

111TH CONGRESS
2^D SESSION

H. R. 6099

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

AUGUST 10, 2010

Mr. NEAL of Massachusetts (for himself, Mr. STARK, Ms. SCHWARTZ, 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 Labor, 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.**

4 This Act may be cited as the “Automatic IRA Act
5 of 2010”.

1 **SEC. 2. EMPLOYEES NOT COVERED BY QUALIFYING RE-**
2 **TIREMENT PLANS OR ARRANGEMENTS ENTI-**
3 **TLED TO PARTICIPATE IN AUTOMATIC IRA**
4 **ARRANGEMENTS.**

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

10 **“SEC. 408B. RIGHT TO AUTOMATIC IRA ARRANGEMENTS AT**
11 **WORK.**

12 “(a) REQUIREMENT TO PROVIDE AUTOMATIC IRA
13 ARRANGEMENT.—Each covered employer shall make
14 available to each qualifying employee of the employer for
15 the calendar year an automatic IRA arrangement.

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

18 “(1) IN GENERAL.—Except as otherwise pro-
19 vided in this subsection or subsection (c)(2), the
20 term ‘covered employer’ means, with respect to any
21 year, an employer which does not maintain a quali-
22 fying plan or arrangement described in section
23 219(g)(5) for the calendar year.

24 “(2) EXCLUDED PLANS.—A qualifying plan or
25 arrangement shall not be taken into account for pur-
26 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, no employer contribution has
8 been made to the plan or arrangement for the
9 2-plan-year period ending with the last plan
10 year ending in the second preceding calendar
11 year and it is not reasonable to assume that an
12 employer contribution will be made for the last
13 plan year ending in the preceding calendar
14 year.

15 “(3) EXCEPTION FOR CERTAIN SMALL AND
16 NEW EMPLOYERS.—

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

20 “(i) did not employ more than 10 em-
21 ployees who received at least \$5,000 of
22 compensation (as defined in section
23 3401(a)) from the employer for the pre-
24 ceding calendar year,

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

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

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

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

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

18 “(iii) any reference to an employer
19 shall include a reference to any predecessor
20 employer.

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

24 “(A) a government or entity described in
25 section 414(d), or

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

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

8 “(c) QUALIFYING EMPLOYEE.—For purposes of this
9 section—

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

13 “(2) PLAN SPONSOR’S EMPLOYEES.—If—

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

17 “(B) the employees of a subsidiary, divi-
18 sion, or other major business unit are generally
19 not eligible to participate in any such qualifying
20 plan or arrangement,

21 then, for purposes of this section, the employer shall
22 be treated as a covered employer with respect to
23 such employees (other than excluded employees),
24 and such employees (other than excluded employees)
25 shall be treated as qualifying employees, but only if

1 there are 50 or more ineligible employees of such
2 subsidiary, division or other major business unit con-
3 stituting at least 10 percent of the employees of the
4 employer (other than excludable employees).

5 “(3) EXCLUDED EMPLOYEES.—

6 “(A) IN GENERAL.—The term ‘excluded
7 employee’ means an employee of the employer
8 who is an excludable employee and who is in a
9 class or category that the employer excludes
10 from treatment as qualifying employees.

11 “(B) EXCLUDABLE EMPLOYEE.—The term
12 ‘excludable employee’ means—

13 “(i) any employee described in section
14 410(b)(3),

15 “(ii) any employee who has not at-
16 tained the age of 18 before the beginning
17 of the calendar year,

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

21 “(iv) in the case of an employer that
22 maintains a qualifying plan or arrange-
23 ment which excludes employees who have
24 not satisfied the minimum age and service
25 requirements for participation in the plan,

1 any employee who has not satisfied such
2 requirements,

3 “(v) in the case of an employer that
4 maintains a section 403(b) annuity con-
5 tract (including a custodial account), any
6 employee who is permitted to be excluded
7 from the salary reduction arrangement
8 under section 403(b)(12),

9 “(vi) in the case of an employer that
10 maintains an arrangement described in
11 section 408(p), any employee who is not
12 required to be eligible to participate in the
13 arrangement under section 408(p)(4), and

14 “(vii) in the case of an employer that
15 maintains a simplified employee pension
16 described in section 408(k), any employee
17 who is permitted to be excluded from par-
18 ticipation under section 408(k)(2).

