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
JULY 27, 2017

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

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

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; REFERENCE.

(a) Short Title.—This Act may be cited as the “Automatic IRA Act of 2017”.

115TH CONGRESS
1ST SESSION
H. R. 3499

H. R. 3499

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.
(b) Amendment of 1986 Code.—Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1986.

SEC. 2. EMPLOYEES NOT COVERED BY QUALIFYING RETIREMENT PLANS OR ARRANGEMENTS ENTITLED TO PARTICIPATE IN AUTOMATIC IRA ARRANGEMENTS.

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

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

“(a) Requirement To Provide Automatic IRA Arrangement.—Each covered employer shall make available to each qualifying employee of the employer for the calendar year an automatic IRA arrangement.

“(b) Covered Employer.—For purposes of this section—

“(1) In General.—Except as otherwise provided in this subsection or subsection (c)(2), the term ‘covered employer’ means, with respect to any
year, an employer which does not maintain a qualifying plan or arrangement described in section 219(g)(5) for the calendar year.

“(2) EXCLUDED PLANS.—A qualifying plan or arrangement shall not be taken into account for purposes of paragraph (1) if—

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

or

“(B) in the case of a plan or arrangement under which the only contributions are discretionary on the part of the employer or other plan sponsor, no employer contribution has been made to the plan or arrangement for the 2-plan-year period ending with the last plan year ending in the second preceding calendar year and it is not reasonable to assume that an employer contribution will be made for the last plan year ending in the preceding calendar year.

“(3) EXCEPTION FOR CERTAIN SMALL AND NEW EMPLOYERS.—The term ‘covered employer’ does not include an employer for a calendar year if the employer either—
“(A) did not employ more than 10 employees who received at least $5,000 of compensation (as defined in section 3401(a)) from the employer for the preceding calendar year,

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

“(C) was not in existence at all times during the calendar year and the preceding calendar year.

“(4) Exception for governments and churches.—The term ‘covered employer’ does not include—

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

“(B) a church or a convention or association of churches which is exempt from tax under section 501.

“(5) Aggregation rule.—All persons treated as a single employer under subsection (a) or (b) of section 52 or subsection (m) or (o) of section 414 shall be treated as a single employer.

“(6) Operating rules.—In determining the number of employees for purposes of this section—
“(A) rules consistent with any rules applicable in determining the number of employees for purposes of section 408(p)(2)(C) and section 4980B(d) shall apply,

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

“(C) any reference to an employer shall include a reference to any predecessor employer.

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

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

“(2) PLAN SPONSOR’S EMPLOYEES.—If—

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

“(B) the employees of a subsidiary, division, or other major business unit are generally not eligible to participate in any such qualifying plan or arrangement,

then, for purposes of this section, the employer shall be treated as a covered employer with respect to such employees (other than excluded employees),
and such employees (other than excluded employees) shall be treated as qualifying employees, but only if there are 50 or more ineligible employees of such subsidiary, division or other major business unit constituting at least 10 percent of the employees of the employer (other than excludable employees).

“(3) EXCLUDED EMPLOYEES.—

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

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

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

“(ii) any employee who has not attained the age of 18 before the beginning of the calendar year,

“(iii) any employee who has not completed at least 3 months of service with the employer,

“(iv) in the case of an employer that maintains a qualifying plan or arrangement which excludes employees who have
not satisfied the minimum age and service requirements for participation in the plan, any employee who has not satisfied such requirements,

“(v) in the case of an employer that maintains a section 403(b) annuity contract (including a custodial account or retirement income account), any employee who is permitted to be excluded from any salary reduction arrangement under the contract pursuant to section 403(b)(12),

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

“(vii) in the case of an employer that maintains a simplified employee pension described in section 408(k), any employee who is permitted to be excluded from participation under section 408(k)(2).

“(4) GUIDANCE.—The Secretary shall issue regulations or other guidance to carry out this subsection, including—
“(A) guidelines for determining the classes or categories of employees to be covered by an automatic IRA arrangement,

“(B) if an employer excludes employees from the automatic IRA arrangement, guidelines providing that the employer shall specify the classification or categories of employees who are so excluded, and

“(C) rules to prevent avoidance of the requirements of this section.

