

**[DISCUSSION DRAFT]**

NOVEMBER 12, 2020

116TH CONGRESS  
2D SESSION

**H. R.** \_\_\_\_\_

To amend the Internal Revenue Code of 1986 to expand retirement plan coverage, increase retirement security, and for other purposes.

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Mr. NEAL introduced the following bill; which was referred to the Committee on \_\_\_\_\_

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**A BILL**

To amend the Internal Revenue Code of 1986 to expand retirement plan coverage, increase retirement security, 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; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the  
5 “Automatic Retirement Plan Act of 2020”.

6 (b) TABLE OF CONTENTS.—The table of contents of  
7 this Act is as follows:

- Sec. 1. Short title; table of contents.  
Sec. 2. Employers required to maintain automatic contribution plan.  
Sec. 3. Deferral-only arrangements.  
Sec. 4. Increase in credit limitation for small employer pension plan startup costs for automatic contribution plans.  
Sec. 5. Treatment of automatic contribution plans under State law.  
Sec. 6. Application of credit for small employer pension plan startup costs to employers which join an existing plan.

1 **SEC. 2. EMPLOYERS REQUIRED TO MAINTAIN AUTOMATIC**  
2 **CONTRIBUTION PLAN.**

3 (a) **AUTOMATIC CONTRIBUTION PLAN.**—

4 (1) **IN GENERAL.**—Section 414 of the Internal  
5 Revenue Code of 1986 is amended by adding at the  
6 end the following:

7 “(aa) **AUTOMATIC CONTRIBUTION PLAN.**—For pur-  
8 poses of this title—

9 “(1) **IN GENERAL.**—The term ‘automatic con-  
10 tribution plan’ means—

11 “(A) a defined contribution plan that—

12 “(i) is described in clause (i), (ii), or  
13 (iv) of section 219(g)(5)(A),

14 “(ii) is described in paragraph (2),

15 “(iii) meets the notice requirements  
16 of, or similar to, the notice requirements of  
17 section 401(k)(13)(E), and

18 “(iv) meets the eligibility, contribu-  
19 tion, investment, lifetime income, and fee  
20 requirements of paragraphs (3), (4), (5),  
21 (6), and (7), respectively,

1           “(B) an automatic IRA arrangement de-  
2           scribed in paragraph (8) that meets the eligi-  
3           bility, contribution, investment, and fee require-  
4           ments of paragraphs (3), (4), (5), and (7)

5           “(C) an arrangement described in section  
6           408(p) that—

7                   “(i) meets the contribution, invest-  
8                   ment, and fee requirements described in  
9                   paragraphs (4), (5), and (7), and

10                   “(ii) meets notice requirements simi-  
11                   lar to the notice requirements of section  
12                   401(k)(13)(E), or

13           “(D) A plan described in clause (i), (ii),  
14           (iv), (v), or (vi) of section 219(g)(5)(A) that—

15                   “(i) is maintained by an employer as  
16                   of the date of enactment of the Automatic  
17                   Retirement Plan Act of 2020,

18                   “(ii) has been maintained by such em-  
19                   ployer (or a predecessor employer) for at  
20                   least 1 year before such date of enactment,  
21                   and

22                   “(iii) has not had its coverage or ben-  
23                   efits substantially decreased for any plan  
24                   year beginning after the date of enactment  
25                   in a manner that demonstrates an intent

1 to avoid the purposes of the Automatic Re-  
2 tirement Plan Act of 2020.

3 Clause (iii) shall be treated as satisfied in the  
4 case of any plan amendment adopted for bona  
5 fide business reasons unrelated to the require-  
6 ments of section 4980J. The Secretary shall  
7 prescribe such rules as are necessary to prevent  
8 the use of a plan described in this subpara-  
9 graph to avoid the purposes of this subsection.

10 “(2) PLAN DESCRIBED.—A plan is described in  
11 this paragraph if the plan is one of the following:

12 “(A) DEFERRAL ONLY.—A deferral only  
13 arrangement that meets the requirements of  
14 section 401(k)(15).

15 “(B) 403(b) PLAN.—A 403(b) plan that—  
16 “(i) meets the requirements of section  
17 401(k)(15), or

18 “(ii) would be described in subpara-  
19 graph (C) without regard to the references  
20 to section 416.

21 “(C) TESTING AUTOMATIC CONTRIBUTION  
22 PLAN.—A plan that—

23 “(i) would be described in subpara-  
24 graph (A), if section 401(k)(15) were ap-

1           plied without regard to subparagraph (D)  
2           thereof, and

3                   “(ii)           satisfies           sections  
4                   401(k)(3)(A)(ii), 401(m)(2), and 416 tak-  
5                   ing into account all applicable rules.

6           “(3) ELIGIBILITY REQUIREMENTS.—

7                   “(A) IN GENERAL.—The requirements of  
8                   this paragraph shall be treated as met if all em-  
9                   ployees of the employer are eligible to partici-  
10                  pate in an automatic contribution plan main-  
11                  tained by the employer.

