To amend the Internal Revenue Code of 1986 to encourage retirement savings by modifying requirements with respect to employer-established IRAs, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 29, 2008

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

A BILL

To amend the Internal Revenue Code of 1986 to encourage retirement savings by modifying requirements with respect to employer-established IRAs, 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.

This Act may be cited as the “Small Businesses Add Value for Employees Act of 2008” or the “SAVE Act of 2008”.

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SEC. 2. ELIMINATION OF RESTRICTION ON SIMPLE IRA ROLLOVERS.

(a) In General.—Paragraph (3) of section 408(d) of the Internal Revenue Code of 1986 (relating to rollover contribution) is amended by striking subparagraph (G).

(b) Effective Date.—The amendment made by this section shall apply to distributions in taxable years beginning after the date of the enactment of this Act.

SEC. 3. ALLOWING MID-YEAR SIMPLE IRA PLAN TERMINATION.

(a) In General.—Subsection (p) of section 408 of the Internal Revenue Code of 1986 is amended by adding at the end the following new paragraph:

“(11) Special rules relating to mid-year termination.—

“(A) In general.—An employer may elect to terminate (in such form and manner as the Secretary may provide) the qualified salary reduction arrangement of the employer at any time during the year.

“(B) Proration and application of qualified plan limitation.—In the case of a year during which an employer terminates a qualified salary reduction arrangement before the end of such year—
“(i) the applicable dollar amount in effect for such year shall be prorated to the date of such termination,

“(ii) for purposes of determining the compensation of an employee for such arrangement for such year, the year of such termination shall be treated as ending on the date of such termination, and

“(iii) subparagraph (D) of paragraph (2) shall not apply with respect to a qualified plan maintained in such year only after the date of such termination.”.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to years beginning after the date of the enactment of this Act.

SEC. 4. ELIMINATION OF HIGHER PENALTY ON EARLY SIMPLE IRA DISTRIBUTIONS.

(a) IN GENERAL.—Subsection (t) of section 72 of the Internal Revenue Code of 1986 (relating to 10 percent additional tax on early distributions from qualified retirement plans) is amended by striking paragraph (6).

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to distributions in taxable years beginning after the date of the enactment of this Act.
SEC. 5. INCREASE IN CONTRIBUTIONS ALLOWED FOR SIMPLE IRA.

(a) ADDITIONAL NONELECTIVE EMPLOYER CONTRIBUTIONS ALLOWED.—

(1) IN GENERAL.—Subparagraph (A) of section 408(p)(2) of the Internal Revenue Code of 1986 (relating to qualified salary reduction arrangement) is amended by striking “and” at the end of clause (iii), by redesignating clause (iv) as clause (v), and by inserting after clause (iii) the following new clause:

“(iv) the employer may make, in addition to any other contribution under this paragraph, nonelective contributions of not more than 10 percent of compensation (subject to the limitation described in subparagraph (B)(ii)) for each employee who is eligible to participate in the arrangement and who has at least $5,000 of compensation from the employer for the year, and”.

(2) CONFORMING AMENDMENT.—Clause (v) of section 408(p)(2)(A) of such Code, as redesignated by this section, is amended by striking “clause (i) or (iii)” and inserting “clause (i), (iii), or (iv)”.

(b) INCREASE IN ELECTIVE CONTRIBUTION LIMITATION.—Subparagraph (E) of section 408(p)(2) is amended to read as follows:
“(E) APPLICABLE DOLLAR AMOUNT.—For purposes of subparagraph (A)(ii), the applicable dollar amount shall be the applicable dollar amount in effect under subparagraph (B) of section 402(g)(1).”.

(c) SIMPLE IRA SUBJECT TO DEFINED CONTRIBUTION PLAN LIMITATION.—Subsection (p) of section 408 of such Code is amended by adding at the end the following new paragraph:

“(11) SUBJECT TO DEFINED CONTRIBUTION PLAN LIMITATION.—An arrangement shall not be treated as a qualified salary reduction arrangement for any year if contributions with respect to any employee for the year exceed the limitation of paragraph (1) of section 415(c) (relating to limitation for defined contribution plans).”.

