRA from  
24 registering for inclusion in the list described in sub-



1 section (b)(1)(B) or participating in the competitive  
2 process under subsection (c)(2).”.

3 (b) NOTICE OF AVAILABILITY OF INVESTMENT  
4 GUIDELINES.—Section 408(i) of the Internal Revenue  
5 Code of 1986 (relating to reports) is amended by adding  
6 at the end the following new sentence: “Any report fur-  
7 nished under paragraph (2) to an individual shall include  
8 notice of the availability of, and methods of acquiring, the  
9 basic investment guidelines prepared by the Secretary of  
10 Labor.”.

11 (c) DEVELOPMENT OF BASIC INVESTMENT GUIDE-  
12 LINES.—

13 (1) IN GENERAL.—The Secretary of Labor  
14 shall, in consultation with the Secretary of the  
15 Treasury, develop and publish basic guidelines for  
16 investing for retirement. Except as otherwise pro-  
17 vided by the Secretary of Labor, such guidelines  
18 shall include—

19 (A) information on the benefits of diver-  
20 sification,

21 (B) information on the essential dif-  
22 ferences, in terms of risk and return, between  
23 various pension plan investments, including  
24 stocks, bonds, mutual funds, and money market  
25 investments,

1 (C) information on how an individual's  
2 pension plan investment allocations may differ  
3 depending on the individual's age and years to  
4 retirement and on other factors determined by  
5 the Secretary of Labor,

6 (D) sources of information where individ-  
7 uals may learn more about pension rights, indi-  
8 vidual investing, and investment advice, and

9 (E) such other information related to indi-  
10 vidual investing as the Secretary of Labor de-  
11 termines appropriate.

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

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

22 (B) other important amounts relating to  
23 retirement savings, including the amount which  
24 a participant or beneficiary would be required  
25 to save annually to provide a retirement income

1 equal to various percentages of current salary  
2 (adjusted for expected growth prior to retire-  
3 ment).

4 (3) PUBLIC COMMENT.—The Secretary of  
5 Labor shall provide at least 90 days for public com-  
6 ment on proposed guidelines before publishing the  
7 final guidelines.

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

10 (A) shall be written in a manner calculated  
11 to be understood by the average plan partici-  
12 pant, and

13 (B) may be delivered in written, electronic,  
14 or other appropriate manner to the extent such  
15 manner would ensure that the guidelines are  
16 reasonably accessible to participants and bene-  
17 ficiaries.

18 (d) FAILURE TO PROVIDE ACCESS TO AUTOMATIC  
19 IRA ARRANGEMENTS.—Chapter 43 of the Internal Rev-  
20 enue Code of 1986 (relating to qualified pension, etc.,  
21 plans) is amended by adding at the end the following new  
22 section:

1 **“SEC. 4980J. REQUIREMENTS FOR APPLICABLE EMPLOY-**  
2 **ERS TO PROVIDE EMPLOYEES ACCESS TO**  
3 **AUTOMATIC IRA ARRANGEMENTS.**

4 “(a) GENERAL RULE.—There is hereby imposed a  
5 tax on any failure by an applicable employer (as defined  
6 in section 438(h)) to meet the requirements of section 438  
7 for a calendar year.

8 “(b) AMOUNT.—

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

13 “(2) TAX NOT TO APPLY WHERE FAILURE NOT  
14 DISCOVERED AND REASONABLE DILIGENCE EXER-  
15 CISED.—No tax shall be imposed by subsection (a)  
16 on any failure during any period for which it is es-  
17 tablished to the satisfaction of the Secretary that the  
18 employer subject to liability for the tax did not know  
19 that the failure existed and exercised reasonable dili-  
20 gence to meet the requirements of section 438.

21 “(3) TAX NOT TO APPLY TO FAILURES COR-  
22 RECTED WITHIN 90 DAYS.—No tax shall be imposed  
23 by subsection (a) on any failure if—

24 “(A) the employer subject to liability for  
25 the tax under subsection (a) exercised reason-

1           able diligence to meet the requirements of sec-  
2           tion 438, and

3           “(B) the employer provides the automatic  
4           IRA arrangement described in section 438 to  
5           each employee eligible to participate in the ar-  
6           rangement by the end of the 90-day period be-  
7           ginning on the first date the employer knew, or  
8           exercising reasonable diligence would have  
9           known, that such failure existed.