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

22 “(A) guidelines for determining the classes
23 or categories of employees to be covered by an
24 automatic IRA arrangement,

1 “(B) if an employer excludes employees
2 from the automatic IRA arrangement, guide-
3 lines providing that the employer shall specify
4 the classification or categories of employees who
5 are so excluded, and

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

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

10 “(1) IN GENERAL.—The term ‘automatic IRA
11 arrangement’ means an arrangement of an employer
12 (determined without regard to whether the employer
13 is required to maintain the arrangement)—

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

16 “(B) under which a qualifying employee—

17 “(i) may elect—

18 “(I) to contribute to an indi-
19 vidual retirement plan, or to purchase
20 a qualified retirement bond instituted
21 by or on behalf of the employee, by
22 having the employer make periodic di-
23 rect deposit or other payroll deposit
24 payments (including electronic pay-
25 ments) to the plan or to the retire-

1 ment bond trustee or other agent by
2 payroll deduction, or

3 “(II) to have such payments paid
4 to the employee directly in cash,

5 “(ii) is treated as having made the
6 election under clause (i) in the amount
7 specified in paragraph (4) until the indi-
8 vidual specifically elects not to have such
9 contributions or purchases made (or spe-
10 cifically elects to have such contributions
11 or purchases made at a different percent-
12 age or in a different amount), and

13 “(iii) may elect to modify the manner
14 in which such amounts are invested for
15 such year,

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

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

22 “(2) ADMINISTRATIVE REQUIREMENTS.—

23 “(A) PAYMENTS.—The requirements of
24 this paragraph are met with respect to any
25 automatic IRA arrangement if the employer

1 makes the payments elected or treated as elect-
2 ed under paragraph (1)(B)—

3 “(i) on or before the last day of the
4 month following the month in which the
5 compensation otherwise would have been
6 payable to the employee in cash, or

7 “(ii) before such later deadline pre-
8 scribed by the Secretary for making such
9 payments, but not later than the due date
10 for the deposit of tax required to be de-
11 ducted and withheld under chapter 24 (re-
12 lating to collection of income tax at source
13 on wages) for the payroll period to which
14 such payments relate.

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

24 “(C) NOTICE OF ELECTION PERIOD.—The
25 requirements of this paragraph shall not be

1 treated as met with respect to any year unless
2 the employer notifies each employee eligible to
3 participate, within a reasonable period of time
4 before the 30th day before the beginning of
5 such year (and, for the first year the employee
6 is so eligible, the 30th day before the first day
7 such employee is so eligible), of—

8 “(i) the payments that may be elected
9 or treated as elected under paragraph
10 (1)(B),

11 “(ii) the opportunity to make the elec-
12 tion to terminate participation in the ar-
13 rangement under paragraph (2)(B),

14 “(iii) the opportunity to make the
15 election under paragraph (1)(B)(ii) to have
16 contributions or purchases made at a dif-
17 ferent percentage or in a different amount,
18 and

19 “(iv) the opportunity under paragraph
20 (1)(B)(iii) to modify the manner in which
21 such amounts are invested for such year.

22 “(D) EMPLOYEE CHOICE OF IRA.—Subject
23 to subsection (f), if the employer so elects, the
24 arrangement provides that an employee may
25 elect to have contributions made to any indi-

1 vidual retirement plan specified by the em-
2 ployee.

3 “(E) EMPLOYEE CHOICE OF RETIREMENT
4 BOND.—Subject to subsection (f), if the em-
5 ployer so elects, the arrangement provides that
6 an employee may elect to have payments ap-
7 plied toward the purchase of retirement bonds.

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

12 “(A) the employee shall be deemed to have
13 made an election to make contributions and
14 payments in the amount determined under such
15 clause,

16 “(B) such contributions shall—

17 “(i) if the employer has made an elec-
18 tion under subsection (f)(2), be transferred
19 to an individual retirement plan of the des-
20 ignated trustee or issuer but only if the
21 contributions are invested as provided in
22 paragraph (5), or

23 “(ii) be applied toward the purchase
24 of a retirement bond.