12                  “(B) CERTAIN EXCLUSIONS.—The fol-  
13                  lowing employees may be excluded from consid-  
14                  eration in determining whether the require-  
15                  ments of this paragraph are met:

16                   “(i) INDIVIDUALS LESS THAN 21  
17                   YEARS OLD.—Any employee who has not  
18                   attained age 21.

19                   “(ii) CERTAIN OTHER EMPLOYEES.—  
20                   Any employee described in section  
21                   410(b)(3).

22                   “(iii) SERVICE REQUIREMENTS.—Any  
23                   employee who has not completed either of  
24                   the following periods of service with the  
25                   employer maintaining the plan:

1                   “(I) The period permitted under  
2                   section 410(a)(1) (determined without  
3                   regard to subparagraph (B)(i) thereof.

4                   “(II) The first period of 2 con-  
5                   secutive 12-month periods during each  
6                   of which the employee has at least  
7                   500 hours of service.

8                   “(C) SPECIAL RULES FOR CONTROLLED  
9                   GROUPS.—Eligible employees within an em-  
10                  ployer need not be eligible to participate in the  
11                  same automatic contribution plan. For purposes  
12                  of this subsection, the term ‘employer’ shall in-  
13                  clude all employers treated as a single employer  
14                  under subsection (b), (c), (m), or (o) of section  
15                  414.

16                  “(D) ENTRY DATES.—Rules similar to the  
17                  rules of section 410(a)(4) shall apply with re-  
18                  spect to employees who have satisfied the age  
19                  and service requirements referenced in subpara-  
20                  graph (B) and who are otherwise entitled to  
21                  participate in a plan.

22                  “(4) CONTRIBUTION REQUIREMENTS.—

23                  “(A) IN GENERAL.—The requirements of  
24                  this paragraph are met if under the arrange-  
25                  ment each employee eligible to participate in

1 the arrangement, who for a plan year is con-  
2 tributing less than a percentage of compensa-  
3 tion equal to the minimum qualified percentage  
4 of compensation applicable to the eligible em-  
5 ployee for such plan year, is treated as having  
6 elected for such plan year to have the employer  
7 make elective contributions in an amount equal  
8 to the qualified percentage of compensation.

9 “(B) ELECTION OUT.—The election treat-  
10 ed as having been made under subparagraph  
11 (A) shall cease to apply with respect to any em-  
12 ployee if such employee makes an affirmative  
13 election—

14 “(i) to not have such contributions  
15 made, or

16 “(ii) to make elective contributions at  
17 a level specified in such affirmative elec-  
18 tion.

19 “(C) QUALIFIED PERCENTAGE.—For pur-  
20 poses of this paragraph, with respect to any  
21 employee, the term ‘qualified percentage’ means  
22 any percentage determined under the arrange-  
23 ment (but in no case greater than 10 percent)  
24 if such percentage is applied uniformly and is—

1           “(i) at least 6 percent during the pe-  
2           riod ending on the last day of the first  
3           plan year which begins after the date on  
4           which the first elective contribution de-  
5           scribed in subparagraph (A) is made with  
6           respect to such employee (disregarding any  
7           elective contribution made for any pre-  
8           ceding year that preceded a year in which  
9           the employee made an affirmative election  
10          described in subparagraph (B)),

11          “(ii) at least 7 percent during the  
12          first plan year following the plan year de-  
13          scribed in clause (i),

14          “(iii) at least 8 percent during the  
15          first plan year following the plan year de-  
16          scribed in clause (ii),

17          “(iv) at least 9 percent during the  
18          first plan year following the plan year de-  
19          scribed in clause (iii), and

20          “(v) At least 10 percent during any  
21          subsequent plan year.

22          “(5) INVESTMENT REQUIREMENTS.—

23          “(A) IN GENERAL.—In the absence of an  
24          investment election by a participant or bene-  
25          ficiary, a plan or arrangement meets the re-



1            requirements of this section if amounts are in-  
2            vested—

3                    “(i) only in the class of assets or  
4                    funds described in subparagraph (B), or

5                    “(ii) in such class of assets and any of  
6                    the class of assets or funds described in  
7                    subparagraph (C), (D), (E), or (F).

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

9                    The class of assets or funds described in this  
10                    clause is the class of assets or funds that con-  
11                    stitutes a qualified default investment alter-  
12                    native under Department of Labor regulation  
13                    section 2550.404c-5.

14                    “(C) PRINCIPAL PRESERVATION.—The

15                    class of assets or funds described in this clause  
16                    is the class of assets or funds that is designed  
17                    to protect the principal of the individual on an  
18                    ongoing basis, including passbook savings, cer-  
19                    tificates of deposit, insurance contracts, mutual  
20                    funds, United States savings bonds (which may  
21                    be indexed for inflation), and similar assets  
22                    specified in regulations.