“(d) Automatic IRA Arrangement.—For purposes of this section—

“(1) In General.—The term ‘automatic IRA arrangement’ means an arrangement of an employer (determined without regard to whether the employer is required to maintain the arrangement)—

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

“(B) under which a qualifying employee—

“(i) may elect—

“(I) to contribute to an individual retirement plan, or to purchase a qualified retirement bond on behalf of the employee, by having the employer deposit payroll deduction
amounts or make other periodic direct
deposits (including electronic pay-
ments) to the plan or to be invested in
retirement bonds (whether to the Sec-
retary of the Treasury or to a des-
ignated trustee or other agent for that
purpose), or

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

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

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

“(C) which meets the administrative re-
quirements of paragraph (2), including the no-
tice requirement of paragraph (2)(C), and
“(D) which does not charge unreasonable additional fees solely on the basis that the balance in an automatic IRA is small.

“(2) ADMINISTRATIVE REQUIREMENTS.—

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

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

“(ii) before such later deadline prescribed by the Secretary for making such payments, but not later than the due date for the deposit of tax required to be deducted and withheld under chapter 24 (relating to collection of income tax at source on wages) for the payroll period to which such payments relate.

“(B) TERMINATION OF EMPLOYEE PARTICIPATION.—Subject to a requirement for reasonable notice, an employee may elect to terminate participation in the arrangement at any
time during a calendar year, except that if an employee so terminates, the arrangement may provide that the employee may not elect to resume participation until the beginning of the next calendar year.

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

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

“(ii) the opportunity to make the election to terminate participation in the arrangement under subparagraph (B),

“(iii) the opportunity to make the election under paragraph (1)(B)(ii) to have contributions or purchases made at a different percentage or in a different amount, and
“(iv) the opportunity under paragraph (1)(B)(iii) to modify the manner in which such amounts are invested for such year.

“(D) Employer may permit employees to choose IRA.—Subject to subsection (f), if the employer so elects, the arrangement provides that an employee may elect to have contributions made to any individual retirement plan specified by the employee.

“(E) Employer may permit employees to choose retirement bond.—Subject to subsection (f), if the employer so elects, the arrangement provides that an employee may elect to have payments applied toward the purchase of retirement bonds.

“(3) Default investments.—If an employee is treated under clause (ii) of paragraph (1)(B) as having made an election to participate in an automatic IRA arrangement—

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

“(B) such contributions shall—
“(i) if the employer has made an election under subsection (f)(2), be transferred to an individual retirement plan of the designated trustee or issuer but only if the contributions are invested as provided in paragraph (5), or

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

“(4) Amount of Contributions and Payments.—

“(A) In General.—The amount specified in this paragraph is—

“(i) 3 percent of compensation, or

“(ii) such other percentage of compensation as is specified in regulations prescribed by the Secretary which is not less than 2 percent or more than 6 percent.

“(B) Authority to Provide for Periodic Increases.—In the case of qualifying employees under an automatic IRA arrangement for 2 or more consecutive years, the Secretary may by regulation provide for periodic (not more frequent than annual) increases in the percentage of compensation an employee is deemed to have elected under subparagraph
(A). The considerations the Secretary shall take into account in issuing any regulations under this subparagraph and subparagraph (A) shall include the potential effects on lower-income employees as well as on adequacy of savings.

“(C) PERMITTED ADDITIONAL PROCEDURES TO LIMIT CONTRIBUTIONS.—An employer—

“(i) shall have no responsibility for any calendar year for determining whether, or ensuring that, the contributions with respect to any employee do not exceed the deductible amount in effect for taxable years beginning in the calendar year under section 219(b)(5) (determined without regard to subparagraph (B) thereof), and

“(ii) shall not be treated as failing to satisfy the requirements of this section or any other provision of this title merely because the employer chooses to limit the contributions under this subsection on behalf of a qualifying employee for any calendar year in a manner reasonably designed to avoid exceeding such deductible amount.
“(5) REQUIRED INVESTMENTS.—

“(A) IN GENERAL.—Amounts contributed under paragraph (3)(B)(i) shall be invested only in the class of assets or funds described in subparagraph (B) unless the employer elects a class of assets or funds described in subparagraph (C), (D), (E), or (F).

