

112TH CONGRESS
2D SESSION

H. R. 4049

To amend the Internal Revenue Code of 1986 to expand personal saving and retirement savings coverage by enabling employees not covered by qualifying retirement plans to save for retirement through automatic IRA arrangements, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 16, 2012

Mr. NEAL (for himself and Mr. BLUMENAUER) introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committee on Education and the Workforce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend the Internal Revenue Code of 1986 to expand personal saving and retirement savings coverage by enabling employees not covered by qualifying retirement plans to save for retirement through automatic IRA arrangements, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; REFERENCE.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Automatic IRA Act of 2012”.

1 (b) AMENDMENT OF 1986 CODE.—Except as other-
2 wise expressly provided, whenever in this Act an amend-
3 ment or repeal is expressed in terms of an amendment
4 to, or repeal of, a section or other provision, the reference
5 shall be considered to be made to a section or other provi-
6 sion of the Internal Revenue Code of 1986.

7 **SEC. 2. EMPLOYEES NOT COVERED BY QUALIFYING RE-**
8 **TIREMENT PLANS OR ARRANGEMENTS ENTI-**
9 **TLED TO PARTICIPATE IN AUTOMATIC IRA**
10 **ARRANGEMENTS.**

11 (a) IN GENERAL.—Subpart A of part I of subchapter
12 D of chapter 1 (relating to pension, profit-sharing, stock
13 bonus plans, etc.) is amended by inserting after section
14 408A the following new section:

15 **“SEC. 408B. RIGHT TO AUTOMATIC IRA ARRANGEMENTS AT**
16 **WORK.**

17 “(a) REQUIREMENT TO PROVIDE AUTOMATIC IRA
18 ARRANGEMENT.—Each covered employer shall make
19 available to each qualifying employee of the employer for
20 the calendar year an automatic IRA arrangement.

21 “(b) COVERED EMPLOYER.—For purposes of this
22 section—

23 “(1) IN GENERAL.—Except as otherwise pro-
24 vided in this subsection or subsection (c)(2), the
25 term ‘covered employer’ means, with respect to any

1 year, an employer which does not maintain a quali-
2 fying plan or arrangement described in section
3 219(g)(5) for the calendar year.

4 “(2) EXCLUDED PLANS.—A qualifying plan or
5 arrangement shall not be taken into account for pur-
6 poses of paragraph (1) if—

7 “(A) the plan or arrangement is frozen as
8 of the first day of the preceding calendar year,
9 or

10 “(B) in the case of a plan or arrangement
11 under which the only contributions are discre-
12 tionary on the part of the employer or other
13 plan sponsor, no employer contribution has
14 been made to the plan or arrangement for the
15 2-plan-year period ending with the last plan
16 year ending in the second preceding calendar
17 year and it is not reasonable to assume that an
18 employer contribution will be made for the last
19 plan year ending in the preceding calendar
20 year.

21 “(3) EXCEPTION FOR CERTAIN SMALL AND
22 NEW EMPLOYERS.—

23 “(A) IN GENERAL.—The term ‘covered em-
24 ployer’ does not include an employer for a cal-
25 endar year if the employer either—

1 “(i) did not employ more than 10 em-
2 ployees who received at least \$5,000 of
3 compensation (as defined in section
4 3401(a)) from the employer for the pre-
5 ceding calendar year,

6 “(ii) did not normally employ more
7 than 10 employees on a typical business
8 day of the preceding calendar year, or

9 “(iii) was not in existence at all times
10 during the calendar year and the preceding
11 calendar year.

12 “(B) OPERATING RULES.—In determining
13 the number of employees for purposes of sub-
14 paragraph (A)—

15 “(i) rules consistent with any rules
16 applicable in determining the number of
17 employees for purposes of section
18 408(p)(2)(C) and section 4980B(d) shall
19 apply,

20 “(ii) all members of the same family
21 (within the meaning of section 318(a)(1))
22 shall be treated as 1 individual, and

23 “(iii) any reference to an employer
24 shall include a reference to any predecessor
25 employer.

1 “(4) EXCEPTION FOR GOVERNMENTS AND
2 CHURCHES.—The term ‘covered employer’ does not
3 include—

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.

9 “(5) AGGREGATION RULE.—All persons treated
10 as a single employer under subsection (a) or (b) of
11 section 52 or subsection (m) or (o) of section 414
12 shall be treated as a single employer.

13 “(c) QUALIFYING EMPLOYEE.—For purposes of this
14 section—

15 “(1) IN GENERAL.—The term ‘qualifying em-
16 ployee’ means any employee of the employer who is
17 not an excluded employee.

18 “(2) PLAN SPONSOR’S EMPLOYEES.—If—

19 “(A) an employer maintains one or more
20 qualifying plans or arrangements described in
21 section 219(g)(5), and

22 “(B) the employees of a subsidiary, divi-
23 sion, or other major business unit are generally
24 not eligible to participate in any such qualifying
25 plan or arrangement,

1 then, for purposes of this section, the employer shall
2 be treated as a covered employer with respect to
3 such employees (other than excluded employees),
4 and such employees (other than excluded employees)
5 shall be treated as qualifying employees, but only if
6 there are 50 or more ineligible employees of such
7 subsidiary, division or other major business unit con-
8 stituting at least 10 percent of the employees of the
9 employer (other than excludable employees).