23                    “(D) BALANCED OPTION.—The class of

24                    assets or funds described in this clause is the  
25                    class of assets or funds that constitutes a quali-

1           fied default investment alternative under De-  
2           partment of Labor regulation section  
3           2550.404e-5(e)(4)(ii).

4           “(E) GUARANTEED LIFETIME INCOME OP-  
5           TION OR EQUIVALENT.—The class of assets or  
6           funds described in this clause is the class of as-  
7           sets or funds that is designed to provide an em-  
8           ployee with the right to elect to receive distribu-  
9           tions as a defined level of income annually (or  
10          more frequently) for at least the remainder of  
11          the life of the employee or the joint lives of the  
12          employee and the employee’s designated bene-  
13          ficiary. No later than 12 months after the date  
14          of enactment of this Act, the Secretary of  
15          Labor and the Secretary shall issue guidance  
16          defining a guaranteed lifetime income or equiv-  
17          alent.

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

22          “(6) LIFETIME INCOME REQUIREMENTS.—Ex-  
23          cept in the case of a plan maintained by an eligible  
24          employer (as defined in section 408(p)(2)(C)(i)), the

1 lifetime income requirements described in this para-  
2 graph are—

3 “(A) GUARANTEED INCOME FOR LIFE  
4 AVAILABLE.—A plan shall not be treated as an  
5 automatic contribution plan unless the plan per-  
6 mits participants to elect to receive at least 50  
7 percent of their vested account balance in a  
8 form of distribution described in section  
9 401(a)(38)(B)(iii).

10 “(B) EXCEPTIONS.—This paragraph shall  
11 not apply with respect to any participant whose  
12 vested account balance is \$5,000 or less at the  
13 time of distribution.

14 “(7) FEE REQUIREMENTS.—Except in the case  
15 of a plan subject to title I of the Employee Retire-  
16 ment Income Security Act of 1974, under the fee re-  
17 quirements of this paragraph, no participant may be  
18 charged unreasonable fees solely on the basis that  
19 the participant’s balance in an automatic contribu-  
20 tion plan is small or solely on the basis that adop-  
21 tion of such a plan by the employee’s employer is  
22 mandatory.

23 “(8) AUTOMATIC IRA ARRANGEMENT.—

24 “(A) IN GENERAL.—For purposes of this  
25 paragraph, the term ‘automatic IRA arrange-

1           ment’ means an arrangement of an employer  
2           which meets the administrative requirements of  
3           subparagraph (B) and under which an em-  
4           ployee—

5                   “(i) may elect—

6                           “(I) to have the employer make  
7                           deposits on behalf of the individual as  
8                           contributions to an individual retire-  
9                           ment plan, or

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

12                           “(ii) is treated as having made the  
13                           election under clause (i)(I) in the amount  
14                           determined under paragraph (4) until the  
15                           individual specifically elects not to have  
16                           such contributions made (or elects to have  
17                           such contributions made at a different  
18                           level), and

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

22                   “(B) ADMINISTRATIVE REQUIREMENTS.—

23                           “(i) PAYMENTS.—The requirements of  
24                           this subparagraph are met with respect to  
25                           any automatic IRA arrangement if the em-

1           ployer makes the payments elected or  
2           treated as elected under subparagraph  
3           (A)(i)—

4                       “(I) on or before the last day of  
5                       the month following the month in  
6                       which the compensation otherwise  
7                       would have been payable to the em-  
8                       ployee in cash, or

9                       “(II) before such later deadline  
10                      prescribed by the Secretary for mak-  
11                      ing such payments, but not later than  
12                      the due date for the deposit of tax re-  
13                      quired to be deducted and withheld  
14                      under chapter 24 (relating to collec-  
15                      tion of income tax at source on wages)  
16                      for the payroll period to which such  
17                      payments relate.

18                      “(ii) NOTICE OF ELECTION PERIOD.—  
19                      The requirements of this paragraph shall  
20                      not be treated as met with respect to any  
21                      year unless the employer notifies each em-  
22                      ployee eligible to participate, within a rea-  
23                      sonable period of time before the beginning  
24                      of such year (and, for the first year the  
25                      employee is so eligible, the 30th day before

1 the first day such employee is so eligible),  
2 of—

3 “(I) the payments that are elect-  
4 ed or treated as elected under clause  
5 (i)(I),

6 “(II) the opportunity to make the  
7 election under subparagraph (A)(ii) to  
8 have contributions made at a different  
9 percentage or in a different amount,  
10 and

11 “(III) the opportunity under sub-  
12 paragraph (A)(iii)) to modify the  
13 manner in which such amounts are in-  
14 vested for such year.