“(B) TARGET DATE/LIFECYCLE OPTION.— The class of assets or funds described in this subparagraph is the class of assets or funds that constitutes a qualified default investment alternative under Department of Labor regulation section 2550.404c–5(e)(4)(i).

“(C) PRINCIPAL PRESERVATION.—The class of assets or funds described in this subparagraph is the class of assets or funds that is designed to protect the principal of the individual on an ongoing basis, including passbook savings, certificates of deposit, insurance contracts, mutual funds, United States savings bonds (which may be indexed for inflation), including through a myRA established for the benefit of the employee, and similar assets specified in regulations.
“(D) BALANCED OPTION.—The class of assets or funds described in this subparagraph is the class of assets or funds that constitutes a qualified default investment alternative under Department of Labor regulation section 2550.404c–5(e)(4)(ii).

“(E) GUARANTEED LIFETIME INCOME OPTION OR EQUIVALENT.—The class of assets or funds described in this subparagraph is the class of assets or funds that is designed to provide an employee with the right to elect to receive distributions as a defined level of income annually (or more frequently) for at least the remainder of the life of the employee or the joint lives of the employee and the employee’s designated beneficiary. No later than 12 months after the date of enactment of this Act, the Secretary of Labor and the Secretary shall issue guidance defining a guaranteed lifetime income or equivalent.

“(F) OTHER.—Any other class of assets or funds determined by the Secretary to be a qualified investment for purposes of this section.
“(6) COORDINATION WITH WITHHOLDING.—
The Secretary shall modify the withholding exemp-
tion certificate under section 3402(f) so that, in the
case of any qualifying employee covered under an
automatic IRA arrangement, any notice and election
requirements with respect to the arrangement may
be met through the use of an attachment to such
certificate or other modifications of the withholding
exemption procedures.

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

tablished for the benefit of the employee.

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

“(e) AUTOMATIC IRA CONTRIBUTIONS AND RETIREMENT BOND PURCHASES TREATED LIKE OTHER CONTRIBUTIONS TO INDIVIDUAL RETIREMENT PLANS.—

“(1) TAX TREATMENT UNAFFECTED.—The fact that a contribution to an individual retirement plan or purchase of a retirement bond is made on behalf of an employee under an automatic IRA arrangement instead of being made directly by the employee shall not affect the deductibility or other tax treatment of the contribution or of other amounts under this title.

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

“(f) Deposits to Plans of a Designated Trustee or Issuer and for Retirement Bonds.—

“(1) In general.—An employer shall not be
treated as failing to satisfy the requirements of this
section or any other provision of this title merely be-
cause the employer makes all contributions (or all
contributions on behalf of employees who do not
specify an individual retirement plan, trustee, or
issuer to receive the contributions) to individual re-

tirement plans specified in paragraph (2) or to the
Secretary or his agent for the purchase of retirement
bonds specified in paragraph (3).

“(2) Individual retirement plans other
than those selected by employee.—An em-
ployer may elect to have contributions for all qual-
ifying employees participating in an automatic IRA
arrangement made to individual retirement plans of
a trustee or issuer under the arrangement that has
been designated by the employer. The preceding sen-
tence shall not apply unless each participant is noti-
ified in writing that the participant’s balance may be
transferred without cost or penalty to another indi-
individual retirement plan established by or on behalf of
the participant.

“(3) Retirement bonds.—

“(A) In general.—The Secretary shall
provide that contributions deposited under sub-
paragraph (B) shall be applied to the purchase
of a retirement bond in the name of each appli-
cable employee.

“(B) Payroll deposit features.—The
Secretary shall establish procedures so that con-
tributions may be applied to the purchase of re-
tirement bonds without undue administrative or
paperwork requirements on participating em-
ployers. Such procedures shall ensure that only
1 such retirement bond of each type (traditional
or Roth) is issued for each TIN.

