

109TH CONGRESS
2^D SESSION

S. 3952

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

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 27, 2006

Mr. BINGAMAN (for himself and Mr. SMITH) 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 allow employees not covered by qualified retirement plans to save for retirement through automatic payroll deposit IRAs, to facilitate similar saving by the self-employed, and for other purposes.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Automatic IRA Act
5 of 2006”.

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

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

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

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

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

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

22 “(A) under which an applicable employee
 23 eligible to participate in the arrangement may
 24 elect to contribute to an individual retirement
 25 plan established by or on behalf of the employee
 26 by having the employer make periodic direct de-

1 posit or other payroll deposit payments (includ-
2 ing electronic payments) to the plan by payroll
3 deduction, and

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

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

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

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

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

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

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

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

16 “(D) the employer provides—

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

24 “(ii) if the arrangement includes an
25 automatic contribution arrangement, the

1 notices required under subsection (g) with
2 respect to the automatic contribution ar-
3 rangement,

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

8 “(F) if the arrangement does not include
9 an automatic contribution arrangement—

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

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

1 matic contribution arrangement under sub-
2 section (g).

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

6 “(1) APPLICABLE EMPLOYEE.—

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

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

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

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

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

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

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

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

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

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

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

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

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

8 “(D) employees who will be eligible to par-
9 ticipate in a qualified plan or arrangement of
10 the employer upon completion of eligibility re-
11 quirements described in section 410(a)(1)(A)
12 (without regard to section 410(a)(1)(B)),

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24 “(A) individual retirement plans specified
25 in paragraph (2), or

1 “(B) individual retirement plans under the
2 payroll tax deposit system established under
3 paragraph (3).

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

15 “(3) PAYROLL TAX DEPOSIT SYSTEM.—The
16 Secretary, in consultation with the TSP II Board,
17 shall establish a system under which an employer—

18 “(A) includes with each deposit of tax re-
19 quired to be deducted and withheld under chap-
20 ter 24 the aggregate amounts, for the period
21 covered by the deposit, which applicable employ-
22 ees designated under subsection (b)(1)(A) (or
23 are deemed to have designated under subsection
24 (b)(2)(F)(ii) or under an automatic contribu-
25 tion arrangement described in subsection (g))

1 for contribution to individual retirement plans,
2 established on behalf of the employees under
3 paragraph (4), and

4 “(B) specifies, in such manner as the Sec-
5 retary may prescribe, for each applicable em-
6 ployee for whom a contribution is to be made
7 the following information:

8 “(i) The employee’s name and TIN.

9 “(ii) The amount of the contribution.

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

16 “(4) ESTABLISHMENT AND MAINTENANCE OF
17 ACCOUNTS UNDER PAYROLL TAX DEPOSIT SYS-
18 TEM.—

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

1 deposit system. To the maximum extent prac-
2 ticable, the TSP II Board shall—

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

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

17 “(B) PAYROLL DEPOSIT FEATURES.—The
18 TSP II Board shall establish procedures so that
19 contributions may be made to individual retire-
20 ment plans (including automatic IRAs) through
21 the payroll tax deposit system described in
22 paragraph (3) without undue administrative or
23 paperwork requirements on employers partici-
24 pating in the payroll tax deposit system. Such

1 procedures shall ensure that only 1 such plan
2 may be established for each TIN.

3 “(C) LIMITATION ON ROLLOVERS TO
4 PLANS OUTSIDE THE SYSTEM.—If—

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

8 “(ii) such amount is paid into an indi-
9 vidual retirement plan established outside
10 of the payroll tax deposit system,

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

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

20 “(1) IN GENERAL.—A payroll deposit IRA ar-
21 rangement may provide that contributions under the
22 arrangement will be made pursuant to an automatic
23 contribution arrangement but only if the arrange-
24 ment meets requirements similar to the require-
25 ments applicable to an eligible automatic contribu-

1 tion arrangement under section 414(w). The Sec-
2 retary shall modify such requirements to the extent
3 necessary to carry out the purposes of this section.