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

SEC. 6. SIMPLIFIED 401(k) PARITY FOR ADDITIONAL NONELECTIVE EMPLOYER CONTRIBUTIONS.

(a) IN GENERAL.—Subparagraph (B) of section 401(k)(11) of such Code (relating to contribution requirements) is amended by adding at the end the following new clause:
“(iv) Special rule for additional nonelective employer contributions.—An arrangement shall not be treated as failing to meet the requirements of this subparagraph merely because under such arrangement the employer makes, in addition to any other contribution under this subparagraph, nonelective contributions of not more than 10 percent of compensation for each employee who is eligible to participate in the arrangement and who has at least $5,000 of compensation from the employer for the year.”.

(b) Effective Date.—The amendment made by this section shall apply to plan years beginning after December 31, 2007.

SEC. 7. AUTOMATIC DEFERRAL IRAS.

(a) In General.—Subpart A of part I of subchapter D of chapter 1 of the Internal Revenue Code of 1986 (relating to pension, profit-sharing, stock bonus plans, etc.) is amended by inserting after section 408A the following new section:

“SEC. 408B. AUTOMATIC DEFERRAL IRAS.

“(a) In General.—An automatic deferral IRA shall be treated for purposes of this title in the same manner
as an individual retirement plan. An automatic IRA may also be treated as a Roth IRA for purposes of this title if it meets the requirements of section 408A.

“(b) AUTOMATIC DEFERRAL IRA.—For purposes of this section, the term ‘automatic deferral IRA’ means an individual retirement plan (as defined in section 7701(a)(37)) with respect to which contributions are made under an arrangement which satisfies the requirements of paragraphs (1) through (4) of subsection (c).

“(c) AUTOMATIC DEFERRAL IRA ARRANGEMENTS.—

“(1) ENROLLMENT.—

“(A) IN GENERAL.—The requirements of this paragraph are met if each employee eligible to participate in the arrangement is treated as having elected to have the employer make payments as elective contributions to an automatic deferral IRA on behalf of such employee (which would have otherwise been made to the employee directly in cash) in an amount equal to so much of a qualified percentage of compensation of such employee as does not exceed the deductible amount for such year (within the meaning of section 219(b)).

“(B) ELIGIBILITY.—An employee is eligible to participate if such employee is described
in paragraph (2) of section 408(k), except that
for purposes of determining whether an em-
ployee is described in such paragraph, subpar-
agraph (C) thereof shall be applied by sub-
stituting ‘$5,000’ for ‘$450’.

“(C) ELECTION OUT.—The election treat-
ed as having been made under subparagraph
(A) shall cease to apply with respect to any em-
ployee who makes an affirmative election—

“(i) to not have such elective contribu-
tions made, or

“(ii) not later than the close of the
30-day period beginning on the date of the
first contribution with respect to such em-
ployee, to make elective contributions at a
level specified in such affirmative election.

“(D) QUALIFIED PERCENTAGE.—For pur-
poses of this paragraph, the term ‘qualified per-
centage’ means, with respect to any employee,
any percentage determined under the trust
agreement if such percentage is applied uni-
formly, is at least 3 percent, and does not ex-
ceed 10 percent.

“(2) NOTICE.—
“(A) IN GENERAL.—The requirements of this paragraph are met if, within a reasonable period before the first day an employee is eligible to participate in the arrangement, the employee receives written notice of the employee’s rights and obligations under the arrangement which—

“(i) is sufficiently accurate and comprehensive to apprise the employee of such rights, and

“(ii) is written in a manner calculated to be understood by the average employee to whom the arrangement applies.