“(4) Payroll tax deposit procedure.—The
procedures the Secretary shall establish may include
a procedure under which an employer—

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

“(B) specifies, in such manner as the Secretary may prescribe, information needed to purchase retirement bonds on behalf of each applicable employee for whom a contribution is to be made, including—

“(i) the employee’s name and TIN, and

“(ii) the amount of the contribution.

“(5) PURPOSES.—The purposes of the retirement bond program established under this subsection and subsection (g) include—

“(A) providing new savers a convenient, low-cost investment option suitable for the initial accumulation of small automatic IRA contributions,

“(B) reflecting the intent that the long-term investment of automatic IRA funds for most savers be in the private market rather than in retirement bonds, encouraging and assisting individuals who accumulate larger amounts in retirement bonds to transfer those
funds to individual retirement plans in the private market, while

“(C) permitting individuals to remain invested in retirement bonds if they choose to do so.

“(6) REGULATIONS.—The Secretary may issue such regulations as are necessary to carry out the purposes of this subsection and subsection (g), including—

“(A) establishment of procedures to communicate to individuals the importance of investment diversification and the transfer option described in subparagraph (B),

“(B) simplified procedures under which holders of retirement bonds may periodically choose to have the bonds or their proceeds transferred to available individual retirement plans, and

“(C) means by which individuals may elect (or be treated as electing) whether to have retirement bonds or their proceeds so transferred. Any such transfer shall be treated as a rollover contribution for purposes of section 408(d)(3) (other than subparagraph (B) thereof).

“(g) RETIREMENT BOND.—
“(1) Retirement bond.—For purposes of this section, the term ‘retirement bond’ means a bond issued under chapter 31 of title 31, which by its terms, or by regulations prescribed by the Secretary under such chapter—

“(A) provides for interest to be credited at rates that take into account the expected duration of the funds invested in retirement bonds and at rates determined or adjusted in a manner and with sufficient frequency to provide substantial protection from inflation,

“(B) is not transferable, and

“(C) is designed for investment for retirement under automatic IRA arrangements or other savings vehicles.

“(2) Individual retirement plan rules applicable.—The provisions of this title applicable to an individual retirement plan (as defined in section 7701(a)(37)), including provisions relating to contributions, holding and distributions, shall apply to a retirement bond, except as determined by the Secretary.

“(3) Annual statement.—As soon as practicable after the close of the calendar year, the Sec-
retary shall make available an annual statement to each participant setting forth—

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

“(B) amounts earned by the retirement bond,

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

“(D) the importance of diversifying retirement savings,

“(E) the benefits of a well-balanced and diversified investment portfolio,

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

“(G) the procedures for redeeming a retirement bond and directly transferring the redeemed amount into an individual retirement plan,

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

“(I) such other information as the Secretary determines necessary or appropriate.

“(h) MODEL NOTICE.—The Secretary shall—
“(1) provide a model notice, written in a manner calculated to be understandable to the average worker, that is simple for employers to use—

“(A) to notify employees of the requirement under this section for the employer to provide certain employees with the opportunity to participate in an automatic IRA arrangement, and

“(B) to satisfy the requirements of subsection (d)(2)(C),

“(2) provide uniform forms for enrollment, including automatic enrollment, in an automatic IRA arrangement, and

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

The information referred to in paragraph (3) shall be provided in a manner designed to assist employers and providers by facilitating the identification by employers of private-sector providers of individual retirement plans and associated investment options that are appropriate for use in automatic IRA arrangements.
“(i) Cross Reference.—For provision preempting conflicting State laws, see section 2(k) of the Automatic IRA Act of 2017.”.

(b) Mandatory Transfers.—Section 401(a)(31)(B) is amended—

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

(2) by adding at the end the following new sentence: “Any amount so transferred (and any earnings thereon) shall be invested in a default investment described in section 408B(d)(5).”.