10 “(3) EXCLUDED EMPLOYEES.—

11 “(A) IN GENERAL.—The term ‘excluded
12 employee’ means an employee of the employer
13 who is an excludable employee and who is in a
14 class or category that the employer excludes
15 from treatment as qualifying employees.

16 “(B) EXCLUDABLE EMPLOYEE.—The term
17 ‘excludable employee’ means—

18 “(i) any employee described in section
19 410(b)(3),

20 “(ii) any employee who has not at-
21 tained the age of 18 before the beginning
22 of the calendar year,

23 “(iii) any employee who has not com-
24 pleted at least 3 months of service with the
25 employer,

1 “(iv) in the case of an employer that
2 maintains a qualifying plan or arrange-
3 ment which excludes employees who have
4 not satisfied the minimum age and service
5 requirements for participation in the plan,
6 any employee who has not satisfied such
7 requirements,

8 “(v) in the case of an employer that
9 maintains a section 403(b) annuity con-
10 tract (including a custodial account or re-
11 tirement income account), any employee
12 who is permitted to be excluded from any
13 salary reduction arrangement under the
14 contract pursuant to section 403(b)(12),

15 “(vi) in the case of an employer that
16 maintains an arrangement described in
17 section 408(p), any employee who is not
18 required to be eligible to participate in the
19 arrangement under section 408(p)(4), and

20 “(vii) in the case of an employer that
21 maintains a simplified employee pension
22 described in section 408(k), any employee
23 who is permitted to be excluded from par-
24 ticipation under section 408(k)(2).

1 “(4) GUIDANCE.—The Secretary shall issue
2 regulations or other guidance to carry out this sub-
3 section, including—

4 “(A) guidelines for determining the classes
5 or categories of employees to be covered by an
6 automatic IRA arrangement,

7 “(B) if an employer excludes employees
8 from the automatic IRA arrangement, guide-
9 lines providing that the employer shall specify
10 the classification or categories of employees who
11 are so excluded, and

12 “(C) rules to prevent avoidance of the re-
13 quirements of this section.

14 “(d) AUTOMATIC IRA ARRANGEMENT.—For pur-
15 poses of this section—

16 “(1) IN GENERAL.—The term ‘automatic IRA
17 arrangement’ means an arrangement of an employer
18 (determined without regard to whether the employer
19 is required to maintain the arrangement)—

20 “(A) which covers each qualifying employee
21 of the covered employer for the calendar year,

22 “(B) under which a qualifying employee—

23 “(i) may elect—

24 “(I) to contribute to an indi-
25 vidual retirement plan, or to purchase

1 a qualified retirement bond on behalf
2 of the employee, by having the em-
3 ployer deposit payroll deduction
4 amounts or make other periodic direct
5 deposits (including electronic pay-
6 ments) to the plan or to be invested in
7 retirement bonds (whether to the Sec-
8 retary of the Treasury or to a des-
9 ignated trustee or other agent for that
10 purpose), or

11 “(II) to have such payments paid
12 to the employee directly in cash,

13 “(ii) is treated as having made the
14 election under clause (i)(I) in the amount
15 specified in paragraph (4) until the indi-
16 vidual specifically elects not to have such
17 contributions or purchases made (or spe-
18 cifically elects to have such contributions
19 or purchases made at a different percent-
20 age or in a different amount), and

21 “(iii) may elect to modify the manner
22 in which such amounts are invested for
23 such year,

1 “(C) which meets the administrative re-
2 quirements of paragraph (2), including the no-
3 tice requirement of paragraph (2)(C), and

4 “(D) which does not charge unreasonable
5 additional fees solely on the basis that the bal-
6 ance in an automatic IRA is small.

7 “(2) ADMINISTRATIVE REQUIREMENTS.—

8 “(A) PAYMENTS.—The requirements of
9 this paragraph are met with respect to any
10 automatic IRA arrangement if the employer
11 makes the payments elected or treated as elect-
12 ed under paragraph (1)(B)—

13 “(i) on or before the last day of the
14 month following the month in which the
15 compensation otherwise would have been
16 payable to the employee in cash, or

17 “(ii) before such later deadline pre-
18 scribed by the Secretary for making such
19 payments, but not later than the due date
20 for the deposit of tax required to be de-
21 ducted and withheld under chapter 24 (re-
22 lating to collection of income tax at source
23 on wages) for the payroll period to which
24 such payments relate.

1 “(B) TERMINATION OF EMPLOYEE PAR-
2 TICIPATION.—Subject to a requirement for rea-
3 sonable notice, an employee may elect to termi-
4 nate participation in the arrangement at any
5 time during a calendar year, except that if an
6 employee so terminates, the arrangement may
7 provide that the employee may not elect to re-
8 sume participation until the beginning of the
9 next calendar year.

