

115TH CONGRESS
1ST SESSION

S. 1861

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 SENATE OF THE UNITED STATES

SEPTEMBER 26, 2017

Mr. WHITEHOUSE introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend the Internal Revenue Code of 1986 to 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 2017”.

6 (b) AMENDMENT OF 1986 CODE.—Except as other-
7 wise expressly provided, whenever in this Act an amend-

1 ment or repeal is expressed in terms of an amendment
2 to, or repeal of, a section or other provision, the reference
3 shall be considered to be made to a section or other provi-
4 sion of the Internal Revenue Code of 1986.

5 **SEC. 2. QUALIFYING AUTOMATIC IRA ARRANGEMENTS.**

6 (a) IN GENERAL.—Subpart A of part I of subchapter
7 D of chapter 1 of the Internal Revenue Code of 1986 is
8 amended by inserting after section 408A the following new
9 section:

10 **“SEC. 408B. QUALIFYING AUTOMATIC IRA ARRANGEMENTS.**

11 “(a) IN GENERAL.—For purposes of this section, a
12 qualifying automatic IRA arrangement is an automatic
13 IRA arrangement which is offered by a covered employer
14 to each qualifying employee of the employer.

15 “(b) COVERED EMPLOYER.—For purposes of this
16 section—

17 “(1) IN GENERAL.—Except as otherwise pro-
18 vided in this subsection or subsection (c)(2), the
19 term ‘covered employer’ means, with respect to any
20 year, an employer which does not maintain a quali-
21 fying plan or arrangement described in section
22 219(g)(5) for the calendar year.

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

1 “(A) the plan or arrangement is frozen as
2 of the first day of the preceding calendar year,
3 or

4 “(B) in the case of a plan or arrangement
5 under which the only contributions are discre-
6 tionary on the part of the employer or other
7 plan sponsor—

8 “(i) no employer contribution has
9 been made to the plan or arrangement for
10 the 3-plan-year period ending with the last
11 plan year ending in the preceding calendar
12 year, and

13 “(ii) it is not reasonable to assume
14 that an employer contribution will be made
15 for the last plan year ending in the pre-
16 ceding calendar year.

17 “(3) EXCEPTION FOR CERTAIN SMALL AND
18 NEW EMPLOYERS.—

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

22 “(i) did not employ more than 10 em-
23 ployees who received at least \$5,000 of
24 compensation (as defined in section

1 3401(a)) from the employer for the pre-
2 ceding calendar year,

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

6 “(iii) was not in existence at all times
7 during the calendar year and the preceding
8 calendar year.

9 “(B) OPERATING RULES.—In determining
10 the number of employees for purposes of sub-
11 paragraph (A)—

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

17 “(ii) all members of the same family
18 (within the meaning of section 318(a)(1))
19 shall be treated as 1 individual, and

20 “(iii) any reference to an employer
21 shall include a reference to any predecessor
22 employer.

23 “(4) EXCEPTION FOR GOVERNMENTS AND
24 CHURCHES.—The term ‘covered employer’ does not
25 include—

1 “(A) a government or entity described in
2 section 414(d), or

3 “(B) a church or a convention or associa-
4 tion of churches which is exempt from tax
5 under section 501.

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

10 “(c) QUALIFYING EMPLOYEE.—For purposes of this
11 section—

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

15 “(2) PLAN SPONSOR’S EMPLOYEES.—If—

16 “(A) an employer maintains one or more
17 qualifying plans or arrangements described in
18 section 219(g)(5),

19 “(B) the employees of any subsidiary, divi-
20 sion, or other major business unit of the em-
21 ployer are generally not eligible to participate in
22 any such qualifying plan or arrangement, and

23 “(C) the number of employees of the em-
24 ployer described in subparagraph (B) for a cal-
25 endar year is—

1 “(i) at least 50, and

2 “(ii) at least 10 percent of the em-
3 ployees of the employer (other than exclud-
4 able employees),

5 then, for purposes of this section, the employer shall
6 be treated as a covered employer with respect to
7 such employees (other than excluded employees) for
8 the calendar year, and such employees (other than
9 excluded employees) shall be treated as qualifying
10 employees.

11 “(3) EXCLUDED EMPLOYEES.—

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

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

19 “(i) any employee described in section
20 410(b)(3),

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

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

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

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

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

23 “(vii) in the case of an employer that
24 maintains a simplified employee pension
25 described in section 408(k), any employee

1 who is permitted to be excluded from par-
2 ticipation under section 408(k)(2).