15 “(C) PERMITTED ADDITIONAL PROCE-  
16 DURES TO LIMIT CONTRIBUTIONS.—An em-  
17 ployer shall not be treated as failing to satisfy  
18 the requirements of this section or any other  
19 provision of this title merely because—

20 “(i) aggregate contributions by or on  
21 behalf of an individual to individual retire-  
22 ment plans of the individual exceed the de-  
23 ductible amount in effect under section  
24 219(b)(5) (determined without regard to  
25 subparagraph (B) thereof) for any taxable

1 year in which any contributions by the em-  
2 ployer under an automatic IRA arrange-  
3 ment are made, and

4 “(ii) the employer chooses to limit the  
5 contributions under this subsection on be-  
6 half of an employee for any calendar year  
7 in a manner reasonably designed to avoid  
8 exceeding such deductible amount.

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

19 “(E) TREATMENT AS ROTH IRA.—An em-  
20 ployee for whom an automatic IRA is estab-  
21 lished under paragraph (1) may elect, at such  
22 time and in such manner and form as the Sec-  
23 retary may prescribe, whether to treat the indi-  
24 vidual retirement plan as designated as a Roth

1 IRA. If no such election is made, the plan shall  
2 be treated as so designated.

3 “(F) DEPOSITS TO PLANS OF A DES-  
4 IGNATED TRUSTEE OR ISSUER.—

5 “(i) IN GENERAL.—An employer shall  
6 not be treated as failing to satisfy the re-  
7 quirements of this section, or any other  
8 provision of this title, merely because the  
9 employer makes all contributions on behalf  
10 of all employees (or all employees who do  
11 not specify an individual retirement plan,  
12 trustee, or issuer to receive the contribu-  
13 tions) to individual retirement plans speci-  
14 fied in clause (ii).

15 “(ii) INDIVIDUAL RETIREMENT PLANS  
16 OTHER THAN THOSE SELECTED BY EM-  
17 PLOYEE.—An employer may elect to have  
18 contributions for all qualifying employees  
19 participating in an automatic IRA arrange-  
20 ment made to individual retirement plans  
21 of a trustee or issuer under the arrange-  
22 ment that has been designated by the em-  
23 ployer. The preceding sentence shall not  
24 apply unless each participant is notified in  
25 writing that the participant’s balance may



1 be transferred without cost or penalty to  
2 another individual retirement plan estab-  
3 lished by or on behalf of the participant.

4 “(iii) EMPLOYERS MAY PERMIT EM-  
5 PLOYEE TO CHOOSE IRA.—If the employer  
6 so elects, the arrangement may provide for  
7 an employee election to have contributions  
8 made to any individual retirement plan  
9 specified by the employee.

10 “(iv) REGULATIONS.—The Secretary  
11 may issue such regulations as are nec-  
12 essary to carry out the purposes of this  
13 subparagraph, including establishment of  
14 procedures to communicate to individuals  
15 the importance of investment diversifica-  
16 tion.

17 “(G) MODEL NOTICE.—The Secretary  
18 shall—

19 “(i) provide a model notice, written in  
20 a manner calculated to be understandable  
21 to the average worker, that is simple for  
22 employers to use—

23 “(I) to notify employees of the  
24 requirement under this section for the  
25 employer to provide certain employees

1 with the opportunity to participate in  
2 an automatic IRA arrangement, and

3 “(II) to satisfy the requirements  
4 of subparagraph (A)(ii)(III),

5 “(ii) provide uniform forms for enroll-  
6 ment, including automatic enrollment, in  
7 an automatic IRA arrangement, and

8 “(iii) establish a website or other elec-  
9 tronic means that small employers can ac-  
10 cess and use to obtain required notices and  
11 forms.

12 “(9) CROSS-REFERENCE.—For provision pre-  
13 empting conflicting State laws, see section  
14 2(a)(2)(F) of the Automatic Retirement Plan Act of  
15 2020.”.

16 (2) AUTOMATIC IRA ARRANGEMENTS.—

17 (A) MANDATORY TRANSFERS.—Section  
18 401(a)(31)(B) of the Internal Revenue Code of  
19 1986 is amended by adding at the end the fol-  
20 lowing new sentence: “Any amount so trans-  
21 ferred (and any earnings thereon) shall be in-  
22 vested in a default investment described in sec-  
23 tion 414(aa)(5).”.

24 (B) PENALTY FOR FAILURE TO TIMELY  
25 REMIT CONTRIBUTIONS TO AUTOMATIC IRA AR-

1           RANGEMENTS.—Section 4975(c) of the Internal  
2           Revenue Code of 1986 is amended by adding at  
3           the end the following new paragraph:

4           “(7) SPECIAL RULE FOR AUTOMATIC IRA AR-  
5           RANGEMENTS.—For purposes of paragraph (1), if  
6           an employer is required under an automatic IRA ar-  
7           rangement described in section 414(aa)(1)(B) to de-  
8           posit amounts withheld from an employee’s com-  
9           pensation into an automatic IRA but fails to do so  
10          within the time prescribed under section  
11          414(aa)(8)(B)(ii), such amounts shall be treated as  
12          assets of the automatic IRA.”