10 “(C) NOTICE OF ELECTION PERIOD.—The
11 requirements of this paragraph shall not be
12 treated as met with respect to any year unless
13 the employer notifies each employee eligible to
14 participate, within a reasonable period of time
15 before the 30th day before the beginning of
16 such year (and, for the first year the employee
17 is so eligible, the 30th day before the first day
18 such employee is so eligible), of—

19 “(i) the payments that may be elected
20 or treated as elected under paragraph
21 (1)(B),

22 “(ii) the opportunity to make the elec-
23 tion to terminate participation in the ar-
24 rangement under paragraph (2)(B),

1 “(iii) the opportunity to make the
2 election under paragraph (1)(B)(ii) to have
3 contributions or purchases made at a dif-
4 ferent percentage or in a different amount,
5 and

6 “(iv) the opportunity under paragraph
7 (1)(B)(iii) to modify the manner in which
8 such amounts are invested for such year.

9 “(D) EMPLOYER MAY PERMIT EMPLOYEES
10 TO CHOOSE IRA.—Subject to subsection (f), if
11 the employer so elects, the arrangement pro-
12 vides that an employee may elect to have con-
13 tributions made to any individual retirement
14 plan specified by the employee.

15 “(E) EMPLOYER MAY PERMIT EMPLOYEES
16 TO CHOOSE RETIREMENT BOND.—Subject to
17 subsection (f), if the employer so elects, the ar-
18 rangement provides that an employee may elect
19 to have payments applied toward the purchase
20 of retirement bonds.

21 “(3) DEFAULT INVESTMENTS.—If an employee
22 is treated under clause (ii) of paragraph (1)(B) as
23 having made an election to participate in an auto-
24 matic IRA arrangement—

1 “(A) the employee shall be deemed to have
2 made an election to make contributions and
3 payments in the amount determined under such
4 clause,

5 “(B) such contributions shall—

6 “(i) if the employer has made an elec-
7 tion under subsection (f)(2), be transferred
8 to an individual retirement plan of the des-
9 ignated trustee or issuer but only if the
10 contributions are invested as provided in
11 paragraph (5), or

12 “(ii) be applied toward the purchase
13 of a retirement bond.

14 “(4) AMOUNT OF CONTRIBUTIONS AND PAY-
15 MENTS.—

16 “(A) IN GENERAL.—The amount specified
17 in this paragraph is—

18 “(i) 3 percent of compensation, or

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

23 “(B) AUTHORITY TO PROVIDE FOR PERI-
24 ODIC INCREASES.—In the case of qualifying em-
25 ployees under an automatic IRA arrangement

1 for 2 or more consecutive years, the Secretary
2 may by regulation provide for periodic (not
3 more frequent than annual) increases in the
4 percentage of compensation an employee is
5 deemed to have elected under subparagraph
6 (A). The considerations the Secretary shall take
7 into account in issuing any regulations under
8 this subparagraph and subparagraph (A) shall
9 include the potential effects on lower-income
10 employees as well as on adequacy of savings.

11 “(C) PERMITTED ADDITIONAL PROCE-
12 DURES TO LIMIT CONTRIBUTIONS.—An em-
13 ployer—

14 “(i) shall have no responsibility for
15 any calendar year for determining whether,
16 or ensuring that, the contributions with re-
17 spect to any employee do not exceed the
18 deductible amount in effect for taxable
19 years beginning in the calendar year under
20 section 219(b)(5) (determined without re-
21 gard to subparagraph (B) thereof), and

22 “(ii) shall not be treated as failing to
23 satisfy the requirements of this section or
24 any other provision of this title merely be-
25 cause the employer chooses to limit the

1 contributions under this subsection on be-
2 half of a qualifying employee for any cal-
3 endar year in a manner reasonably de-
4 signed to avoid exceeding such deductible
5 amount.

6 “(5) REQUIRED INVESTMENTS.—

7 “(A) IN GENERAL.—Amounts contributed
8 under paragraph (3)(B)(i) shall be invested
9 only in the class of assets or funds described in
10 subparagraph (B) unless the employer elects a
11 class of assets or funds described in subpara-
12 graph (C) or (D).

13 “(B) TARGET DATE/LIFECYCLE OPTION.—

14 The class of assets or funds described in this
15 subparagraph is the class of assets or funds
16 that constitutes a qualified default investment
17 alternative under Department of Labor regula-
18 tion section 2550.404c-5(e)(4)(i).

19 “(C) PRINCIPAL PRESERVATION.—The

20 class of assets or funds described in this sub-
21 paragraph is the class of assets or fund that is
22 designed to protect the principal of the indi-
23 vidual on an ongoing basis, including passbook
24 savings, certificates of deposit, insurance con-
25 tracts, mutual funds, United States savings

1 bonds (which may be indexed for inflation), and
2 similar assets specified in regulations.

3 “(D) BALANCED OPTION.—The class of
4 assets or funds described in this subparagraph
5 is the class of assets or funds that constitutes
6 a qualified default investment alternative under
7 Department of Labor regulation section
8 2550.404e-5(e)(4)(ii).

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

18 “(7) TREATMENT AS IRA.—A qualifying em-
19 ployee for whom an automatic IRA is established
20 under paragraph (1) may elect, at such time and in
21 such manner and form as the Secretary may pre-
22 scribe, whether to treat the individual retirement
23 plan as described, or not described, in section 408A.
24 If no such election is made, the plan shall be treated

1 as described in section 408A and shall meet the re-
2 quirements of section 408A.