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

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

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

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

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

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

22 “(A) 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 qualifying retirement bond, by hav-
2 ing the employer deposit payroll de-
3 duction amounts or make other peri-
4 odic direct deposits (including elec-
5 tronic payments) to the plan or invest
6 such amounts in such qualifying re-
7 tirement bonds, or

8 “(II) to have such payments paid
9 to the employee directly in cash,

10 “(ii) is treated as having made the
11 election under clause (i)(I) in the amount
12 specified in paragraph (5) until the indi-
13 vidual specifically elects not to have such
14 contributions or purchases made (or spe-
15 cifically elects to have such contributions
16 or purchases made at a different percent-
17 age or in a different amount), and

18 “(iii) may elect to modify the manner
19 in which such amounts are invested for
20 such year,

21 “(B) which meets the administrative re-
22 quirements of paragraph (3), including the no-
23 tice requirement of paragraph (3)(C), and

1 “(C) which does not charge unreasonable
2 additional fees solely on the basis that the bal-
3 ance in an automatic IRA is small.

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

15 “(3) ADMINISTRATIVE REQUIREMENTS.—

16 “(A) PAYMENTS.—The requirements of
17 this paragraph are met with respect to any
18 automatic IRA arrangement if the employer
19 makes the payments elected or treated as elect-
20 ed under paragraph (1)(A)—

21 “(i) on or before the last day of the
22 month following the month in which the
23 compensation otherwise would have been
24 payable to the employee in cash,

1 “(ii) before such later deadline pre-
2 scribed by the Secretary for making such
3 payments, but not later than the due date
4 for the deposit of tax required to be de-
5 ducted and withheld under chapter 24 (re-
6 lating to collection of income tax at source
7 on wages) for the payroll period to which
8 such payments relate, or

9 “(iii) as early as administratively
10 practicable.

11 “(B) TERMINATION OF EMPLOYEE PAR-
12 TICIPATION.—Subject to a requirement for rea-
13 sonable notice, an employee may elect to termi-
14 nate participation in the arrangement at any
15 time during a calendar year, except that if an
16 employee so terminates, the arrangement may
17 provide that the employee may not elect to re-
18 sume participation until the beginning of the
19 next calendar year.

20 “(C) NOTICE OF ELECTION PERIOD.—The
21 requirements of this paragraph shall not be
22 treated as met with respect to any year unless
23 the employer notifies each employee eligible to
24 participate, within a reasonable period of time
25 before the 30th day before the beginning of

1 such year (and, for the first year the employee
2 is so eligible, the 30th day before the first day
3 such employee is so eligible), of—

4 “(i) the payments that may be elected
5 or treated as elected under paragraph
6 (1)(A),

7 “(ii) the opportunity to make the elec-
8 tion to terminate participation in the ar-
9 rangement under subparagraph (B),

10 “(iii) the opportunity to make the
11 election under paragraph (1)(A)(ii) to have
12 contributions or purchases made at a dif-
13 ferent percentage or in a different amount,
14 and

15 “(iv) the opportunity under paragraph
16 (1)(A)(iii) to modify the manner in which
17 such amounts are invested for such year.

18 “(D) INVESTMENT OPTIONS.—The require-
19 ments of this paragraph shall not be treated as
20 met with respect to any year unless an em-
21 ployee electing to have contributions made to an
22 individual retirement plan is provided with the
23 option to choose among all investment options
24 described in subparagraphs (B), (C), (D), and
25 (E) of paragraph (6).

1 “(4) DEFAULT INVESTMENTS.—If an employee
2 is treated under clause (ii) of paragraph (1)(A) as
3 having made an election to participate in an auto-
4 matic IRA arrangement—

5 “(A) the employee shall be deemed to have
6 made an election to make contributions and
7 payments in the amount determined under such
8 clause, and

9 “(B) such contributions shall—

10 “(i) be transferred to an individual re-
11 tirement plan of the designated trustee or
12 issuer, but only if the contributions are in-
13 vested as provided in paragraph (6), or

14 “(ii) be applied toward the purchase
15 of a qualifying retirement bond.