(c) Penalty for Failure to Timely Remit Contributions to Automatic IRA Arrangements.—Section 4975(c) is amended by adding at the end the following new paragraph:

“(7) Special rule for automatic IRA arrangements.—For purposes of paragraph (1), if an employer is required under an automatic IRA arrangement under section 408B to deposit amounts withheld from an employee’s compensation into an automatic IRA or toward the purchase of a retirement bond but fails to do so within the time prescribed under section 408B(d)(2)(A), such amounts shall be treated as assets of the automatic IRA.”.
(d) Coordination With Employee Retirement Income Security Act of 1974.—

(1) Exemption.—

(A) In general.—Section 3(2) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002(2)) is amended—

(i) by inserting "or (C)" after "sub-
paragraph (B)" in subparagraph (A), and

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

"(C) An automatic IRA arrangement de-
scribed in section 408B(d) of the Internal Rev-
enue Code of 1986 shall not be treated as an employee pension benefit plan or pension plan if, under the arrangement, contributions are to be made to an automatic IRA the provider of which is included in the website list established under section 408B(h)(3) of such Code, are to be made to an individual retirement plan des-
ignated by the employee, or are to be invested in retirement bonds (whether to the Secretary of the Treasury or to a designated trustee or other agent for that purpose).".

(B) Customer identification program.—Notwithstanding the amendment made
by subparagraph (A), an individual retirement plan established pursuant to an automatic IRA arrangement described in section 408B(d) of the Internal Revenue Code of 1986 shall, for purposes of any customer identification program established under section 5318(l) of title 31, United States Code, be treated as an account opened for the purpose of participating in an employee benefit plan established under the Employee Retirement Income Security Act of 1974.

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

(A) by inserting the following sentence before the last sentence: “In the case of an automatic IRA under section 408B of such Code that is not exempt under section 3(2)(C), a participant or beneficiary shall, for purposes of paragraph (1), be treated as exercising control over the assets in the account on and after the 7th day after notice has been given to an employee that such automatic IRA has been established on behalf of the employee.”, and

(B) by inserting “or with respect to an automatic IRA under section 408B of such
Code” after “arrangement” in the last sentence.

(c) NOTICE OF AVAILABILITY OF INVESTMENT GUIDELINES.—

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

(2) UPDATE INFORMATION.—Such information shall be modified (or updated) by the Secretary of Labor in consultation with the Secretary of the Treasury and the Chairman of the Securities and Exchange Commission to address needed changes due to the creation of automatic IRAs.

(f) FAILURE TO PROVIDE ACCESS TO PAYROLL SAVINGS ARRANGEMENTS.—Chapter 43 (relating to qualified pension, etc., plans) is amended by adding at the end the following new section:
SEC. 4980J. REQUIREMENTS FOR COVERED EMPLOYERS TO PROVIDE EMPLOYEES ACCESS TO AUTOMATIC IRA ARRANGEMENTS.

(a) General Rule.—There is hereby imposed a tax on any failure by a covered employer (as defined in section 408B) to meet the requirements of subsection (d) for a calendar year.

(b) Amount.—

(1) In general.—The amount of the tax imposed by subsection (a) on any failure for any calendar year shall be $100 with respect to each employee to whom such failure relates.

(2) Tax not to apply where failure not discovered and reasonable diligence exercised.—No tax shall be imposed by subsection (a) on any failure during any period for which it is established to the satisfaction of the Secretary that the employer subject to liability for the tax did not know that the failure existed and exercised reasonable diligence to meet the requirements of subsection (d).

(3) Tax not to apply to failures corrected within 90 days.—No tax shall be imposed by subsection (a) on any failure if—

(A) the employer subject to liability for the tax under subsection (a) exercised reason-
able diligence to meet the requirements of subsection (d), and

“(B) the employer provides the automatic IRA arrangement described in section 408B to each employee eligible to participate in the arrangement by the end of the 90-day period beginning on the first date the employer knew, or exercising reasonable diligence would have known, that such failure existed.

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

“(c) PROCEDURES FOR NOTICE.—The Secretary may prescribe and implement procedures for obtaining confirmation that employers are in compliance with the requirements of subsection (d). The Secretary, in the Secretary’s discretion, may prescribe that the confirmation shall be obtained on an annual or less frequent basis, and may use for this purpose the annual report or quarterly report for employment taxes, or such other means as the Secretary may deem advisable.
“(d) Requirement to Provide Employee Access to Automatic IRA Arrangements.—The requirements of this subsection are met if the employer meets the requirements of section 408B.”.