3 “(8) EMPLOYER’S OPTION TO OBTAIN AFFIRMA-
4 TIVE ELECTIONS FROM EMPLOYEES INSTEAD OF
5 AUTOMATIC ENROLLMENT.—As an alternative to
6 automatic enrollment, an employer may choose to
7 comply with subsection (d)(1)(B)(ii) by notifying
8 employees that the employer wishes to obtain from
9 each qualifying employee an affirmative election ei-
10 ther to contribute or not to contribute to an auto-
11 matic IRA, provided that any qualifying employee
12 who fails to make such an election is treated in the
13 manner provided under subsection (d)(1)(B)(ii).

14 “(e) AUTOMATIC IRA CONTRIBUTIONS AND RETIRE-
15 MENT BOND PURCHASES TREATED LIKE OTHER CON-
16 TRIBUTIONS TO INDIVIDUAL RETIREMENT PLANS.—

17 “(1) TAX TREATMENT UNAFFECTED.—The fact
18 that a contribution to an individual retirement plan
19 or purchase of a retirement bond is made on behalf
20 of an employee under an automatic IRA arrange-
21 ment instead of being made directly by the employee
22 shall not affect the deductibility or other tax treat-
23 ment of the contribution or of other amounts under
24 this title.

1 “(2) PAYROLL SAVINGS CONTRIBUTIONS TAKEN
2 INTO ACCOUNT.—Any contribution to an individual
3 retirement plan or purchase of a retirement bond
4 made on behalf of an employee under an automatic
5 IRA arrangement shall be taken into account in ap-
6 plying the limitations on contributions to individual
7 retirement plans and the other provisions of this
8 title applicable to individual retirement plans as if
9 the contribution or purchase had been made directly
10 by the employee.

11 “(f) DEPOSITS TO PLANS OF A DESIGNATED TRUST-
12 EE OR ISSUER AND FOR RETIREMENT BONDS.—

13 “(1) IN GENERAL.—An employer shall not be
14 treated as failing to satisfy the requirements of this
15 section or any other provision of this title merely be-
16 cause the employer makes all contributions (or all
17 contributions on behalf of employees who do not
18 specify an individual retirement plan, trustee, or
19 issuer to receive the contributions) to individual re-
20 tirement plans specified in paragraph (2) or to the
21 Secretary or his agent for the purchase of retirement
22 bonds specified in paragraph (3).

23 “(2) INDIVIDUAL RETIREMENT PLANS OTHER
24 THAN THOSE SELECTED BY EMPLOYEE.—An em-
25 ployer may elect to have contributions for all quali-

1 fying employees participating in an automatic IRA
2 arrangement made to individual retirement plans of
3 a trustee or issuer under the arrangement that has
4 been designated by the employer. The preceding sen-
5 tence shall not apply unless each participant is noti-
6 fied in writing that the participant’s balance may be
7 transferred without cost or penalty to another indi-
8 vidual retirement plan established by or on behalf of
9 the participant.

10 “(3) RETIREMENT BONDS.—

11 “(A) IN GENERAL.—The Secretary shall
12 provide that contributions deposited under sub-
13 paragraph (B) shall be applied to the purchase
14 of a retirement bond in the name of each appli-
15 cable employee.

16 “(B) PAYROLL DEPOSIT FEATURES.—The
17 Secretary shall establish procedures so that con-
18 tributions may be applied to the purchase of re-
19 tirement bonds without undue administrative or
20 paperwork requirements on participating em-
21 ployers. Such procedures shall ensure that only
22 1 such retirement bond of each type (traditional
23 or Roth) is issued for each TIN.

1 “(4) PAYROLL TAX DEPOSIT PROCEDURE.—The
2 procedures the Secretary shall establish may include
3 a procedure under which an employer—

4 “(A) may include with each deposit of tax
5 required to be deducted and withheld under
6 chapter 24 the aggregate amounts, for the pe-
7 riod covered by the deposit, which qualifying
8 employees have designated under subsection
9 clause (i)(I) of subsection (d)(1)(B) (or are
10 deemed to have designated under clause (ii) of
11 such subsection) as contributions to purchase
12 retirement bonds on behalf of the employees
13 under paragraph (3), and

14 “(B) specifies, in such manner as the Sec-
15 retary may prescribe, information needed to
16 purchase retirement bonds on behalf of each ap-
17 plicable employee for whom a contribution is to
18 be made, including—

19 “(i) the employee’s name and TIN,

20 and

21 “(ii) the amount of the contribution.

22 “(5) PURPOSES.—The purposes of the retire-
23 ment bond program established under this sub-
24 section and subsection (g) include—

1 “(A) providing new savers a convenient,
2 low-cost investment option suitable for the ini-
3 tial accumulation of small automatic IRA con-
4 tributions,

5 “(B) to reflect the intent that the long-
6 term investment of automatic IRA funds for
7 most savers be in the private market rather
8 than in retirement bonds, encouraging and as-
9 sisting individuals who accumulate larger
10 amounts in retirement bonds to transfer those
11 funds to individual retirement plans in the pri-
12 vate market, while

13 “(C) permitting individuals to remain in-
14 vested in retirement bonds if they choose to do
15 so.