10          “(4) WAIVER BY SECRETARY.—In the case of a  
11         failure which is due to reasonable cause and not to  
12         willful neglect, the Secretary may waive part or all  
13         of the tax imposed by subsection (a) to the extent  
14         that the payment of such tax would be excessive or  
15         otherwise inequitable relative to the failure involved.  
16         The Secretary, in consultation with the Secretary of  
17         Labor, may establish a voluntary corrections pro-  
18         gram as part of the waiver authority under this  
19         paragraph.

20          “(c) PROCEDURES FOR NOTICE.—The Secretary may  
21         prescribe and implement procedures for obtaining from  
22         employers confirmation that such employers are in compli-  
23         ance with the requirements of section 438. The Secretary,  
24         in the Secretary’s discretion, may prescribe that the con-  
25         firmation shall be obtained on an annual or less frequent

1 basis, and may use for this purpose the annual report or  
2 quarterly report for employment taxes, or such other  
3 means as the Secretary may deem advisable.”.

4 (e) PROVISIONS RELATING TO PENALTIES.—

5 (1) PENALTY FOR FAILURE TIMELY TO REMIT  
6 CONTRIBUTIONS TO AUTOMATIC IRA ARRANGE-  
7 MENTS.—Section 4975(c) of the Internal Revenue  
8 Code of 1986 is amended by adding at the end the  
9 following new paragraph:

10 “(7) SPECIAL RULE FOR AUTOMATIC IRA AR-  
11 RANGEMENTS.—For purposes of paragraph (1), if  
12 an employer is required under an automatic IRA ar-  
13 rangement under section 438 to deposit amounts  
14 withheld from an employee’s compensation into a  
15 designated automatic IRA but fails to do so within  
16 the time prescribed under such arrangement, such  
17 amounts shall be treated as assets of the automatic  
18 IRA.”.

19 (2) WAIVER OF EARLY WITHDRAWAL PENALTY  
20 FOR CERTAIN DISTRIBUTIONS FOLLOWING INITIAL  
21 ELECTION TO PARTICIPATE IN QUALIFIED AUTO-  
22 MATIC IRA ARRANGEMENT.—Subsection (t) of sec-  
23 tion 72 of such Code is amended by adding at the  
24 end the following new paragraph:

1           “(11) DISTRIBUTION FOLLOWING INITIAL  
2 ELECTION TO PARTICIPATE IN QUALIFIED AUTO-  
3 MATIC IRA ARRANGEMENT.—Paragraph (1) shall not  
4 apply in the case of a distribution to a qualifying  
5 employee made not later than 90 days after the ini-  
6 tial election under section 438(c)(1)(A).”.

7 (f) COORDINATION WITH ERISA.—

8           (1) EXEMPTION.—

9           (A) IN GENERAL.—Section 3(2) of the  
10 Employee Retirement Income Security Act of  
11 1974 (29 U.S.C. 1002(2)) is amended—

12           (i) by inserting “or (C)” after “sub-  
13 paragraph (B)” in subparagraph (A), and

14           (ii) by adding at the end the following  
15 new subparagraph:

16           “(C) An automatic IRA arrangement de-  
17 scribed in section 438(c) of the Internal Rev-  
18 enue Code of 1986 shall not be treated as an  
19 employee pension benefit plan or pension plan  
20 if, under the arrangement, contributions are to  
21 be made to a designated automatic IRA the  
22 provider of which is included on the website list  
23 established under section 440(b) of such Code,  
24 are to be made to an individual retirement plan  
25 pursuant to section 440(c), or are to be made

1 to the Secretary of the Treasury for investment  
2 in retirement bonds pursuant to section  
3 440(d).”.