1 “(4) AMOUNT OF CONTRIBUTIONS AND PAY-
2 MENTS.—

3 “(A) IN GENERAL.—The amount specified
4 in this paragraph is—

5 “(i) 3 percent of compensation, or

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

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

23 “(C) PERMITTED ADDITIONAL PROCE-
24 DURES TO LIMIT CONTRIBUTIONS.—An em-
25 ployer—

1 “(i) shall have no responsibility for
2 any calendar year for determining whether,
3 or ensuring that, the contributions with re-
4 spect to any employee do not exceed the
5 deductible amount in effect for taxable
6 years beginning in the calendar year under
7 section 219(b)(5) (determined without re-
8 gard to subparagraph (B) thereof), and

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

18 “(5) REQUIRED INVESTMENTS.—Amounts con-
19 tributed under paragraph (3)(B)(i) shall be invested
20 only in one of the following investment options:

21 “(A) PRINCIPAL PRESERVATION.—A class
22 of assets or fund that is designed to protect the
23 principal of the individual on an ongoing basis,
24 including passbook savings, certificates of de-
25 posit, insurance contracts, mutual funds,

1 United States savings bonds (which may be in-
2 dexed for inflation), and similar assets specified
3 in regulations.

4 “(B) TARGET DATE/LIFECYCLE OPTION.—
5 A class of assets or funds that constitutes a
6 qualified default investment alternative under
7 Department of Labor regulation section
8 2550.404e-5(e)(4)(i).

9 “(C) BALANCED OPTION.—A class of as-
10 sets or funds that constitutes a qualified default
11 investment alternative under Department of
12 Labor regulation section 2550.404e-5(e)(4)(ii).

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

22 “(7) TREATMENT AS IRA.—An automatic IRA
23 shall be treated for purposes of this title in the same
24 manner as an individual retirement plan and may be

1 treated as a Roth IRA for purposes of this title if
2 it meets the requirements 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 2010.”.

13 (b) MANDATORY TRANSFERS.—Section
14 401(a)(31)(B) of the Internal Revenue Code of 1986 is
15 amended—

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

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

23 (c) PENALTY FOR FAILURE TIMELY TO REMIT CON-
24 TRIBUTIONS TO AUTOMATIC IRA ARRANGEMENTS.—Sec-
25 tion 4975(c) of the Internal Revenue Code of 1986 is

1 amended by adding at the end the following new para-
2 graph:

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

12 (d) COORDINATION WITH ERISA.—

13 (1) EXEMPTION.—

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

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

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

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

1 be made to an automatic IRA the provider of
2 which is included in the website list established
3 under section 408B(h)(3) of such Code, are to
4 be made to an individual retirement plan des-
5 ignated by the employee, or are to be made to
6 the Secretary of the Treasury for investment in
7 retirement bonds.”.

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) of the Inter-
15 nal Revenue Code of 1986 (relating to reports) is
16 amended by adding at the end the following new
17 sentences: “Any report furnished under paragraph
18 (2) to an individual shall include notice of the inter-
19 net website of the Department of Labor for sources
20 of information on individual investing and diver-
21 sification.”.

22 (2) UPDATE INFORMATION.—Such information
23 shall be modified (or updated) by the Secretary of
24 Labor in consultation with the Secretary of the
25 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 of the Internal Rev-
5 enue Code of 1986 (relating to qualified pension, etc.,
6 plans) is amended by adding at the end the following new
7 section:

8 **“SEC. 4980J. REQUIREMENTS FOR COVERED EMPLOYERS**
9 **TO PROVIDE EMPLOYEES ACCESS TO AUTO-**
10 **MATIC IRA 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 meet the requirements of subsection (d)
14 for a calendar year.

15 “(b) AMOUNT.—

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

20 “(2) TAX NOT TO APPLY WHERE FAILURE NOT
21 DISCOVERED AND REASONABLE DILIGENCE EXER-
22 CISED.—No tax shall be imposed by subsection (a)
23 on any failure during any period for which it is es-
24 tablished to the satisfaction of the Secretary that the
25 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 of such Code is amended by
15 adding at the 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 A of chapter 1 of the Internal Rev-
4 enue Code of 1986 is amended by inserting after the
5 item relating to section 408A the following new
6 item:

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

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

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

10 (k) PREEMPTION OF CONFLICTING STATE LAWS.—

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

21 (l) EFFECTIVE DATE.—The amendments made by
22 this section shall apply to calendar years beginning after
23 December 31, 2011.