16 “(6) REGULATIONS.—The Secretary may issue
17 such regulations as are necessary to carry out the
18 purposes of this subsection and subsection (g), in-
19 cluding—

20 “(A) establishment of procedures to com-
21 municate to individuals the importance of in-
22 vestment diversification and the transfer option
23 described in subparagraph (B),

24 “(B) simplified procedures under which
25 holders of retirement bonds may periodically

1 choose to have the bonds or their proceeds
2 transferred to available individual retirement
3 plans, and

4 “(C) means by which individuals may elect
5 (or be treated as electing) whether to have re-
6 tirement bonds or their proceeds so transferred.

7 Any such transfer shall be treated as a rollover con-
8 tribution for purposes of section 408(d)(3) (other
9 than subparagraph (B) thereof).

10 “(g) RETIREMENT BOND.—

11 “(1) RETIREMENT BOND.—The term ‘retire-
12 ment bond’ means a bond issued under chapter 31
13 of title 31, which by its terms, or by regulations pre-
14 scribed by the Secretary under such chapter—

15 “(A) provides for interest to be credited at
16 rates that take into account the expected dura-
17 tion of the funds invested in retirement bonds
18 and at rates determined or adjusted in a man-
19 ner and with sufficient frequency to provide
20 substantial protection from inflation,

21 “(B) is not transferable, and

22 “(C) is designed for investment for retire-
23 ment under automatic IRA arrangements or
24 other savings vehicles.

1 “(2) INDIVIDUAL RETIREMENT PLAN RULES AP-
2 PLICABLE.—The provisions of this title applicable to
3 an individual retirement plan (as defined in section
4 7701(a)(37)), including provisions relating to con-
5 tributions, holding and distributions, shall apply to
6 a retirement bond, except as determined by the Sec-
7 retary.

8 “(3) ANNUAL STATEMENT.—As soon as prac-
9 ticable after the close of the calendar year, the Sec-
10 retary shall make available an annual statement to
11 each participant setting forth—

12 “(A) payments made by or on behalf of the
13 participant for the retirement bond,

14 “(B) amounts earned by the retirement
15 bond,

16 “(C) the value of the account as of the
17 close of such calendar year,

18 “(D) the importance of diversifying retire-
19 ment savings,

20 “(E) the benefits of a well-balanced and di-
21 versified investment portfolio,

22 “(F) a notice of the internet website of the
23 Department of Labor for sources of information
24 on individual investing and diversification,

1 “(G) the procedures for redeeming a re-
2 tirement bond and directly transferring the re-
3 deemed amount into an individual retirement
4 plan,

5 “(H) other factors affecting retirement
6 savings decisions, and

7 “(I) such other information as the Sec-
8 retary determines necessary or appropriate.

9 “(h) MODEL NOTICE.—The Secretary shall—

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

13 “(A) to notify employees of the require-
14 ment under this section for the employer to pro-
15 vide certain employees with the opportunity to
16 participate in an automatic IRA arrangement,
17 and

18 “(B) to satisfy the requirements of sub-
19 section (d)(2)(C),

20 “(2) provide uniform forms for enrollment, in-
21 cluding automatic enrollment, in an automatic IRA
22 arrangement, and

23 “(3) establish a website or other electronic
24 means that small employers can access and use to

1 obtain information on automatic IRA arrangements
2 and to obtain required notices and forms.

3 The information referred to in paragraph (3) shall
4 be provided in a manner designed to assist employ-
5 ers and providers by facilitating the identification by
6 employers of private-sector providers of individual
7 retirement plans and associated investment options
8 that are appropriate for use in automatic IRA ar-
9 rangements.

10 “(i) CROSS REFERENCE.—For provision preempting
11 conflicting State laws, see section 2(k) of the Automatic
12 IRA Act of 2012.”

13 (b) MANDATORY TRANSFERS.—Section
14 401(a)(31)(B) is amended—

15 (1) by inserting “(including an automatic IRA
16 arrangement)” after “individual retirement plan”
17 each place it appears, and

18 (2) by adding at the end the following new sen-
19 tence: “Any amount so transferred (and any earn-
20 ings thereon) shall be invested in a default invest-
21 ment described in section 408B(d)(5).”

22 (c) PENALTY FOR FAILURE TO TIMELY REMIT CON-
23 TRIBUTIONS TO AUTOMATIC IRA ARRANGEMENTS.—Sec-
24 tion 4975(c) is amended by adding at the end the fol-
25 lowing new paragraph:

1 “(7) SPECIAL RULE FOR AUTOMATIC IRA AR-
2 RANGEMENTS.—For purposes of paragraph (1), if
3 an employer is required under an automatic IRA ar-
4 rangement under section 408B to deposit amounts
5 withheld from an employee’s compensation into an
6 automatic IRA or toward the purchase of a retire-
7 ment bond but fails to do so within the time pre-
8 scribed under section 408B(d)(2)(A), such amounts
9 shall be treated as assets of the automatic IRA.”.