16 “(5) AMOUNT OF CONTRIBUTIONS AND PAY-
17 MENTS.—

18 “(A) IN GENERAL.—The amount specified
19 in this paragraph with respect to any employee
20 is—

21 “(i) 3 percent of the compensation of
22 the employee, or

23 “(ii) such other percentage of com-
24 pensation as is specified in regulations pre-

1 scribed by the Secretary which is not less
2 than 2 percent or more than 6 percent.

3 “(B) AUTHORITY TO PROVIDE FOR PERI-
4 ODIC INCREASES.—In the case of qualifying em-
5 ployees under an automatic IRA arrangement
6 for 2 or more consecutive years, the Secretary
7 may by regulation provide for periodic (not
8 more frequent than annual) increases in the
9 percentage of compensation an employee is
10 deemed to have elected under subparagraph
11 (A). The considerations the Secretary shall take
12 into account in issuing any regulations under
13 this subparagraph and subparagraph (A) shall
14 include the potential effects on lower-income
15 employees as well as on adequacy of savings.

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

19 “(i) shall have no responsibility for
20 any calendar year for determining whether,
21 or ensuring that, the contributions with re-
22 spect to any employee do not exceed the
23 deductible amount in effect for taxable
24 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 “(6) REQUIRED INVESTMENTS.—

13 “(A) IN GENERAL.—Amounts contributed
14 under paragraph (4)(B)(i) shall be invested
15 only in the class of assets or funds described in
16 subparagraph (B) unless the employee elects a
17 class of assets or funds described in subpara-
18 graph (C), (D), or (E).

19 “(B) TARGET DATE OR LIFECYCLE OP-
20 TION.—The class of assets or funds described
21 in this subparagraph is the class of assets or
22 funds that constitutes a qualified default invest-
23 ment alternative under section 2550.404c-
24 5(e)(4)(i) of title 29, Code of Federal Regula-
25 tions.

1 “(C) PRINCIPAL PRESERVATION.—The
2 class of assets or funds described in this sub-
3 paragraph is the class of assets or funds that
4 is designed to protect the principal of the indi-
5 vidual on an ongoing basis, including passbook
6 savings, certificates of deposit, insurance con-
7 tracts, mutual funds, United States savings
8 bonds (which may be indexed for inflation), and
9 similar assets specified in regulations.

10 “(D) GUARANTEED LIFETIME INCOME OP-
11 TION OR EQUIVALENT.—The class of assets or
12 funds described in this subparagraph is the
13 class of assets or funds that is designed to pro-
14 vide an employee with the right to elect to re-
15 ceive distributions as a defined level of income
16 annually (or more frequently) for at least the
17 remainder of the life of the employee or the
18 joint lives of the employee and the employee’s
19 designated beneficiary.

20 “(E) OTHER.—Any other class of assets or
21 funds determined by the Secretary to be a
22 qualified investment for purposes of this sec-
23 tion.

24 “(7) QUALIFYING RETIREMENT BOND.—For
25 purposes of this section—

1 “(A) IN GENERAL.—The term ‘qualifying
2 retirement bond’ means a bond issued under
3 chapter 31 of title 31, United States Code,
4 which by its terms, or by regulations prescribed
5 by the Secretary under such chapter—

6 “(i) provides for interest to be cred-
7 ited at rates that take into account the ex-
8 pected duration of the funds invested in
9 such bonds and at rates determined or ad-
10 justed in a manner and with sufficient fre-
11 quency to provide substantial protection
12 from inflation,

13 “(ii) is not transferable, and

14 “(iii) is designed for investment for
15 retirement under automatic IRA arrange-
16 ments or other savings vehicles.

17 “(B) INDIVIDUAL RETIREMENT PLAN
18 RULES APPLICABLE.—The provisions of this
19 title applicable to an individual retirement plan
20 (as defined in section 7701(a)(37)), including
21 provisions relating to contributions, holding and
22 distributions, shall apply to a qualifying retire-
23 ment bond, except as determined by the Sec-
24 retary.