4 “(2) DEFAULT INVESTMENTS.—If an employee
5 is deemed under an automatic contribution arrange-
6 ment to have made an election to participate in a
7 payroll deposit IRA arrangement—

8 “(A) the employee shall be deemed to have
9 made an election to make contributions in the
10 amount specified in paragraph (3),

11 “(B) such contributions shall be trans-
12 ferred to—

13 “(i) an automatic IRA, or,

14 “(ii) if the employer has made an elec-
15 tion under subsection (f)(2), to an indi-
16 vidual retirement plan of the designated
17 trustee or issuer but only if the require-
18 ments of subparagraph (C) are met with
19 respect to such individual retirement plan,
20 and

21 “(C) such contributions shall be invested
22 as provided in paragraph (4).

23 “(3) AMOUNT OF CONTRIBUTIONS.—

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

1 “(B) AUTHORITY OF BOARD TO PROVIDE
2 FOR ANNUAL INCREASES.—The TSP II Board
3 may by regulation provide for annual increases
4 in the percentage of compensation an employee
5 is deemed to have elected under paragraph (2)
6 but in no event shall the percentage of com-
7 pensation an employee is deemed to have elect-
8 ed exceed 8 percent.

9 “(C) CONTRIBUTION LIMIT.—The con-
10 tributions under paragraph (2) on behalf of an
11 employee for any calendar year shall not exceed
12 the dollar limits applicable to the employee for
13 the calendar year under section 219 or 408A.

14 “(4) INVESTMENT IN LIFE CYCLE FUND OR
15 OTHER INVESTMENTS SPECIFIED BY THE BOARD.—
16 Amounts contributed under paragraph (2) shall be
17 invested in—

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

22 “(B) such other investment or investments
23 as the TSP II Board specifies in regulations
24 and which entails asset allocation and extensive
25 diversification.

1 A fund or investment shall meet the requirements of
2 this paragraph only if it is consistent with regula-
3 tions prescribed by the Secretary of Labor under
4 section 404(c)(5) of the Employee Retirement In-
5 come Security Act of 1974.

6 “(5) COORDINATION WITH WITHHOLDING.—
7 The Secretary shall modify the withholding exemp-
8 tion certificate under section 3402(f) so that any no-
9 tice and election requirements with respect to an
10 automatic contribution arrangement which is part of
11 a payroll deposit IRA arrangement may be met
12 through the use of such certificate.

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

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

18 “(A) to notify employees of the require-
19 ment under this section for the employer to pro-
20 vide certain employees with the opportunity to
21 participate in a payroll deposit IRA arrange-
22 ment, and

23 “(B) to satisfy the requirements of sub-
24 section (b)(2)(D).

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

4 “(3) establish a web site or other electronic
5 means for small employers to access and use to ob-
6 tain information on payroll deposit IRA arrange-
7 ments and to obtain required notices and forms.”.

8 (b) PREEMPTION OF CONFLICTING STATE LAWS.—
9 Section 514(e)(1) of the Employee Retirement Income Se-
10 curity Act of 1974 (29 U.S.C. 1144(e)(1)), as added by
11 section 902 of the Pension Protection Act of 2006, is
12 amended to read as follows:

13 “(1) IN GENERAL.—Notwithstanding any other
14 provision of this section, this title shall supersede
15 any law of a State which would directly or indirectly
16 prohibit or restrict—

17 “(A) the inclusion in any plan of an auto-
18 matic contribution arrangement, or

19 “(B) the establishment or operation of a
20 deposit IRA arrangement meeting the require-
21 ments of section 408B of the Internal Revenue
22 Code of 1986 (and the inclusion in such ar-
23 rangement of an automatic contribution ar-
24 rangement).

1 The Secretary may prescribe regulations which
2 would establish minimum standards that an auto-
3 matic contribution arrangement would be required to
4 satisfy in order for this subsection to apply in the
5 case of such arrangement. This subsection shall
6 apply to a plan or arrangement without regard to
7 whether this title applies to such plan or arrange-
8 ment.”.