10 (d) COORDINATION WITH EMPLOYEE RETIREMENT
11 INCOME SECURITY ACT OF 1974.—

12 (1) EXEMPTION.—

13 (A) IN GENERAL.—Section 3(2) of the
14 Employee Retirement Income Security Act of
15 1974 (29 U.S.C. 1002(2)) is amended—

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

18 (ii) by adding at the end the following
19 new subparagraph:

20 “(C) An automatic IRA arrangement de-
21 scribed in section 408B(d) of the Internal Rev-
22 enue Code of 1986 shall not be treated as an
23 employee pension benefit plan or pension plan
24 if, under the arrangement, contributions are to
25 be made to an automatic IRA the provider of

1 which is included in the website list established
2 under section 408B(h)(3) of such Code, are to
3 be made to an individual retirement plan des-
4 ignated by the employee, or are to be invested
5 in retirement bonds (whether to the Secretary
6 of the Treasury or to a designated trustee or
7 other agent for that purpose).”.

8 (B) CUSTOMER IDENTIFICATION PRO-
9 GRAM.—Notwithstanding the amendment made
10 by subparagraph (A), an individual retirement
11 plan established pursuant to an automatic IRA
12 arrangement described in section 408B(d) of
13 the Internal Revenue Code of 1986 shall, for
14 purposes of any customer identification pro-
15 gram established under section 5318(l) of title
16 31, United States Code, be treated as an ac-
17 count opened for the purpose of participating in
18 an employee benefit plan established under the
19 Employee Retirement Income Security Act of
20 1974.

21 (2) FIDUCIARY DUTIES.—Section 404(c)(2) of
22 such Act is amended—

23 (A) by inserting the following sentence be-
24 fore the last sentence: “In the case of an auto-
25 matic IRA under section 408B of such Code

1 that is not exempt under section 3(2)(C), a par-
2 ticipant or beneficiary shall, for purposes of
3 paragraph (1), be treated as exercising control
4 over the assets in the account on and after the
5 7th day after notice has been given to an em-
6 ployee that such automatic IRA has been estab-
7 lished on behalf of the employee.”, and

8 (B) by inserting “or with respect to an
9 automatic IRA under section 408B of such
10 Code” after “arrangement” in the last sen-
11 tence.

12 (e) NOTICE OF AVAILABILITY OF INVESTMENT
13 GUIDELINES.—

14 (1) IN GENERAL.—Section 408(i) (relating to
15 reports) is amended by adding at the end the fol-
16 lowing new sentences: “Any report furnished under
17 paragraph (2) to an individual shall include notice of
18 the internet website of the Department of Labor for
19 sources of information on individual investing and
20 diversification.”.

21 (2) UPDATE INFORMATION.—Such information
22 shall be modified (or updated) by the Secretary of
23 Labor in consultation with the Secretary of the
24 Treasury and the Chairman of the Securities and

1 Exchange Commission to address needed changes
2 due to the creation of automatic IRAs.

3 (f) FAILURE TO PROVIDE ACCESS TO PAYROLL SAV-
4 INGS ARRANGEMENTS.—Chapter 43 (relating to qualified
5 pension, etc., plans) is amended by adding at the end the
6 following new section:

7 **“SEC. 4980J. REQUIREMENTS FOR COVERED EMPLOYERS**
8 **TO PROVIDE EMPLOYEES ACCESS TO AUTO-**
9 **MATIC IRA ARRANGEMENTS.**

10 “(a) GENERAL RULE.—There is hereby imposed a
11 tax on any failure by a covered employer (as defined in
12 section 408B) to meet the requirements of subsection (d)
13 for a calendar year.

14 “(b) AMOUNT.—

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

19 “(2) TAX NOT TO APPLY WHERE FAILURE NOT
20 DISCOVERED AND REASONABLE DILIGENCE EXER-
21 CISED.—No tax shall be imposed by subsection (a)
22 on any failure during any period for which it is es-
23 tablished to the satisfaction of the Secretary that the
24 employer subject to liability for the tax did not know

1 that the failure existed and exercised reasonable dili-
2 gence to meet the requirements of subsection (d).

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

6 “(A) the employer subject to liability for
7 the tax under subsection (a) exercised reason-
8 able diligence to meet the requirements of sub-
9 section (d), and

10 “(B) the employer provides the automatic
11 IRA arrangement described in section 408B to
12 each employee eligible to participate in the ar-
13 rangement by the end of the 90-day period be-
14 ginning on the first date the employer knew, or
15 exercising reasonable diligence would have
16 known, that such failure existed.

17 “(4) WAIVER BY SECRETARY.—In the case of a
18 failure which is due to reasonable cause and not to
19 willful neglect, the Secretary may waive part or all
20 of the tax imposed by subsection (a) to the extent
21 that the payment of such tax would be excessive or
22 otherwise inequitable relative to the failure involved.

23 “(c) PROCEDURES FOR NOTICE.—The Secretary may
24 prescribe and implement procedures for obtaining con-
25 firmation that employers are in compliance with the re-

1 requirements of subsection (d). The Secretary, in the Sec-
 2 retary’s discretion, may prescribe that the confirmation
 3 shall be obtained on an annual or less frequent basis, and
 4 may use for this purpose the annual report or quarterly
 5 report for employment taxes, or such other means as the
 6 Secretary may deem advisable.