(g) Waiver of Early Withdrawal Penalty for Certain Distributions Following Initial Election To Participate in Automatic IRA Arrangement.—Section 72(t) is amended by adding at the end the following new paragraph:

“(11) Distribution following initial election to participate in automatic IRA arrangement.—Paragraph (1) shall not apply in the case of a distribution to a qualifying employee made not later than 90 days after the initial election under section 408B(d)(1)(B)(ii).”.

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

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

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

(i) Automatic IRA Advisory Group.—

(1) In General.—Not later than 60 days after the date of the enactment of this Act, the Secretary
of the Treasury and the Secretary of Labor shall jointly establish an Automatic IRA Advisory Group (in this subsection referred to as the “Advisory Group”). The purpose of the Advisory Group shall be to make recommendations regarding the automatic IRA investment options described in section 408B(d)(5) of the Internal Revenue Code of 1986 and the website described in section 408B(h)(3) of such Code, including, with respect to automatic IRA arrangements, the disclosure of information regarding fees and expenses, the use of low-cost investment options, the appropriate use of electronic methods to provide notice and disclosure, and such other related matters as may be determined by the Secretaries.

(2) Membership.—The Advisory Group shall consist of not more than 15 members and shall be composed of—

(A) such persons as the Secretaries of the Treasury and Labor may consider appropriate to provide expertise regarding investments for retirement, including providers of individual retirement accounts and individual retirement annuities described in section 408 or 408A of such Code, and
(B) one or more representatives of the Department of Labor and of the Department of the Treasury.

(3) COMPENSATION.—The members of the Advisory Group shall serve without compensation.

(4) ADMINISTRATIVE SUPPORT.—The Department of the Treasury and the Department of Labor shall jointly provide appropriate administrative support to the Advisory Group, including technical assistance. The Advisory Group may use the services and facilities of such Departments, with or without reimbursement, as jointly determined by such Departments.

(5) REPORT BY ADVISORY GROUP.—Not later than 12 months after the date of the enactment of this Act, the Advisory Group shall submit to the Secretary of Labor and the Secretary of the Treasury a report containing its recommendations. The Secretaries may request that the Advisory Group submit subsequent reports.

(j) CONFORMING AMENDMENTS.—

(1) The table of sections for subpart A of part I of subchapter D of chapter 1 is amended by inserting after the item relating to section 408A the following new item:

“Sec. 408B. Right to automatic IRA arrangements at work.”.
(2) The table of sections for chapter 43 is amended by adding at the end the following new item:

“Sec. 4980J. Requirements for employers to provide employees access to automatic IRA arrangements.”.

(k) Preemption of Conflicting State Laws.—The amendments made by this section shall supersede any law of a State that would directly or indirectly prohibit or restrict the establishment or operation of an automatic IRA arrangement meeting the requirements of section 408B of the Internal Revenue Code of 1986. Nothing in such amendments shall be construed to impair or supersede any State law to the extent it provides a remedy for the failure to make payroll deposit payments under any such automatic IRA arrangement within the period required under such section 408B.

(l) Effective Date.—The amendments made by this section shall apply to calendar years beginning after December 31, 2018.

SEC. 3. CREDIT FOR SMALL EMPLOYERS MAINTAINING AUTOMATIC IRA ARRANGEMENTS.

(a) In General.—Subpart D of part IV of subchapter A of chapter 1 (relating to business related credits) is amended by adding at the end the following new section:
SEC. 45S. SMALL EMPLOYER AUTOMATIC IRA ARRANGEMENT.

(a) GENERAL RULE.—For purposes of section 38, in the case of an eligible employer maintaining an automatic IRA arrangement meeting the requirements of section 408B (without regard to whether the employer is required to maintain the arrangement), the small employer automatic IRA arrangement credit determined under this section for any taxable year is the amount determined under subsection (b).

(b) AMOUNT OF CREDIT.—

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

(A) $25 multiplied by the number of qualifying employees (within the meaning of section 408B(c)) for whom contributions are made under the automatic IRA arrangement referred to in subsection (a) for the calendar year in which the taxable year begins, plus

(B) $500 for the taxable year which begins in the first calendar year, and $250 for the taxable year which begins in the second calendar year, in which the eligible employer main-
tains an automatic IRA arrangement meeting the requirements of section 408B.