“(B) TIMING AND CONTENT.—A notice shall not be treated as meeting the requirements of subparagraph (A) with respect to an employee unless—

“(i) the notice explains the employee’s right to elect not to have elective contributions made on the employee’s behalf (or to elect to have such contributions made at a different percentage),

“(ii) the notice explains how contributions made under the arrangement will be
invested in the absence of any investment election by the employee, and

“(iii) the employee has a reasonable period of time after receipt of the notice described in clauses (i) and (ii) and before the first elective contribution is made to make either such election.

“(3) DEFAULT INVESTMENT ARRANGEMENT.—The requirements of this paragraph are met if—

“(A) in the absence of an investment election by the employee with respect to the employee’s interest in the trust, such interest is invested as provided in regulations prescribed pursuant to subparagraph (A) of section 404(c)(5) of the Employee Retirement Income Security Act of 1974, and

“(B) the employer provides each employee who has an interest in the trust, notice which meets the requirements of subparagraph (B) of such section.

“(4) ADMINISTRATIVE REQUIREMENTS.—The requirements of this paragraph are met if—

“(A) an employer must make the elective employer contributions under paragraph (1)(A) not later than the close of the 30-day period
following the last day of the month with respect

to which the contributions are to be made,

“(B) an employee may elect to terminate

participation in the arrangement at any time
during the year, except that if the employee so
terminates, the arrangement may provide that
the employee may elect to resume participation
until the beginning of the next year, and

“(C) each employee eligible to participate
may elect, during the 30-day period before the
beginning of any year, or to modify the amount
subject to such arrangement, for such year.”.

(b) PREEMPTION OF CONFLICTING STATE LAWS.—

Any law of a State shall be superseded if it would directly
or indirectly prohibit or restrict an employer from creating
or organizing an automatic deferral IRA (as defined in
section 408B of the Internal Revenue Service of 1986).

(c) CLERICAL AMENDMENT.—The table of sections
for subpart A of part I of subchapter D of chapter 1 of
the Internal Revenue Code of 1986 is amended by insert-
ing after the item relating to 408A the following new item:

“408B. Automatic deferral IRAs.”.

(d) EFFECTIVE DATE.—The amendments made by
this section shall apply to taxable years beginning after
SEC. 8. EXPANDING SMALL EMPLOYER PENSION PLAN

STARTUP COST CREDIT.

(a) IN GENERAL.—

(1) INCLUDING STARTUP COSTS FOR EMPLOYER-ESTABLISHED IRAS.—Paragraph (2) of section 45E(d) of the Internal Revenue Code of 1986 (defining eligible employer plan) is amended by inserting before the period “and a plan of which a trust described in section 408(c) is a part”.

(2) ADDITIONAL CREDIT AMOUNT.—

(A) IN GENERAL.—Subsection (a) of section 45E of such Code is amended by striking “50 percent of” and all that follows and inserting “the sum of—

“(1) 50 percent of the qualified startup costs paid or incurred by the taxpayer during the taxable year, plus

“(2) $25 multiplied by the number of employees of the employer who participate in any eligible employer plan of the employer for the first time in such taxable year.”.

(B) CONFORMING AMENDMENT.—Paragraph (2) of section 45E(c) of such Code (defining eligible employer) is amended—
(i) by striking “qualified employer plan” in each place it appears and inserting “eligible employer plan”, and
(ii) by striking “QUALIFIED” in the heading thereof and inserting “ELIGIBLE”.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to costs paid or incurred in taxable years beginning after the date of the enactment of this Act.

SEC. 9. AMENDMENT TO EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974.

(a) IN GENERAL.—Section 3(2) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002(2)) is amended by adding at the end the following new subparagraph:

“(C) An individual retirement plan (as defined in section 7701(a)(37) of the Internal Revenue Code of 1986) shall not be considered a pension plan merely because an employer establishes a payroll deduction program for the purpose of enabling employees to make voluntary contributions to such account or annuity.”.

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect on the date of the enactment of this Act.