7 “(d) REQUIREMENT TO PROVIDE EMPLOYEE ACCESS
 8 TO AUTOMATIC IRA ARRANGEMENTS.—The requirements
 9 of this subsection are met if the employer meets the re-
 10 quirements of section 408B.”.

11 (g) WAIVER OF EARLY WITHDRAWAL PENALTY FOR
 12 CERTAIN DISTRIBUTIONS FOLLOWING INITIAL ELECTION
 13 TO PARTICIPATE IN AUTOMATIC IRA ARRANGEMENT.—
 14 Subsection (t) of section 72 is amended by adding at the
 15 end the following new paragraph:

16 “(11) DISTRIBUTION FOLLOWING INITIAL
 17 ELECTION TO PARTICIPATE IN AUTOMATIC IRA AR-
 18 RANGEMENT.—Paragraph (1) shall not apply in the
 19 case of a distribution to a qualifying employee made
 20 not later than 90 days after the initial election
 21 under section 408B(d)(1)(B)(ii).”.

22 (h) BANKRUPTCY.—Section 522 of title 11, United
 23 States Code, is amended—

24 (1) in subsection (d)(12) by inserting “408B,”
 25 after “408A,”, and

1 (2) in subsection (n) by inserting “, or in an
2 automatic IRA arrangement described in section
3 408B,”.

4 (i) AUTOMATIC IRA ADVISORY GROUP.—

5 (1) IN GENERAL.—Not later than 60 days after
6 the date of enactment of this Act, the Secretary of
7 the Treasury and the Secretary of Labor shall joint-
8 ly establish an Automatic IRA Advisory Group (in
9 this subsection referred to as the “Advisory
10 Group”). The purpose of the Advisory Group shall
11 be to make recommendations regarding the auto-
12 matic IRA investment options described in section
13 408B(d)(5) of the Internal Revenue Code of 1986
14 and the website described in section 408B(h)(3) of
15 such Code, including, with respect to automatic IRA
16 arrangements, the disclosure of information regard-
17 ing fees and expenses, the use of low-cost investment
18 options, the appropriate use of electronic methods to
19 provide notice and disclosure, and such other related
20 matters as may be determined by the Secretaries.

21 (2) MEMBERSHIP.—The Advisory Group shall
22 consist of not more than 15 members and shall be
23 composed of—

24 (A) such persons as the Secretaries of the
25 Treasury and Labor may consider appropriate

1 to provide expertise regarding investments for
2 retirement, including providers of individual re-
3 tirement accounts and individual retirement an-
4 nnuities described in section 408 or 408A of
5 such Code, and

6 (B) one or more representatives of the De-
7 partment of Labor and of the Department of
8 the Treasury.

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

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

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

1 (j) CONFORMING AMENDMENTS.—

2 (1) The table of sections for subpart A of part
3 I of subchapter D of chapter 1 is amended by insert-
4 ing after the item relating to section 408A the fol-
5 lowing new item:

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

6 (2) The table of sections for chapter 43 is
7 amended by adding at the end the following new
8 item:

“Sec. 4980J. Requirements for employers to provide employees access to auto-
matic IRA arrangements.”.

9 (k) PREEMPTION OF CONFLICTING STATE LAWS.—

10 The amendments made by this section shall supersede any
11 law of a State that would directly or indirectly prohibit
12 or restrict the establishment or operation of an automatic
13 IRA arrangement meeting the requirements of section
14 408B of the Internal Revenue Code of 1986. Nothing in
15 such amendments shall be construed to impair or super-
16 sede any State law to the extent it provides a remedy for
17 the failure to make payroll deposit payments under any
18 such automatic IRA arrangement within the period re-
19 quired under such section 408B.

20 (l) EFFECTIVE DATE.—The amendments made by
21 this section shall apply to calendar years beginning after
22 December 31, 2013.

1 **SEC. 3. CREDIT FOR SMALL EMPLOYERS MAINTAINING**
2 **AUTOMATIC IRA ARRANGEMENTS.**

3 (a) **IN GENERAL.**—Subpart D of part IV of sub-
4 chapter A of chapter 1 (relating to business related cred-
5 its) is amended by adding at the end the following new
6 section:

7 **“SEC. 45S. SMALL EMPLOYER AUTOMATIC IRA ARRANGE-**
8 **MENT.**

9 “(a) **GENERAL RULE.**—For purposes of section 38,
10 in the case of an eligible employer maintaining an auto-
11 matic IRA arrangement meeting the requirements of sec-
12 tion 408B (without regard to whether the employer is re-
13 quired to maintain the arrangement), the small employer
14 automatic IRA arrangement credit determined under this
15 section for any taxable year is the amount determined
16 under subsection (b).

17 “(b) **AMOUNT OF CREDIT.**—

18 “(1) **IN GENERAL.**—The amount of the credit
19 determined under this section for any taxable year
20 with respect to an eligible employer shall be the sum
21 of—

22 “(A) \$25 multiplied by the number of
23 qualifying employees (within the meaning of
24 section 408B(c)) for whom contributions are
25 made under the automatic IRA arrangement re-

1 ferred to in subsection (a) for the calendar year
2 in which the taxable year begins, plus

3 “(B) \$500 for the taxable year which be-
4 gins in the first calendar year, and \$250 for the
5 taxable year which begins in the second cal-
6 endar year, in which the eligible employer main-
7 tains an automatic IRA arrangement meeting
8 the requirements of section 408B.