4 (B) CUSTOMER IDENTIFICATION PRO-  
5 GRAM.—Notwithstanding the amendment made  
6 by subparagraph (A), an individual retirement  
7 plan established pursuant to an automatic IRA  
8 arrangement described in section 438(e) of the  
9 Internal Revenue Code of 1986 shall, for pur-  
10 poses of any customer identification program  
11 established under section 5318(l) of title 31,  
12 United States Code, be treated as an account  
13 opened for the purpose of participating in an  
14 employee benefit plan established under the  
15 Employee Retirement Income Security Act of  
16 1974.

17 (2) FIDUCIARY DUTIES.—Section 404(c)(2) of  
18 such Act is amended—

19 (A) by inserting the following sentence be-  
20 fore the last sentence: “In the case of an auto-  
21 matic IRA designated by the employer under  
22 section 438 of such Code that is not exempt  
23 under section 3(2)(C), a participant or bene-  
24 ficiary shall, for purposes of paragraph (1), be  
25 treated as exercising control over the assets in



1 the account on and after the 7th day after no-  
2 tice has been given to an employee that such  
3 automatic IRA has been established on behalf  
4 of the employee.”, and

5 (B) by inserting “or with respect to an  
6 automatic IRA designated by an employer  
7 under section 438 of such Code” after “ar-  
8 rangement” in the last sentence.

9 (g) PREEMPTION OF CONFLICTING STATE LAWS.—  
10 Section 514(e) of the Employee Retirement Income Secu-  
11 rity Act of 1974 (29 U.S.C. 1144(e)(1)) is amended by  
12 adding at the end the following:

13 “(5) Notwithstanding any other provision of  
14 this section, this title shall supersede any law of a  
15 State which would directly or indirectly prohibit or  
16 restrict the establishment or operation of an auto-  
17 matic IRA arrangement in accordance with section  
18 438 of the Internal Revenue Code of 1986. Nothing  
19 in this title shall be construed to impair or supersede  
20 any State law to the extent it provides a remedy for  
21 the failure to make payments required under such  
22 arrangement within the required time period under  
23 such section 438.”.

24 (h) MANDATORY TRANSFERS.—Section  
25 401(a)(31)(B) of the Internal Revenue Code of 1986 is

1 amended by inserting “(including an automatic IRA)”  
2 after “individual retirement plan” each place it appears.

3 (i) AUTOMATIC IRA ADVISORY GROUP.—

4 (1) IN GENERAL.—Not later than 60 days after  
5 the date of enactment of this Act, the Secretary of  
6 the Treasury and the Secretary of Labor shall joint-  
7 ly establish an Automatic IRA Advisory Group (in  
8 this subsection referred to as the “Advisory  
9 Group”). The purpose of the Advisory Group shall  
10 be to make recommendations regarding requirements  
11 for the automatic IRA investment options and proce-  
12 dures described in section 439(c) of the Internal  
13 Revenue Code of 1986, including disclosure of infor-  
14 mation regarding fees and expenses and such other  
15 related matters as may be determined by the Secre-  
16 taries.

17 (2) MEMBERSHIP.—The Advisory Group shall  
18 consist of not more than 15 members and shall be  
19 composed of—

20 (A) such persons as the Secretaries of the  
21 Treasury and Labor may consider appropriate  
22 to provide expertise regarding investments for  
23 retirement, including providers of individual re-  
24 tirement accounts and individual retirement an-

1           nunities described in section 408 or 408A of  
2           such Code; and

3           (B) one or more representatives of the De-  
4           partment of Labor and of the Department of  
5           the Treasury.

6           (3) COMPENSATION.—The members of the Ad-  
7           visory Group shall serve without compensation.

8           (4) ADMINISTRATIVE SUPPORT.—The Depart-  
9           ment of the Treasury and the Department of Labor  
10          shall jointly provide appropriate administrative sup-  
11          port to the Advisory Group, including technical as-  
12          sistance. The Advisory Group may use the services  
13          and facilities of such Departments, with or without  
14          reimbursement, as jointly determined by such De-  
15          partments.

16          (5) REPORTS BY ADVISORY GROUP.—Not later  
17          than 12 months after the date of the enactment of  
18          this Act, the Advisory Group shall submit to the  
19          Secretary of Labor and the Secretary of the Treas-  
20          ury a report containing its recommendations. The  
21          Secretaries may request that the Advisory Group  
22          submit subsequent reports.