13                   (C) COORDINATION WITH EMPLOYEE RE-  
14           TIREMENT INCOME SECURITY ACT OF 1974.—

15                           (i) EXEMPTION.—

16                                   (I) IN GENERAL.—Section 3(2)  
17                                   of the Employee Retirement Income  
18                                   Security Act of 1974 (29 U.S.C.  
19                                   1002(2)) is amended by inserting “or  
20                                   (C)” after “subparagraph (B)” in  
21                                   subparagraph (A) and by adding at  
22                                   the end of such section the following  
23                                   new subparagraph:

24                                   “(C) An automatic IRA arrangement de-  
25                                   scribed in section 414(aa)(1)(B) of the Internal

1 Revenue Code of 1986 the only contributions to  
2 which by the employer are elective contributions  
3 shall not be treated as an employee pension  
4 benefit plan or pension plan.”.

5 (II) CUSTOMER IDENTIFICATION  
6 PROGRAM.—Notwithstanding the  
7 amendment made by subclause (I), an  
8 individual retirement plan established  
9 pursuant to an automatic IRA ar-  
10 rangement described in section  
11 414(aa)(1)(B) of the Internal Rev-  
12 enue Code of 1986 shall, for purposes  
13 of any customer identification pro-  
14 gram established under section  
15 5318(l) of title 31, United States  
16 Code, be treated as an account opened  
17 for the purpose of participating in an  
18 employee benefit plan established  
19 under the Employee Retirement In-  
20 come Security Act of 1974.

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

23 (I) by inserting the following sen-  
24 tence before the last sentence: “In the  
25 case of an automatic IRA arrange-

1                   ment under section 414(aa)(1)(B) of  
2                   such Code that is not exempt under  
3                   section 3(2)(C), a participant or bene-  
4                   ficiary shall, for purposes of para-  
5                   graph (1), be treated as exercising  
6                   control over the assets in the account  
7                   on and after the 7th day after notice  
8                   has been given to an employee that  
9                   such automatic IRA has been estab-  
10                  lished on behalf of the employee.”,  
11                  and

12                                 (II) by inserting “or with respect  
13                                 to an automatic IRA under section  
14                                 414(aa)(8) of such Code” after “ar-  
15                                 rangement” in the last sentence.

16                                 (D) WAIVER OF EARLY WITHDRAWAL PEN-  
17                                 ALTY FOR CERTAIN DISTRIBUTIONS FOLLOWING  
18                                 INITIAL ELECTION TO PARTICIPATE IN AUTO-  
19                                 MATIC IRA ARRANGEMENT.—Section 72(t) is  
20                                 amended by adding at the end the following  
21                                 new paragraph:

22                                 “(11) DISTRIBUTION FOLLOWING INITIAL  
23                                 ELECTION TO PARTICIPATE IN AUTOMATIC IRA AR-  
24                                 RANGEMENT.—Paragraph (1) shall not apply in the  
25                                 case of a distribution to a qualifying employee made

1 not later than 90 days after the initial election  
2 under section 414(aa)(8)(A)(ii).”.

3 (E) BANKRUPTCY.—Subsection (n) of sec-  
4 tion 522 of title 11, United States Code, is  
5 amended by inserting “or in an automatic IRA  
6 arrangement described in section 414(aa)(1)(B)  
7 of such Code,” after the first reference to  
8 “1986.”.

9 (F) PREEMPTION OF CONFLICTING STATE  
10 LAWS.—The amendments made by this section  
11 shall supersede any law of a State that would  
12 directly or indirectly prohibit or restrict the es-  
13 tablishment or operation of an automatic IRA  
14 arrangement meeting the requirements of sec-  
15 tion 414(aa)(1)(B) of the Internal Revenue  
16 Code of 1986. Nothing in such amendments  
17 shall be construed to impair or supersede any  
18 State law to the extent it provides a remedy for  
19 the failure to make payroll deposit payments  
20 under any such automatic IRA arrangement  
21 within the period required under such section  
22 414(aa)(8).

23 (b) EXCISE TAX FOR FAILURE TO MAINTAIN AUTO-  
24 MATIC CONTRIBUTION PLAN.—Chapter 43 of such Code  
25 is amended by adding at the end the following new section:

1 **“SEC. 4980J. FAILURE TO MAINTAIN AUTOMATIC CON-**  
2 **TRIBUTION PLAN.**

3 “(a) GENERAL RULE.—

4 “(1) IN GENERAL.—There is hereby imposed a  
5 tax on the failure of an employer to maintain an  
6 automatic contribution plan.

7 “(2) EXCEPTIONS.—

8 “(A) Paragraph (1) shall not apply to an  
9 employer to the extent such employer partici-  
10 pates in an arrangement under a qualified  
11 State law under section 514(f)(2) of the Em-  
12 ployee Retirement Income Security Act of 1974.

13 “(B) Paragraph (1) shall not apply to an  
14 employer with respect to any employee who is  
15 eligible to participate in a different automatic  
16 contribution plan than one or more other em-  
17 ployees of the employer.