1 “(C) ANNUAL STATEMENT.—As soon as
2 practicable after the close of each calendar
3 year, the Secretary shall make available an an-
4 nual statement to each participant on behalf of
5 whom qualifying retirement bonds have been
6 purchased, setting forth—

7 “(i) payments made by or on behalf of
8 the participant for such bonds during such
9 calendar year,

10 “(ii) amounts earned by any such
11 bonds, whether purchased during such year
12 or during a prior year, during such cal-
13 endar year,

14 “(iii) the value of the participant’s ac-
15 count with respect to such bonds as of the
16 close of such calendar year,

17 “(iv) the importance of diversifying
18 retirement savings,

19 “(v) the benefits of a well-balanced
20 and diversified investment portfolio,

21 “(vi) a notice of the internet website
22 of the Department of Labor for sources of
23 information on individual investing and di-
24 versification,

1 “(vii) the procedures for redeeming a
2 qualifying retirement bond and directly
3 transferring the redeemed amount into an
4 individual retirement plan,

5 “(viii) other factors affecting retire-
6 ment savings decisions, and

7 “(ix) such other information as the
8 Secretary determines necessary or appro-
9 priate.

10 “(8) TREATMENT AS ROTH IRA.—A qualifying
11 employee for whom an automatic IRA is established
12 under paragraph (1) may elect, at such time and in
13 such manner and form as the Secretary may pre-
14 scribe but not later than the due date of the return
15 for the taxable year in which such automatic IRA is
16 established, whether to treat the individual retire-
17 ment plan as described, or not described, in section
18 408A. If no such election is made, the plan shall be
19 treated as described in section 408A and shall meet
20 the requirements of section 408A (including any ap-
21 propriate adjustment or conversion as may be pro-
22 vided by the Secretary).

23 “(e) TREATMENT OF CONTRIBUTIONS.—

24 “(1) IN GENERAL.—A contribution to an indi-
25 vidual retirement plan or purchase of a retirement

1 bond on behalf of an employee under a qualifying
2 automatic IRA arrangement shall be treated for pur-
3 poses of this title as if it had been made directly by
4 the employee, including for purposes of limitations
5 on contributions to individual retirement plans.

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

15 “(3) INDIVIDUAL RETIREMENT PLAN RULES AP-
16 PPLICABLE.—The provisions of this title applicable to
17 an individual retirement plan (as defined in section
18 7701(a)(37)), including provisions relating to con-
19 tributions, holding and distributions, shall apply to
20 a qualifying retirement bond, except as determined
21 by the Secretary.

22 “(4) ROLLOVER FROM BONDS TO IRA.—The
23 Secretary shall provide for procedures by which an
24 individual may periodically elect to transfer quali-
25 fying retirement bonds (with their proceeds) held by

1 the individual to an individual retirement account.
2 Any such transfer shall be treated as a rollover con-
3 tribution for purposes of section 408(d)(3) (other
4 than subparagraph (B) thereof).

5 “(f) MODEL NOTICE.—The Secretary, in coordina-
6 tion with the Director of the Consumer Financial Protec-
7 tion Bureau, shall—

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

11 “(A) to notify employees of the require-
12 ment under section 4980J for the employer to
13 provide certain employees with the opportunity
14 to participate in a qualifying automatic IRA ar-
15 rangement, and

16 “(B) to satisfy the requirements of sub-
17 section (d)(3)(C),

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

21 “(3) establish a website or other electronic
22 means that small employers can access and use to
23 obtain information on automatic IRA arrangements
24 and to obtain required notices and forms.

1 The information referred to in paragraph (3) shall be pro-
 2 vided in a manner designed to assist employers and pro-
 3 viders by facilitating the identification by employers of pri-
 4 vate-sector providers of individual retirement plans and
 5 associated investment options that are appropriate for use
 6 in automatic IRA arrangements.

7 “(g) CROSS REFERENCE.—For provision preempting
 8 conflicting State laws, see section 2(j) of the Automatic
 9 IRA Act of 2017.”.

10 (b) MANDATORY TRANSFERS.—Section
 11 401(a)(31)(B)(i) of the Internal Revenue Code of 1986
 12 is amended—

13 (1) by inserting “(including a plan established
 14 through a qualifying automatic IRA arrangement
 15 (as defined in section 408B))” after “individual re-
 16 tirement plan” each place it appears, and

17 (2) by adding at the end the following new sen-
 18 tence: “Any amount so transferred (and any earn-
 19 ings thereon) shall be invested only in investments
 20 described in section 408B(d)(6).”.