23          (j) CONFORMING AMENDMENT.—The table of parts  
24          for subchapter A of chapter 1 of the Internal Revenue

1 Code of 1986 is amended by inserting after the item relat-  
2 ing to part III the following new item:

“PART IV. AUTOMATIC IRA ARRANGEMENTS”.

3 (k) **EFFECTIVE DATE.**—The amendments made by  
4 this section shall apply to calendar years beginning after  
5 December 31, 2011.

6 **SEC. 3. CREDIT FOR SMALL EMPLOYERS MAINTAINING**  
7 **AUTOMATIC IRA ARRANGEMENTS.**

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 (relating to business related credits) is amended by  
11 adding at the end the following new section:

12 **“SEC. 45S. SMALL EMPLOYER AUTOMATIC IRA CREDIT.**

13 “(a) **GENERAL RULE.**—For purposes of section 38,  
14 in the case of an eligible employer maintaining an auto-  
15 matic IRA arrangement meeting the requirements of sec-  
16 tion 438 (without regard to whether the employer is re-  
17 quired to maintain the arrangement), the small employer  
18 automatic IRA credit determined under this section for  
19 any taxable year is the amount determined under sub-  
20 section (b).

21 “(b) **AMOUNT OF CREDIT.**—

22 “(1) **IN GENERAL.**—The amount of the credit  
23 determined under this section for any taxable year  
24 with respect to an eligible employer shall be equal to  
25 the lesser of—

1           “(A) \$25 multiplied by the number of  
2           qualifying employees (within the meaning of  
3           section 438(b)) for whom contributions are  
4           made under the automatic IRA arrangement re-  
5           ferred to in subsection (a) for the calendar year  
6           in which the taxable year begins, or

7           “(B) \$250.

8           “(2) DURATION OF CREDIT.—No credit shall be  
9           determined under this section for any taxable year  
10          other than a taxable year which begins during the  
11          first 2 calendar years in which the eligible employer  
12          maintains an automatic IRA arrangement meeting  
13          the requirements of section 438.

14          “(3) COORDINATION WITH SMALL EMPLOYER  
15          STARTUP CREDIT.—No credit shall be allowed under  
16          this section to the employer for any taxable year if  
17          a credit is determined under section 45E with re-  
18          spect to the employer for the taxable year.

19          “(c) ELIGIBLE EMPLOYER.—For purposes of this  
20          section, the term ‘eligible employer’ means, with respect  
21          to any calendar year in which the taxable year begins, an  
22          employer which maintains an automatic IRA arrangement  
23          meeting the requirements of section 438, which had no  
24          more than 100 employees on each day during the pre-  
25          ceding calendar year, and which did not maintain a quali-

1 fied plan or arrangement (as defined in section 438(i))  
2 during any portion of the calendar year preceding the  
3 adoption of the automatic IRA arrangement or any por-  
4 tion of the 2 preceding calendar years.

5 “(d) OTHER RULES.—For purposes of this section,  
6 the rules of section 45E(e) shall apply.”.

7 (b) CREDIT ALLOWED AS PART OF GENERAL BUSI-  
8 NESS CREDIT.—Section 38(b) of the Internal Revenue  
9 Code of 1986 (defining current year business credit) is  
10 amended by striking “plus” at the end of paragraph (35),  
11 by striking the period at the end of paragraph (36) and  
12 inserting “, plus”, and by adding at the end the following  
13 new paragraph:

14 “(37) in the case of an eligible employer (as de-  
15 fined in section 45S(c)) maintaining an automatic  
16 IRA arrangement meeting the requirements of sec-  
17 tion 438, the small employer automatic IRA credit  
18 determined under section 45S(a).”

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

“Sec. 45S. Small employer automatic IRA credit.”.

23 (d) EFFECTIVE DATE.—The amendments made by  
24 this section shall apply to taxable years beginning after  
25 December 31, 2011.