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 of the Internal Revenue Code of
5 1986 (relating to business related credits) is amended by
6 adding at the end the following new 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 equal to
21 the lesser 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, or

3 “(B) \$250.

4 “(2) DURATION OF CREDIT.—No credit shall be
5 determined under this section for any taxable year
6 other than a taxable year which begins in the first
7 2 calendar years in which the eligible employer
8 maintains an automatic IRA arrangement meeting
9 the requirements of section 408B.

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

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

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

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

23 “(3) did not maintain a qualifying plan or ar-
24 rangement (described in section 408B(b)) during the
25 portion of the calendar year preceding the adoption

1 of the automatic IRA arrangement and the 2 pre-
2 ceding calendar years.

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

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

12 “(37) in the case of an eligible employer (as de-
13 fined in section 45S(c)) maintaining an automatic
14 IRA arrangement meeting the requirements of sec-
15 tion 408B, the small employer automatic IRA ar-
16 rangement credit determined under section 45S(a).”.

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

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

21 (d) EFFECTIVE DATE.—The amendments made by
22 this section shall apply to taxable years beginning after
23 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, 2011.

10 (b) ELIMINATING BARRIERS TO USE OF MULTIPLE
11 EMPLOYER PLANS.—The Secretaries of the Treasury and
12 Labor shall—

13 (1) prescribe administrative guidance estab-
14 lishing conditions under which an employer partici-
15 pating in a plan described in section 413(c) of the
16 Internal Revenue Code of 1986 shall not have any
17 liability under title I of the Employee Retirement In-
18 come Security Act of 1974 with respect to the acts
19 or omissions of one or more other participating em-
20 ployers, which regulations may require that the por-
21 tion of the plan attributable to such participating
22 employers be spun off to plans maintained by such
23 employers,

24 (2) prescribe administrative guidance estab-
25 lishing conditions under which a plan described in
26 section 413(c) of such Code may be treated as satis-

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

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

14 **SEC. 5. STUDIES.**

15 (a) IN GENERAL.—The Secretary of the Treasury
16 and the Secretary of Labor shall jointly conduct a separate
17 study of the feasibility and desirability of each of the fol-
18 lowing:

19 (1) Extending to automatic IRA arrangements
20 spousal consent requirements similar to, or based
21 on, those that apply under the Federal Employees'
22 Thrift Savings Plan, including consideration of
23 whether modifications of such requirements are nec-
24 essary to apply them to automatic IRA arrange-
25 ments.

1 (2) Promoting the use of low-cost annuities,
2 longevity insurance, or other guaranteed lifetime in-
3 come arrangements in automatic IRA arrangements,
4 including 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 individual retirement arrange-
12 ments.

13 (3) Establishing procedures under which
14 amounts saved by employees in retirement bonds
15 would be automatically transferred into alternative
16 diversified investments provided by the private sector
17 when employees' automatic IRA balances reach a
18 certain dollar level.

19 (b) STUDY OF CONSOLIDATION OF INDIVIDUAL RE-
20 TIREMENT PLANS.—The Secretary of the Treasury and
21 the Secretary of Labor shall jointly conduct a separate
22 study of the feasibility and desirability of—

23 (1) using data submitted on investments in in-
24 dividual retirement accounts and annuities to enable
25 individuals with multiple such accounts and annu-

1 ities that include very small amounts to receive peri-
2 odic notices informing them about the location of
3 these accounts and how such accounts and annuities
4 might be consolidated, and

5 (2) using investment arrangements associated
6 with automatic IRAs to assist in addressing the
7 problem of abandoned accounts.

8 (c) REPORT.—Not later than 18 months after the
9 date of the enactment of this Act, the Secretaries shall
10 report the results of each study conducted under this sec-
11 tion, together with any recommendations for legislative
12 changes, to the Committees on Finance and Health, Edu-
13 cation, Labor, and Pensions of the Senate and the Com-
14 mittees on Ways and Means and Education and Labor of
15 the House of Representatives.

16 (d) EFFECTIVE DATE.—The amendments made by
17 this section shall apply to calendar years beginning on or
18 after the date of the enactment of this Act.

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