18 “(b) AMOUNT OF TAX.—

19 “(1) IN GENERAL.—The amount of the tax im-  
20 posed by subsection (a) on any failure with respect  
21 to an employee shall be \$10 for each day in the non-  
22 compliance period with respect to such failure.

23 “(2) NONCOMPLIANCE PERIOD.—For purposes  
24 of this section, the term ‘noncompliance period’  
25 means, with respect to any failure, the period—

1           “(A) beginning on the date such failure  
2           first occurs, and

3           “(B) ending on the earlier of—

4                 “(i) the date such failure is corrected,

5                 or

6                 “(ii) with respect to any employer, the  
7                 date that is 3 months after the last date  
8                 on which the employee is required to be eli-  
9                 gible to participate in an automatic con-  
10                tribution plan maintained by such em-  
11                ployer.

12           “(c) LIMITATIONS ON AMOUNT OF TAX.—

13                 “(1) TAX NOT TO APPLY WHERE FAILURE NOT  
14                 DISCOVERED    EXERCISING    REASONABLE    DILI-  
15                 GENCE.—No tax shall be imposed by subsection (a)  
16                 on any failure during any period for which it is es-  
17                 tablished to the satisfaction of the Secretary that  
18                 none of the persons referred to in subsection (e)  
19                 knew that such failure existed.

20                 “(2) TAX NOT TO APPLY TO FAILURES COR-  
21                 RECTED WITHIN 9½ MONTHS.—No tax shall be im-  
22                 posed by subsection (a) on any failure if—

23                 “(A) such failure was due to reasonable  
24                 cause and not to willful neglect, and



1           “(B) such failure is corrected during the  
2           9½-month period beginning on the first date  
3           any of the persons referred to in subsection (e)  
4           knew that such failure existed.

5           “(3) OVERALL LIMITATION FOR UNINTEN-  
6           TIONAL FAILURES.—In the case of failures which  
7           are due to reasonable cause and not to willful ne-  
8           glect—

9           “(A) GENERAL RULE.—The tax imposed  
10           by subsection (a) for failures during the taxable  
11           year of the employer shall not exceed \$500,000.

12           “(B) TAXABLE YEARS IN THE CASE OF  
13           CERTAIN CONTROLLED GROUPS.—For purposes  
14           of this subparagraph, if not all persons who are  
15           treated as a single employer for purposes of this  
16           section have the same taxable year, the taxable  
17           years taken into account shall be determined  
18           under principles similar to the principles of sec-  
19           tion 1561.

20           “(4) WAIVER BY SECRETARY.—In the case of a  
21           failure which is due to reasonable cause and not to  
22           willful neglect, the Secretary may waive part or all  
23           of the tax imposed by subsection (a) to the extent  
24           that the payment of such tax would be excessive rel-  
25           ative to the failure involved.

1           “(d) TAX NOT TO APPLY IN CERTAIN CASES.—This  
2 section shall not apply in the case of—

3           “(1) any failure of an employer to meet the re-  
4 quirements of subsection (a) with respect to any em-  
5 ployee if the failure with respect to such employee  
6 occurred during the calendar year immediately fol-  
7 lowing a calendar year during which all employers  
8 maintaining such plan employed 10 or fewer employ-  
9 ees on a typical business day,

10           “(2) any governmental plan (within the mean-  
11 ing of section 414(d)),

12           “(3) any church plan (within the meaning of  
13 section 414(e)), or

14           “(4) employers that has been in existence for  
15 fewer than 3 years, taking into account all prede-  
16 cessor employers.

17           “(e) LIABILITY FOR TAX.—The employer shall be lia-  
18 ble for the tax imposed by subsection (a) on a failure. All  
19 employers, determined without regard to subsection (f)(2),  
20 shall be jointly and severally liable for the liability of any  
21 other employer with which they are aggregated under sub-  
22 section (f)(2).

23           “(f) DEFINITIONS.—For purposes of this section—

1           “(1) the term ‘automatic contribution plan’ has  
2           the meaning given such term under section 414(aa),  
3           and

4           “(2) the term ‘employer’ includes all employers  
5           treated as a single employer under subsection (b),  
6           (c), (m), or (o) of section 414.”.

7           (c) CLERICAL AMENDMENT.—The table of sections  
8           for chapter 43 of the Internal Revenue Code of 1986 is  
9           amended by adding at the end the following new item:

          “Sec. 4980J. Failure to maintain automatic contribution plan.”.

10          (d) EFFECTIVE DATE.—

11           (1) IN GENERAL.—The amendments made by  
12           subsection (a) shall apply to plan years beginning  
13           after December 31, 2021.

14           (2) DELAYED EFFECTIVE DATE.—

15           (A) LARGE EMPLOYERS.—Except as pro-  
16           vided in subparagraph (B), the amendments  
17           made by subsections (b) and (c) shall apply to  
18           years beginning after December 31, 2023.