1 **SEC. 4. PROMOTING QUALIFIED PLANS.**

2 (a) INCREASE IN CREDIT FOR SMALL EMPLOYER  
3 PENSION PLAN STARTUP COSTS.—

4 (1) IN GENERAL.—Section 45E(b)(1) of the In-  
5 ternal Revenue Code of 1986 is amended by striking  
6 “\$500” and inserting “\$1,000”.

7 (2) EFFECTIVE DATE.—The amendment made  
8 by this subsection shall apply to taxable years begin-  
9 ning after December 31, 2010.

10 (b) ELIMINATING BARRIERS TO USE OF MULTIPLE  
11 EMPLOYER PLANS.—The Secretaries of the Treasury and  
12 Labor shall, within 12 months after the date of the enact-  
13 ment of this Act—

14 (1) prescribe guidance establishing conditions  
15 under which an employer participating in a plan de-  
16 scribed in section 413(c) of the Internal Revenue  
17 Code of 1986 shall not have any liability under title  
18 I of the Employee Retirement Income Security Act  
19 of 1974 with respect to the acts or omissions of one  
20 or more other participating employers, which regula-  
21 tions may require that the portion of the plan attrib-  
22 utable to such participating employers be spun off to  
23 plans maintained by such employers,

24 (2) prescribe guidance establishing conditions  
25 under which a plan described in section 413(c) of  
26 such Code may be treated as satisfying the qualifica-

1       tion requirements of sections 401(a) and 413(c) of  
2       such Code despite the violation of such requirements  
3       by one or more participating employers, including  
4       requiring, if appropriate, that the portion of the plan  
5       attributable to such participating employers be spun  
6       off to plans maintained by such employers, and

7               (3) prescribe guidance providing simplified  
8       means, including a model plan document, by which  
9       plans described in section 413(c) of such Code may  
10      satisfy the requirements of sections 102, 103, and  
11      105 of the Employee Retirement Income Security  
12      Act of 1974.

13 **SEC. 5. STUDIES.**

14       (a) STUDIES OF SPOUSAL CONSENT REQUIREMENTS  
15      AND PROMOTION OF CERTAIN LIFETIME INCOME AR-  
16      RANGEMENTS.—The Secretary of the Treasury and the  
17      Secretary of Labor shall jointly conduct a separate study  
18      of the feasibility and desirability of each of the following:

19               (1) Extending to automatic IRAs spousal con-  
20      sent requirements similar to, or based on, those that  
21      apply under the Federal Employees' Thrift Savings  
22      Plan, including consideration of whether modifica-  
23      tions of such requirements are necessary to apply  
24      the requirements to automatic IRAs.



1           (2) Promoting the use of low-cost annuities,  
2 longevity insurance, or other guaranteed lifetime in-  
3 come arrangements in automatic IRAs, including  
4 consideration of—

5           (A) appropriate means of arranging for, or  
6 encouraging, individuals to receive at least a  
7 portion of their distributions in some form of  
8 low-cost guaranteed lifetime income, and

9           (B) issues presented by possible additional  
10 differences in, or uniformity of, provisions gov-  
11 erning different IRAs.

12       (b) STUDY OF CONSOLIDATION OF INDIVIDUAL RE-  
13 TIREMENT PLANS.—The Secretary of the Treasury and  
14 the Secretary of Labor shall jointly conduct a separate  
15 study of the feasibility and desirability of—

16           (1) using data on investments in individual re-  
17 tirement accounts and annuities to enable individ-  
18 uals with multiple such accounts and annuities that  
19 include very small amounts to receive periodic no-  
20 tices informing them about the location of these ac-  
21 counts and how such accounts and annuities might  
22 be consolidated, and

23           (2) using investment arrangements associated  
24 with automatic IRAs to assist in addressing the  
25 problem of abandoned accounts.

1       (c) REPORT.—Not later than 18 months after the  
2 date of the enactment of this Act, the Secretaries shall  
3 report the results of each study conducted under sub-  
4 sections (a) and (b), together with any recommendations  
5 for legislative changes, to the Committees on Finance and  
6 Health, Education, Labor, and Pensions of the Senate and  
7 the Committees on Ways and Means and Education and  
8 Labor of the House of Representatives.

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