21 (c) PENALTY FOR FAILURE TO TIMELY REMIT CON-
 22 TRIBUTIONS TO AUTOMATIC IRA ARRANGEMENTS.—Sec-
 23 tion 4975(c) of the Internal Revenue Code of 1986 is
 24 amended by adding at the end the following new para-
 25 graph:

1 “(7) SPECIAL RULE FOR QUALIFYING AUTO-
2 MATIC IRA ARRANGEMENTS.—For purposes of para-
3 graph (1), if an employer is required under a quali-
4 fying automatic IRA arrangement under section
5 408B to deposit amounts withheld from an employ-
6 ee’s compensation into an individual retirement ac-
7 count or toward the purchase of a qualifying retire-
8 ment bond (as defined in section 408B(d)(7)) but
9 fails to do so within the time prescribed under sec-
10 tion 408B(d)(3)(A), such amounts shall be treated
11 as assets of the individual retirement account.”.

12 (d) COORDINATION WITH EMPLOYEE RETIREMENT
13 INCOME SECURITY ACT OF 1974.—

14 (1) EXEMPTION.—

15 (A) IN GENERAL.—Section 3(2) of the
16 Employee Retirement Income Security Act of
17 1974 (29 U.S.C. 1002(2)) is amended—

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

20 (ii) by adding at the end the following
21 new subparagraph:

22 “(C) A qualifying automatic IRA arrange-
23 ment described in section 408B of the Internal
24 Revenue Code of 1986 shall not be treated as
25 an employee pension benefit plan or pension

1 plan if, under the arrangement, contributions
2 are to be made to an individual retirement ac-
3 count the provider of which is included in the
4 website list established under section
5 408B(f)(3) of such Code, are to be made to an
6 individual retirement plan designated by the
7 employee, or are to be invested in qualifying re-
8 tirement bonds (as defined in section
9 408B(d)(7)).”.

10 (B) CUSTOMER IDENTIFICATION PRO-
11 GRAM.—Notwithstanding the amendment made
12 by subparagraph (A), an individual retirement
13 plan established pursuant to an automatic IRA
14 arrangement described in section 408B(d) of
15 the Internal Revenue Code of 1986 shall, for
16 purposes of any customer identification pro-
17 gram established under section 5318(l) of title
18 31, United States Code, be treated as an ac-
19 count opened for the purpose of participating in
20 an employee benefit plan established under the
21 Employee Retirement Income Security Act of
22 1974.

23 (2) FIDUCIARY DUTIES.—Section 404(e) of
24 such Act is amended by adding at the end the fol-
25 lowing new paragraph:

1 “(6) In the case of an individual retirement ac-
2 count opened under a qualifying automatic IRA ar-
3 rangement under section 408B of such Code that is
4 not exempt under section 3(2)(C), a participant or
5 beneficiary shall, for purposes of paragraph (1), be
6 treated as exercising control over the assets in the
7 account on and after the 7th day after notice has
8 been given to an employee that such account has
9 been established on behalf of the employee. No re-
10 ports, other than those required under section
11 101(g), shall be required with respect to an account
12 opened under a qualifying automatic IRA arrange-
13 ment under section 408B of such Code.”.

14 (e) NOTICE OF AVAILABILITY OF INVESTMENT
15 GUIDELINES.—

16 (1) IN GENERAL.—Section 408(i) of the Inter-
17 nal Revenue Code of 1986 is amended by adding at
18 the end the following new sentence: “Any report fur-
19 nished under paragraph (2) to an individual shall in-
20 clude notice of the Internet website of the Depart-
21 ment of Labor for sources of information on indi-
22 vidual investing and diversification.”.

23 (2) UPDATED INFORMATION.—Such informa-
24 tion shall be modified (or updated) by the Secretary
25 of Labor in consultation with the Secretary of the

1 Treasury and the Chairman of the Securities and
2 Exchange Commission to address needed changes
3 due to the creation of automatic IRAs.

4 (f) FAILURE TO PROVIDE QUALIFYING AUTOMATIC
5 IRA ARRANGEMENTS.—Chapter 43 of the Internal Rev-
6 enue Code of 1986 is amended by adding at the end the
7 following new section:

8 **“SEC. 4980J. REQUIREMENTS FOR COVERED EMPLOYERS**
9 **TO PROVIDE QUALIFYING AUTOMATIC IRA**
10 **ARRANGEMENTS.**

11 “(a) GENERAL RULE.—There is hereby imposed a
12 tax on any failure by a covered employer (as defined in
13 section 408B) to maintain a qualifying IRA arrangement
14 (as defined in such section), and to meet the requirements
15 under such arrangement, for a calendar year.