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

“(3) DURATION OF CREDIT.—The credit described in paragraph (1)(A) shall apply only for a taxable year which begins in the first 6 calendar years in which the eligible employer maintains an automatic IRA arrangement meeting the requirements of section 408B.

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

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

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

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

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

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

“(3) did not maintain a qualifying plan or arrangement (described in section 408B(b)) during the portion of the calendar year preceding the adoption of the automatic IRA arrangement and the 2 preceding calendar years.

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

(b) CREDIT ALLOWED AS PART OF GENERAL BUSINESS CREDIT.—Section 38(b) is amended by striking “plus” at the end of paragraph (35), by striking the period at the end of paragraph (36) and inserting “, plus”, and by adding at the end the following new paragraph:

“(37) in the case of an eligible employer (as defined in section 45S(e)) maintaining an automatic
IRA arrangement meeting the requirements of section 408B, the small employer automatic IRA arrangement credit determined under section 45S(a).”.

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

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

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2018.

SEC. 4. STUDIES.

(a) IN GENERAL.—The Secretary of the Treasury and the Secretary of Labor shall jointly conduct a separate study of the feasibility and desirability of each of the following:

(1) Extending to automatic IRA arrangements spousal consent requirements similar to, or based on, those that apply under the Federal Employees’ Thrift Savings Plan, including consideration of whether modifications of such requirements are necessary to apply them to automatic IRA arrangements.

(2) Establishing procedures under which amounts saved by employees in retirement bonds would be automatically transferred into alternative diversified investments provided by the private sector.
when employees’ automatic IRA balances reach a certain dollar level as well as procedures facilitating employees’ ability to transfer into such private sector investments.

(b) Study of Consolidation of Individual Retirement Plans.—The Secretary of the Treasury and the Secretary of Labor shall jointly conduct a separate study of the feasibility and desirability of—

(1) using data submitted on investments in individual retirement accounts and annuities to enable individuals with multiple such accounts and annuities that include very small amounts to receive periodic notices informing them about the location of these accounts and how such accounts and annuities might be consolidated, and

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

(c) Report.—Not later than 18 months after the date of the enactment of this Act, the Secretaries shall report the results of each study conducted under this section, together with any recommendations for legislative changes, to the Committees on Finance and Health, Education, Labor, and Pensions of the Senate and the Com-
mittees on Ways and Means and Education and the Work-

force of the House of Representatives.

SEC. 5. ELIMINATING BARRIERS TO USE OF MULTIPLE EMP-

LOYER PLANS.

By December 31, 2018, the Secretaries of the Treas-

ury and Labor shall—

(1) prescribe administrative guidance estab-

lishing conditions under which an employer partici-

pating in a plan described in section 413(c) of the

Internal Revenue Code of 1986 shall not have any

liability under title I of the Employee Retirement In-

come Security Act of 1974 with respect to the acts

or omissions of one or more other participating em-

ployers, which regulations may require that the por-

tion of the plan attributable to such participating

employers be spun off to plans maintained by such

employers,

(2) prescribe administrative guidance estab-

lishing conditions under which a plan described in

section 413(c) of such Code may be treated as satis-

fying the qualification requirements of sections

401(a) and 413(c) of such Code despite the violation

of such requirements by one or more participating

employers, including requiring, if appropriate, that

the portion of the plan attributable to such partici-
pating employers be spun off to plans maintained by such employers, and

(3) prescribe administrative guidance providing simplified means by which plans described in section 413(e) of such Code may satisfy the requirements of section 103 of the Employee Retirement Income Security Act of 1974.

SEC. 6. INCREASE IN CREDIT LIMITATION FOR SMALL EMPLOYER PENSION PLAN STARTUP COSTS.

(a) In General.—Section 45E(b)(1) is amended to read as follows:

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

“(A) $500, or

“(B) the lesser of—

“(i) $250 for each employee of the eligible employer who is not a highly compensated employee (as defined in section 415(q)) and who is eligible to participate in the eligible employer plan maintained by the eligible employer, or

“(ii) $5,000, and”.

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