9 (c) NOTICE OF AVAILABILITY OF INVESTMENT
10 GUIDELINES.—Section 408(i) (relating to reports) is
11 amended by adding at the end the following new sentence:
12 “Any report furnished under paragraph (2) to an indi-
13 vidual shall include notice of the availability of, and meth-
14 ods of acquiring, the basic investment guidelines prepared
15 by the Secretary of Labor.”.

16 (d) DEVELOPMENT OF BASIC INVESTMENT GUIDE-
17 LINES.—

18 (1) IN GENERAL.—The Secretary of Labor
19 shall, in consultation with the Secretary of Treasury,
20 develop and publish basic guidelines for investing for
21 retirement. Except as otherwise provided by the Sec-
22 retary of Labor, such guidelines shall include—

23 (A) information on the benefits of diver-
24 sification,

1 (B) information on the essential dif-
2 ferences, in terms of risk and return, between
3 various pension plan investments, including
4 stocks, bonds, mutual funds, and money market
5 investments,

6 (C) information on how an individual's
7 pension plan investment allocations may differ
8 depending on the individual's age and years to
9 retirement and on other factors determined by
10 the Secretary of Labor,

11 (D) sources of information where individ-
12 uals may learn more about pension rights, indi-
13 vidual investing, and investment advice, and

14 (E) such other information related to indi-
15 vidual investing as the Secretary of Labor de-
16 termines appropriate.

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

21 (A) the retirement age value of the partici-
22 pant's or beneficiary's nonforfeitable pension
23 benefits under the plan (expressed as an annu-
24 ity amount and determined by reference to var-

1 ied historical annual rates of return and annu-
2 ity interest rates), and

3 (B) other important amounts relating to
4 retirement savings, including the amount which
5 a participant or beneficiary would be required
6 to save annually to provide a retirement income
7 equal to various percentages of their current
8 salary (adjusted for expected growth prior to
9 retirement).

10 (3) PUBLIC COMMENT.—The Secretary of
11 Labor shall provide at least 90 days for public com-
12 ment on proposed guidelines before publishing the
13 final guidelines.

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

16 (A) shall be written in a manner calculated
17 to be understood by the average plan partici-
18 pant, and

19 (B) may be delivered in written, electronic,
20 or other appropriate manner to the extent such
21 manner would ensure that the guidelines are
22 reasonably accessible to participants and bene-
23 ficiaries.

24 (e) PENALTY FOR FAILURE TO PROVIDE ACCESS TO
25 PAYROLL SAVINGS ARRANGEMENTS.—Chapter 43 (relat-

1 ing to qualified pension, etc., plans) is amended by adding
2 at the end the following new section:

3 **“SEC. 4980H. REQUIREMENTS FOR EMPLOYERS TO PRO-**
4 **VIDE EMPLOYEES ACCESS TO PAYROLL DE-**
5 **POSIT IRA ARRANGEMENTS.**

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

9 “(b) AMOUNT.—

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

14 “(2) TAX NOT TO APPLY WHERE FAILURE NOT
15 DISCOVERED AND REASONABLE DILIGENCE EXER-
16 CISED.—No tax shall be imposed by subsection (a)
17 on any failure during any period for which it is es-
18 tablished to the satisfaction of the Secretary that the
19 employer subject to liability for the tax did not know
20 that the failure existed and exercised reasonable dili-
21 gence to meet the requirements of subsection (d). In
22 no event shall the tax be imposed with respect to
23 any failure that ends before the expiration of 90
24 days after the employer has responded or has had a

1 reasonable opportunity to respond to a request for
2 confirmation of compliance under subsection (c).

3 “(3) TAX NOT TO APPLY TO FAILURES COR-
4 RECTED WITHIN 30 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 payroll de-
11 posit IRA arrangement described in section
12 408B to each employee eligible to participate in
13 the arrangement by the end of the 30-day pe-
14 riod beginning on the first date the employer
15 knew, or exercising reasonable diligence would
16 have 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.—Not later than 6
24 months after the date of the enactment of this section,
25 the Secretary shall prescribe and implement procedures

1 for obtaining from employers confirmation that such em-
2 ployers are in compliance with the requirements of sub-
3 section (d). The Secretary, in the Secretary’s discretion,
4 may prescribe that the confirmation shall be obtained on
5 an annual or less frequent basis, and may use for this
6 purpose the annual report or quarterly report for employ-
7 ment taxes, or such other means as the Secretary may
8 deem advisable.