16 “(b) AMOUNT.—

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

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

1 employer subject to liability for the tax did not know
2 that the failure existed and exercised reasonable dili-
3 gence to maintain a qualifying IRA arrangement
4 and to meet the requirements under such arrange-
5 ment.

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

9 “(A) the employer subject to liability for
10 the tax under subsection (a) exercised reason-
11 able diligence to maintain a qualifying IRA ar-
12 rangement and to meet the requirements under
13 such arrangement, and

14 “(B) the employer provides a qualifying
15 automatic IRA arrangement described in sec-
16 tion 408B to each qualifying employee (as de-
17 fined in section 408B) by the end of the 90-day
18 period beginning on the first date the employer
19 knew, or exercising reasonable diligence would
20 have known, that such failure existed.

21 “(4) WAIVER BY SECRETARY.—In the case of a
22 failure which is due to reasonable cause and not to
23 willful neglect, the Secretary may waive part or all
24 of the tax imposed by subsection (a) to the extent

1 that the payment of such tax would be excessive or
 2 otherwise inequitable relative to the failure involved.

3 “(c) PROCEDURES FOR NOTICE.—The Secretary may
 4 prescribe and implement procedures for obtaining con-
 5 firmation of whether employers are subject to the tax im-
 6 posed by subsection (a). The Secretary, in the Secretary’s
 7 discretion, may prescribe that the confirmation shall be
 8 obtained on an annual or less frequent basis, and may use
 9 for this purpose the annual report or quarterly report for
 10 employment taxes, or such other means as the Secretary
 11 may deem advisable.”.

12 (g) WAIVER OF EARLY WITHDRAWAL PENALTY FOR
 13 CERTAIN DISTRIBUTIONS FOLLOWING INITIAL ELECTION
 14 TO PARTICIPATE IN AUTOMATIC IRA ARRANGEMENT.—
 15 Section 72(t) of the Internal Revenue Code of 1986 is
 16 amended by adding at the end the following new para-
 17 graph:

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

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

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

3 (2) in subsection (n), by inserting “, or in a
4 qualifying automatic IRA arrangement described in
5 section 408B” after “section 408(p) of such Code”.

6 (i) CONFORMING AMENDMENTS.—

7 (1) The table of sections for subpart A of part
8 I of subchapter D of chapter 1 of the Internal Rev-
9 enue Code of 1986 is amended by inserting after the
10 item relating to section 408A the following new
11 item:

“Sec. 408B. Qualifying automatic IRA arrangements.”.

12 (2) The table of sections for chapter 43 of such
13 Act is amended by adding at the end the following
14 new item:

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

15 (j) PREEMPTION OF CONFLICTING STATE LAWS.—

16 The amendments made by this section shall supersede any
17 law of a State that would directly or indirectly prohibit
18 or restrict the establishment or operation of a qualifying
19 automatic IRA arrangement meeting the requirements of
20 section 408B of the Internal Revenue Code of 1986. Noth-
21 ing in such amendments shall be construed to impair or
22 supersede any State law to the extent it provides a remedy
23 for the failure to make payroll deposit payments under any

1 such automatic IRA arrangement within the period re-
 2 quired under such section 408B.

3 (k) EFFECTIVE DATE.—The amendments made by
 4 this section shall apply to calendar years beginning after
 5 December 31, 2018.

6 (l) REGULATIONS.—Not later than 12 months after
 7 the date of the enactment of this Act, the Secretary of
 8 the Treasury, in coordination with the Secretary of Labor,
 9 shall issue guidance defining the class of guaranteed life-
 10 time income or equivalent arrangements which meet the
 11 requirements of section 408B(d)(5)(E) of the Internal
 12 Revenue Code of 1986, as added by this section.

13 **SEC. 3. CREDIT FOR SMALL EMPLOYERS MAINTAINING**
 14 **QUALIFYING AUTOMATIC IRA ARRANGE-**
 15 **MENTS.**

16 (a) IN GENERAL.—Subpart D of part IV of sub-
 17 chapter A of chapter 1 of the Internal Revenue Code of
 18 1986 is amended by adding at the end the following new
 19 section:

20 **“SEC. 45S. SMALL EMPLOYER AUTOMATIC IRA ARRANGE-**
 21 **MENT.**

22 “(a) GENERAL RULE.—For purposes of section 38,
 23 in the case of an eligible employer maintaining a quali-
 24 fying automatic IRA arrangement meeting the require-
 25 ments of section 408B (without regard to whether the em-

1 ployer is a covered employer), the small employer auto-
2 matic IRA arrangement credit determined under this sec-
3 tion for any taxable year in the credit period is the amount
4 determined under subsection (b).