9 “(2) LIMITATION.—No more than 10 qualifying
10 employees may be taken into account under para-
11 graph (1)(A) for a taxable year.

12 “(3) DURATION OF CREDIT.—The credit de-
13 scribed in paragraph (1)(A) shall apply only for a
14 taxable year which begins in the first 6 calendar
15 years in which the eligible employer maintains an
16 automatic IRA arrangement meeting the require-
17 ments of section 408B.

18 “(4) COORDINATION WITH SMALL EMPLOYER
19 STARTUP CREDIT.—

20 “(A) No credit shall be allowed under this
21 section to the employer for any taxable year if
22 a credit is determined under section 45E with
23 respect to the employer for the taxable year.

24 “(B) If the eligible employer maintains an
25 automatic IRA arrangement meeting the re-

1 requirements of section 408B with respect to any
2 of the first three calendar years for which the
3 employer could adopt such an arrangement and
4 subsequently adopts an eligible employer plan
5 for its employees for any of those years which
6 it maintains for such third taxable year, then
7 section 45E(b)(1) shall be applied with respect
8 to the eligible employer by replacing ‘2 taxable
9 years’ with ‘3 taxable years’.

10 “(c) ELIGIBLE EMPLOYER.—For purposes of this
11 section, the term ‘eligible employer’ means, with respect
12 to any calendar year in which the taxable year begins, an
13 employer which—

14 “(1) maintains an automatic IRA arrangement
15 meeting the requirements of section 408B,

16 “(2) on each day during the preceding calendar
17 year, had no more than 100 employees, and

18 “(3) did not maintain a qualifying plan or ar-
19 rangement (described in section 408B(b)) during the
20 portion of the calendar year preceding the adoption
21 of the automatic IRA arrangement and the 2 pre-
22 ceding calendar years.

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

1 (b) CREDIT ALLOWED AS PART OF GENERAL BUSI-
2 NESS CREDIT.—Section 38(b) (defining current year busi-
3 ness credit) is amended by striking “plus” at the end of
4 paragraph (35), by striking the period at the end of para-
5 graph (36) and inserting “, plus”, and by adding at the
6 end the following new paragraph:

7 “(37) in the case of an eligible employer (as de-
8 fined in section 45S(c)) maintaining an automatic
9 IRA arrangement meeting the requirements of sec-
10 tion 408B, the small employer automatic IRA ar-
11 rangement credit determined under section 45S(a).”.

12 (c) CLERICAL AMENDMENT.—The table of sections
13 for subpart D of part IV of subchapter A of chapter 1
14 is amended by adding at the end the following new item:

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

15 (d) EFFECTIVE DATE.—The amendments made by
16 this section shall apply to taxable years beginning after
17 December 31, 2013.

18 **SEC. 4. STUDIES.**

19 (a) IN GENERAL.—The Secretary of the Treasury
20 and the Secretary of Labor shall jointly conduct a separate
21 study of the feasibility and desirability of each of the fol-
22 lowing:

23 (1) Extending to automatic IRA arrangements
24 spousal consent requirements similar to, or based
25 on, those that apply under the Federal Employees’

1 Thrift Savings Plan, including consideration of
2 whether modifications of such requirements are nec-
3 essary to apply them to automatic IRA arrange-
4 ments.

5 (2) Promoting the use of low-cost annuities,
6 longevity insurance, or other guaranteed lifetime in-
7 come arrangements in automatic IRA arrangements,
8 including consideration of—

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

13 (B) issues presented by possible additional
14 differences in, or uniformity of, provisions gov-
15 erning different individual retirement arrange-
16 ments.

17 (3) Establishing procedures under which
18 amounts saved by employees in retirement bonds
19 would be automatically transferred into alternative
20 diversified investments provided by the private sector
21 when employees' automatic IRA balances reach a
22 certain dollar level as well as procedures facilitating
23 employees' ability to transfer into such private sector
24 investments.

1 (b) STUDY OF CONSOLIDATION OF INDIVIDUAL RE-
2 TIREMENT PLANS.—The Secretary of the Treasury and
3 the Secretary of Labor shall jointly conduct a separate
4 study of the feasibility and desirability of—

5 (1) using data submitted on investments in in-
6 dividual retirement accounts and annuities to enable
7 individuals with multiple such accounts and annu-
8 ities that include very small amounts to receive peri-
9 odic notices informing them about the location of
10 these accounts and how such accounts and annuities
11 might be consolidated, and

12 (2) using investment arrangements associated
13 with automatic IRAs to assist in addressing the
14 problem of abandoned accounts.

15 (c) REPORT.—Not later than 18 months after the
16 date of the enactment of this Act, the Secretaries shall
17 report the results of each study conducted under this sec-
18 tion, together with any recommendations for legislative
19 changes, to the Committees on Finance and Health, Edu-
20 cation, Labor, and Pensions of the Senate and the Com-
21 mittees on Ways and Means and Education and the Work-
22 force of the House of Representatives.

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