19           (B) SMALL EMPLOYERS.—In the case of  
20           an eligible employer (as defined in section  
21           408(p)(2)(C)(i) of the Internal Revenue Code of  
22           1986), the amendments made by subsections  
23           (b) and (c) shall apply to years beginning after  
24           December 31, 2025.

1 **SEC. 3. DEFERRAL-ONLY ARRANGEMENTS.**

2 (a) IN GENERAL.—Section 401(k) of the Internal  
3 Revenue Code of 1986 is amended by adding at the end  
4 the following new paragraph:

5 “(15) DEFERRAL-ONLY ARRANGEMENT.—

6 “(A) IN GENERAL.—A deferral-only ar-  
7 rangement shall be treated as meeting the re-  
8 quirements of paragraph (3)(A)(ii).

9 “(B) DEFERRAL-ONLY ARRANGEMENT.—  
10 For purposes of this paragraph, the term ‘de-  
11 ferral-only arrangement’ means any cash or de-  
12 ferred arrangement which meets—

13 “(i) the automatic deferral require-  
14 ments of subparagraph (C),

15 “(ii) the elective contribution require-  
16 ment of subparagraph (D), and

17 “(iii) the requirements of subpara-  
18 graph (E) of paragraph (13).

19 “(C) AUTOMATIC DEFERRAL.—

20 “(i) IN GENERAL.—The requirements  
21 of this subparagraph are met if, under the  
22 arrangement, each employee eligible to  
23 participate in the arrangement who is not  
24 contributing or is contributing less than  
25 the qualified percentage applicable to an  
26 eligible employee in the first year of eligi-

1 bility is treated as having elected to have  
2 the employer make elective contributions in  
3 an amount equal to the qualified percent-  
4 age of compensation applicable under  
5 clause (iii).

6 “(ii) ELECTION OUT.—The election  
7 treated as having been made under clause  
8 (i) shall cease to apply with respect to any  
9 employee if such employee makes an af-  
10 firmative election—

11 “(I) to not have such contribu-  
12 tions made, or

13 “(II) to make elective contribu-  
14 tions at a level specified in such af-  
15 firmative election.

16 “(iii) QUALIFIED PERCENTAGE.—For  
17 purposes of this subparagraph, with re-  
18 spect to any employee, the term ‘qualified  
19 percentage’ means, in lieu of the meaning  
20 given such term in paragraph (13)(C)(iii),  
21 any percentage determined under the ar-  
22 rangement if such percentage is applied  
23 uniformly and is—

24 “(I) at least 6 percent, but not  
25 greater than 10 percent, during the

1 period ending on the last day of the  
2 first plan year which begins after the  
3 date on which the first elective con-  
4 tribution described in clause (i) is  
5 made with respect to such employee  
6 (disregarding any elective contribution  
7 made for any preceding year that pre-  
8 ceded a year in which the employee  
9 made an affirmative election described  
10 in clause (ii)),

11 “(II) at least 7 percent during  
12 the first plan year following the plan  
13 year described in subclause (I),

14 “(III) at least 8 percent during  
15 the first plan year following the plan  
16 year described in subclause (II),

17 “(IV) at least 9 percent during  
18 the first plan year following the plan  
19 year described in subclause (III), and

20 “(V) At least 10 percent during  
21 any subsequent plan year.

22 “(D) ELECTIVE CONTRIBUTIONS.—

23 “(i) IN GENERAL.—The requirements  
24 of this subparagraph are met if under the  
25 plan containing the arrangement—

1                   “(I) the only contributions which  
2                   may be made are elective contribu-  
3                   tions of employees who are eligible to  
4                   participate in the arrangement, and

5                   “(II) the aggregate amount of  
6                   such elective contributions which may  
7                   be made with respect to any employee  
8                   for any calendar year shall not exceed  
9                   \$8,000.

10                  “(ii) COST OF LIVING ADJUSTMENT.—  
11                  In the case of any calendar year beginning  
12                  after December 31, 2021, the \$8,000  
13                  amount under clause (i) shall be adjusted  
14                  in the same manner as cost of living ad-  
15                  justments are made under section  
16                  402(g)(4), except that ‘2020’ shall be sub-  
17                  stituted for ‘2005’.

18                  “(iii) CROSS REFERENCE.—For catch-  
19                  up contributions for individuals age 50 or  
20                  over, see section 414(v).”.

21                  (b) CATCH-UP CONTRIBUTIONS FOR INDIVIDUALS  
22                  AGE 50 AND OVER.—

23                   (1) Clause (i) of section 414(v)(2)(B) of such  
24                   Code is amended by inserting “, 401(k)(15),” after  
25                   “401(k)(11)”.

1           (2) Section 414(v)(2)(B) of such Code is  
2 amended by adding at the end thereof the following  
3 clause:

4                   “(iii) in the case of an applicable em-  
5 ployer plan described in section  
6 401(k)(15), the applicable dollar amount is  
7 \$1,000.”.