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

13 (f) COORDINATION WITH ERISA FIDUCIARY DU-
14 TIES.—Section 404(c)(2) of such Act (29 U.S.C.
15 1104(c)(2)) is amended—

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

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

24 (3) by inserting “or with respect to an indi-
25 vidual retirement plan designated by an employer

1 under section 408B of such Code” after “arrange-
2 ment” in the last sentence.

3 (g) CONFORMING AMENDMENTS.—

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

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

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

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

11 (h) EFFECTIVE DATE.—The amendments made by
12 this section shall apply to calendar years beginning after
13 December 31, 2007.

14 **SEC. 3. CREDIT FOR SMALL EMPLOYERS MAINTAINING**
15 **PAYROLL DEPOSIT IRA ARRANGEMENTS.**

16 (a) IN GENERAL.—Subpart D of part IV of sub-
17 chapter A of chapter 1 (relating to business related cred-
18 its) is amended by adding at the end the following new
19 section:

20 **“SEC. 45N. SMALL EMPLOYER PAYROLL DEPOSIT IRA AR-**
21 **RANGEMENT COSTS.**

22 “(a) GENERAL RULE.—For purposes of section 38,
23 in the case of an eligible employer maintaining a payroll

1 deposit IRA arrangement meeting the requirements of sec-
2 tion 408B (without regard to whether or not the employer
3 is required to maintain the arrangement), the small em-
4 ployer payroll deposit IRA arrangement cost credit deter-
5 mined under this section for any taxable year is the
6 amount determined under subsection (b).

7 “(b) AMOUNT OF CREDIT.—

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

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

18 “(B) \$250.

19 “(2) DURATION OF CREDIT.—No credit shall be
20 determined under this section for any taxable year
21 other than a taxable year which begins in the first
22 2 calendar years in which the eligible employer
23 maintains a payroll deposit IRA arrangement meet-
24 ing the requirements of section 408B.

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

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

12 (b) CREDIT ALLOWED AS PART OF GENERAL BUSI-
13 NESS CREDIT.—Section 38(b) (defining current year busi-
14 ness credit) is amended by striking “and” at the end of
15 paragraph (29), by striking the period at the end of para-
16 graph (30) and inserting “, and”, and by adding at the
17 end the following new paragraph:

18 “(31) in the case of an eligible employer (as de-
19 fined in section 45N(c)) maintaining a payroll de-
20 posit IRA arrangement meeting the requirements of
21 section 408B, the small employer payroll deposit
22 IRA arrangement cost credit determined under sec-
23 tion 45N(a).”

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

“Sec. 45N. Small employer payroll deposit IRA arrangement costs.”.

4 (d) EFFECTIVE DATE.—The amendments made by
 5 this section shall apply to taxable years beginning after
 6 December 31, 2007.

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

8 (a) IN GENERAL.—Subpart A of part I of subchapter
 9 A of chapter 1 (relating to pension, profit-sharing, stock
 10 bonus plans, etc.), as amended by section 2, is amended
 11 by inserting after section 408B the following new section:

12 **“SEC. 408C. AUTOMATIC IRAS.**

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

18 “(b) AUTOMATIC IRA.—For purposes of this section,
 19 the term ‘automatic IRA’ means an individual retirement
 20 plan (as defined in section 7701(a)(37)) which meets the
 21 investment and fee requirements under the regulations
 22 under subsection (c).

23 “(c) INVESTMENT AND FEE REQUIREMENTS.—

24 “(1) IN GENERAL.—The TSP II Board, in con-
 25 sultation with the Secretary and the Secretary of

1 Labor, shall, not later than 1 year after the date of
2 the enactment of this section, prescribe regulations
3 which set forth the requirements of this subsection
4 which an individual retirement plan must meet in
5 order to be treated as an automatic IRA.