5 “(b) AMOUNT OF CREDIT.—

6 “(1) IN GENERAL.—The amount of the credit
7 determined under this section for any taxable year
8 with respect to an eligible employer shall be the sum
9 of—

10 “(A) \$25 multiplied by the number of
11 qualifying employees (within the meaning of
12 section 408B(c)) for whom contributions are
13 made under the qualifying automatic IRA ar-
14 rangement referred to in subsection (a) for the
15 calendar year in which the taxable year begins,
16 plus

17 “(B) the amount determined under para-
18 graph (2) with respect to the taxable year.

19 “(2) AMOUNT DETERMINED.—The amount de-
20 termined under this paragraph is—

21 “(A) \$500 in the case of the taxable year
22 which begins in the first calendar year in which
23 the eligible employer maintains the qualifying
24 automatic IRA arrangement,

1 “(B) \$250 in the case of the taxable year
2 which begins in the second calendar year in
3 which the eligible employer maintains such ar-
4 rangement, and

5 “(C) \$0 thereafter.

6 “(3) LIMITATION.—The amount determined
7 under paragraph (1)(A) for any taxable year shall
8 not exceed \$250.

9 “(4) COORDINATION WITH SMALL EMPLOYER
10 STARTUP CREDIT.—

11 “(A) IN GENERAL.—No credit shall be al-
12 lowed under this section to the employer for
13 any taxable year if a credit is determined under
14 section 45E with respect to the employer for
15 the taxable year.

16 “(B) EXTENSION OF CREDIT.—If the eligi-
17 ble employer maintains a qualifying automatic
18 IRA arrangement meeting the requirements of
19 section 408B (without regard to whether the
20 employer is a covered employer) with respect to
21 any of the first 3 calendar years for which the
22 employer could adopt such an arrangement, and
23 subsequently adopts an eligible employer plan
24 for its employees for any of those years which
25 it maintains throughout such 3-calendar-year

1 period, then section 45E(b)(1) shall be applied
2 with respect to the eligible employer by sub-
3 stituting ‘3 taxable years’ for ‘2 taxable years’.

4 “(c) DEFINITIONS.—For purposes of this section—

5 “(1) ELIGIBLE EMPLOYER.—The term ‘eligible
6 employer’ means, with respect to the calendar year
7 in which the taxable year begins, an employer
8 which—

9 “(A) maintains a qualifying automatic IRA
10 arrangement meeting the requirements of sec-
11 tion 408B (without regard to whether the em-
12 ployer is a covered employer),

13 “(B) on each day during the preceding cal-
14 endar year, had no more than 100 employees,
15 and

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

22 “(2) CREDIT PERIOD.—The term ‘credit period’
23 means the first 6 calendar years in which the eligible
24 employer maintains the qualifying automatic IRA
25 arrangement.

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

3 (b) CREDIT ALLOWED AS PART OF GENERAL BUSI-
4 NESS CREDIT.—Section 38(b) of the Internal Revenue
5 Code of 1986 is amended by striking “plus” at the end
6 of paragraph (35), by striking the period at the end of
7 paragraph (36) and inserting “, plus”, and by adding at
8 the end the following new paragraph:

9 “(37) the small employer automatic IRA ar-
10 rangement credit determined under section 45S(a).”.

11 (c) CLERICAL AMENDMENT.—The table of sections
12 for subpart D of part IV of subchapter A of chapter 1
13 of the Internal Revenue Code of 1986 is amended by add-
14 ing 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, 2018.

18 **SEC. 4. INCREASE IN CREDIT LIMITATION FOR SMALL EM-**
19 **PLOYER PENSION PLAN STARTUP COSTS.**

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

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

25 “(A) \$500, or

1 “(B) the lesser of—

2 “(i) \$250 for each employee of the eli-
3 gible employer who is not a highly com-
4 pensated employee (as defined in section
5 415(q)) and who is eligible to participate
6 in the eligible employer plan maintained by
7 the eligible employer, or

8 “(ii) \$5,000, and”.

9 (b) **EFFECTIVE DATE.**—The amendment made by
10 this section shall apply to taxable years beginning after
11 December 31, 2017.

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