8           (3) Section 414(v)(2)(C) of such Code is  
9 amended by—

10                   (A) by striking “(B)(i) and” and inserting  
11 “(B)(i),” and by inserting after “subparagraph  
12 (B)(ii)” the following: “, and the \$1,000  
13 amount described in subparagraph (B)(iii)”,  
14 and

15                   (B) inserting after “2005” the following:  
16 “(the calendar quarter beginning July 1, 2020,  
17 in the case of the \$1,000 amount described in  
18 subparagraph (B)(iii))”.

19           (c) SIMPLIFIED REPORTING.—Section 104(a)(2)(A)  
20 of the Employee Retirement Income Security Act of 1974  
21 (29 U.S.C. 1024(a)(2)) is amended by inserting “or for  
22 any pension plan which is a deferral-only arrangement de-  
23 scribed in section 401(k)(15)(B) of the Internal Revenue  
24 Code of 1986” before the period at the end.





1 4972(d)” and inserting “an automatic contribution plan  
2 within the meaning of section 414(aa)”.

3 (d) CONFORMING AMENDMENTS.—Section 45E(c)(2)  
4 of such Code is amended—

5 (1) by striking “QUALIFIED EMPLOYER PLANS”  
6 and inserting “ELIGIBLE EMPLOYER PLANS”, and

7 (2) by striking “qualified employer plan” each  
8 place it appears and inserting “eligible employer  
9 plan”.

10 (e) EFFECTIVE DATE.—The amendment made by  
11 this section shall apply to taxable years beginning after  
12 December 31, 2021.

13 **SEC. 5. TREATMENT OF AUTOMATIC CONTRIBUTION PLANS**  
14 **UNDER STATE LAW.**

15 (a) IN GENERAL.—Section 514 of the Employee Re-  
16 tirement Income Security Act of 1974 (29 U.S.C. 1144)  
17 is amended by adding at the end the following:

18 “(f) AUTOMATIC CONTRIBUTION PLANS.—

19 “(1) IN GENERAL.—If an employer maintains  
20 an automatic contribution plan (as defined in section  
21 414(aa) of the Internal Revenue Code of 1986), the  
22 employer—

23 “(A) shall not be subject to any require-  
24 ment imposed by a State or political subdivision  
25 thereof to contribute to an individual retirement

1 plan (as defined in section 7701(a)(37) of the  
2 Internal Revenue Code of 1986) established and  
3 maintained pursuant to a payroll deduction sav-  
4 ings program of a State or political subdivision  
5 thereof, and

6 “(B) shall not be required to participate in  
7 any manner in such a payroll deduction savings  
8 program.

9 “(2) QUALIFIED STATE LAW EXCEPTION.—This  
10 subsection shall not apply with respect to any em-  
11 ployer to the extent that such employer participates  
12 in an arrangement under a qualified State law.

13 “(3) QUALIFIED STATE LAW.—For purposes of  
14 this subsection—

15 “(A) IN GENERAL.—The term ‘qualified  
16 State law’ means a State law that—

17 “(i) was enacted before the date of en-  
18 actment of the Automatic Retirement Plan  
19 Act of 2020,

20 “(ii)(I) requires certain employers to  
21 contribute to, or participate in, an indi-  
22 vidual retirement plan (as defined in sec-  
23 tion 7701(a)(37) of such Code) established  
24 and maintained pursuant to a payroll de-  
25 duction savings program of the State, or

1 “(II) allows certain employers to con-  
2 tribute to, or participate in, a plan de-  
3 scribed in section 413(c) of such Code es-  
4 tablished and maintained by the State, and

5 “(iii) is not superseded by this title  
6 (determined without regard to this sub-  
7 section).

8 “(B) EXCEPTION.—If a State law de-  
9 scribed in subparagraph (A)(ii) is amended  
10 after the date of enactment of the Automatic  
11 Retirement Plan Act of 2020 to materially ex-  
12 pand the scope of the requirement described in  
13 subparagraph (A)(ii)(I) or the availability of a  
14 plan described in subparagraph (A)(ii)(II), the  
15 State law shall, as of the effective date of such  
16 amendment, cease to be treated as a qualified  
17 State law.”.

18 (b) EFFECTIVE DATE.—The amendments made by  
19 this section shall apply to plan years beginning after De-  
20 cember 31, 2021.

21 **SEC. 6. APPLICATION OF CREDIT FOR SMALL EMPLOYER**  
22 **PENSION PLAN STARTUP COSTS TO EMPLOY-**  
23 **ERS WHICH JOIN AN EXISTING PLAN.**

24 (a) IN GENERAL.—Section 45E(d)(3)(A) of the In-  
25 ternal Revenue Code of 1986 is amended by striking “ef-

1 fective” and inserting “effective with respect to the eligible  
2 employer”.

3 (b) EFFECTIVE DATE.—The amendment made by  
4 this section shall apply to eligible employer plans which  
5 become effective with respect to the eligible employer after  
6 the date of the enactment of this Act.