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

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

18 “(B) Any other investment option specified
19 in the regulations.

20 Such regulations shall specify which of the invest-
21 ment options shall be treated as default investment
22 options for purposes of section 408B(g)(4).

23 “(3) INVESTMENT FEES.—

24 “(A) IN GENERAL.—The regulations under
25 paragraph (1) shall provide that an automatic

1 IRA shall not charge any investment fees
 2 which, in the aggregate, are not reasonable (as
 3 determined under such regulations).

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

11 (b) MANDATORY TRANSFERS.—Section
 12 401(a)(31)(B) is amended—

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

16 (2) by adding at the end the following new sen-
 17 tence: “Any amount so transferred (and any earn-
 18 ings thereon) shall be invested in a default invest-
 19 ment described in section 408B(g)(4).”

20 (c) CLERICAL AMENDMENT.—The table of sections
 21 for subpart A of part I of subchapter A of chapter 1 is
 22 amended by inserting after the item relating to section
 23 408B the following new item:

“Sec. 408C. Automatic IRAs.”.

24 (d) EFFECTIVE DATE.—The amendments made by
 25 this section shall apply to calendar years beginning on or

1 after the date on which proposed and temporary or final
2 regulations described in section 408C(e) of the Internal
3 Revenue Code of 1986 (as added by this Act) are issued.

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

5 (a) ESTABLISHMENT.—There is established in the ex-
6 ecutive branch of the Government a TSP II Board. The
7 board shall be established and maintained in the same
8 manner as the Federal Retirement Thrift Investment
9 Board under subchapter VII of chapter 84 of title 5,
10 United States Code.

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

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

18 (1) establishment and maintenance of individual
19 retirement plans under the payroll tax deposit sys-
20 tem established under section 408B(f)(3) of the In-
21 ternal Revenue Code of 1986,

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

24 (3) the amount of contributions, and the invest-
25 ment of such contributions, under automatic con-

1 tribution arrangements under section 408B(g) of
2 such Code, including the designation of investment
3 funds in which such contributions may be invested,
4 and

5 (4) the establishment of automatic IRAs under
6 section 408C of such Code, including the issuance of
7 regulations under subsection (c) of such section.

8 (d) BEST PRACTICES.—The TSP II Board shall, on
9 a continual basis, prescribe and encourage best practices
10 (including cost efficiencies and innovations) in enrollment,
11 investment, distribution, and other procedures or arrange-
12 ments relating to retirement savings and investment. In
13 carrying out its responsibilities under this section, the
14 TSP II Board may implement (by contract or otherwise)
15 pilot projects to help assess the efficacy and workability
16 of specific practices and arrangements.

17 (e) EXPANSION OF USE OF IRAS BY SELF-EM-
18 PLOYED AND OTHER INDIVIDUALS.—The TSP II Board
19 shall establish procedures to disseminate information
20 (through use of the Internet and other appropriate means)
21 to—

22 (1) facilitate and encourage the use by self-em-
23 ployed and other individuals of automatic debit and
24 similar arrangements for investment in individual re-
25 tirement plans, including automatic IRAs,

1 (2) facilitate and encourage efforts by voluntary
2 associations to promote savings in individual retire-
3 ment plans, including automatic IRAs, by their
4 members and others, and

5 (3) facilitate and encourage the direct deposit
6 of Federal and State income tax refunds in indi-
7 vidual retirement plans, including automatic IRAs.

8 (f) EXCLUSIVE INTEREST.—The members of the
9 TSP II Board shall discharge their responsibilities solely
10 in the interest of participants and beneficiaries under the
11 payroll tax deposit system established under section 408B
12 of the Internal Revenue Code of 1986.

13 (g) OTHER PROVISIONS MADE APPLICABLE.—The
14 provisions of subsections (f)(3), (g), (i), and (j) of section
15 8472 of title 5, United States Code, shall apply to the
16 TSP II Board.

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