To amend the Internal Revenue Code of 1986 and the Employee Retirement Income Security Act of 1974 to increase participation in section 401(k) plans through automatic contribution trusts, and for other purposes.

IN THE SENATE OF THE UNITED STATES

Mr. BINGAMAN introduced the following bill; which was read twice and referred to the Committee on

A BILL

To amend the Internal Revenue Code of 1986 and the Employee Retirement Income Security Act of 1974 to increase participation in section 401(k) plans through automatic contribution trusts, 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 “Save More for Retirement Act of 2005”.
SEC. 2. INCREASING PARTICIPATION IN CASH OR DEFERRED PLANS THROUGH AUTOMATIC CONTRIBUTION ARRANGEMENTS.

(a) In General.—Section 401(k) of the Internal Revenue Code of 1986 (relating to cash or deferred arrangement) is amended by adding at the end the following new paragraph:

“(13) Nondiscrimination Requirements for Automatic Contribution Trusts.—

“(A) In General.—A cash or deferred arrangement shall be treated as meeting the requirements of paragraph (3)(A)(ii) if such arrangement constitutes an automatic contribution trust.

“(B) Automatic Contribution Trust.—

“(i) In General.—For purposes of this paragraph, the term ‘automatic contribution trust’ means an arrangement—

“(I) except as provided in clauses (ii) and (iii), under which each employee eligible to participate in the arrangement is treated as having elected to have the employer make elective contributions in an amount equal to the applicable percentage of the employee’s compensation, and
“(II) which meets the requirements of subparagraphs (C), (D), (E), and (F).

“(ii) EXCEPTION FOR EXISTING EMPLOYEES.—In the case of any employee—

“(I) who was eligible to participate in the arrangement (or a predecessor arrangement) immediately before the first date on which the arrangement is an automatic contribution trust, and

“(II) whose rate of contribution immediately before such first date was less than the applicable percentage for the employee,

clause (i)(I) shall not apply to such employee until the date which is 1 year after such first date (or such earlier date as the employee may elect).

“(iii) ELECTION OUT.—Each employee eligible to participate in the arrangement may specifically elect not to have contributions made under clause (i), and such clause shall cease to apply to
compensation paid on or after the effective date of the election.

"(iv) Applicable Percentage.—

For purposes of this subparagraph—

"(I) In General.—The term ‘applicable percentage’ means, with respect to any employee, the percentage (not less than 3 percent) determined under the arrangement.

"(II) Increase in Percentage.—In the case of the second plan year beginning after the first date on which the election under clause (i)(I) is in effect with respect to the employee and any succeeding plan year, the applicable percentage shall be a percentage (not greater than 10 percent or such higher percentage specified by the plan) equal to the sum of the applicable percentage for the employee as of the close of the preceding plan year plus 1 percentage point (or such higher percentage specified by the plan). A plan may elect to provide that, in lieu of any increase under the
preceding sentence, the increase in the applicable percentage required under this subclause shall occur after each increase in compensation an employee receives on or after the first day of such second plan year and that the applicable percentage after each such increase in compensation shall be equal to the applicable percentage for the employee immediately before such increase in compensation plus 1 percentage point (or such higher percentage specified by the plan).

“(C) Matching or Nonelective Contributions.—

“(i) In general.—The requirements of this subparagraph are met if, under the arrangement, the employer—

“(I) makes matching contributions on behalf of each employee who is not a highly compensated employee in an amount equal to 50 percent of the elective contributions of the employee to the extent such elective con-
tributions do not exceed 7 percent of compensation; or

“(II) is required, without regard to whether the employee makes an elective contribution or employee contribution, to make a contribution to a defined contribution plan on behalf of each employee who is not a highly compensated employee and who is eligible to participate in the arrangement in an amount equal to at least 3 percent of the employee’s compensation,

The rules of clauses (ii) and (iii) of paragraph (12)(B) shall apply for purposes of subclause (I). The rules of paragraph (12)(E)(ii) shall apply for purposes of subclauses (I) and (II).

“(ii) OTHER PLANS.—An arrangement shall be treated as meeting the requirements under clause (i) if any other plan maintained by the employer meets such requirements with respect to employees eligible under the arrangement.

“(D) NOTICE REQUIREMENTS.—
“(i) IN GENERAL.—The requirements of this subparagraph are met if the requirements of clauses (ii) and (iii) are met.

“(ii) REASONABLE PERIOD TO MAKE ELECTION.—The requirements of this clause are met if each employee to whom subparagraph (B)(i) applies—

“(I) receives a notice explaining the employee’s right under the arrangement to elect not to have elective contributions made on the employee’s behalf, and how contributions made under the arrangement will be invested in the absence of any investment election by the employee, and

“(II) has a reasonable period of time after receipt of such notice and before the first elective contribution is made to make such election.

“(iii) ANNUAL NOTICE OF RIGHTS AND OBLIGATIONS.—The requirements of this clause are met if each employee eligible to participate in the arrangement is, within a reasonable period before any year (or if the plan elects to change the applica-
The requirements of clauses (i) and (ii) of paragraph (12)(D) shall be met with respect to the notices described in clauses (ii) and (iii) of this subparagraph.

“(E) PARTICIPATION, WITHDRAWAL, AND VESTING REQUIREMENTS.—The requirements of this subparagraph are met if—

“(i) the arrangement requires that each employee eligible to participate in the arrangement (determined without regard to any minimum service requirement otherwise applicable under section 410(a) or the plan) commences participation in the arrangement no later than the 1st day of the 1st calendar quarter following the date on which employee first becomes so eligible,

“(ii) the withdrawal requirements of paragraph (2)(B) are met with respect to all employer contributions (including matching and elective contributions) taken into account in determining whether the
arrangement meets the requirements of subparagraph (C), and

“(iii) the arrangement requires that an employee’s right to the accrued benefit derived from employer contributions described in clause (ii) (other than elective contributions) is nonforfeitable after the employee has completed—

“(I) at least 1 year of service, or

“(II) in the case of an employee who is eligible to participate in the arrangement as of the first day on which the employee begins employment with the employer maintaining the arrangement, at least 2 years of service.

“(F) CERTAIN WITHDRAWALS MUST BE ALLOWED.—

“(i) IN GENERAL.—Notwithstanding any other provision of this subsection, the requirements of this subparagraph are met if the arrangement allows employees to elect to withdraw elective contributions described in subparagraph (B)(i) (and earnings attributable thereto) from the cash or
deferred arrangement in accordance with
the provisions of this subparagraph.

“(ii) **Time for Making Election.**—
Clause (i) shall not apply to an election by
an employee unless the election is made no
later than the close of the latest of the fol-
lowing payroll periods occurring after the
first payroll period to which the automatic
enrollment system applies to the employee:

“(I) The payroll period in which
the aggregate elective contributions
made under subparagraph (B)(i) first
exceed $500.

“(II) The second payroll period
following such first payroll period.

“(III) The first payroll period
which begins at least one month after
the close of the first payroll period to
which the automatic enrollment sys-
tem applies.

“(iii) **Amount of Distribution.**—
Clause (i) shall not apply to any election
by an employee unless the amount of any
distribution by reason of the election is
equal to the amount of elective contribu-
tions made with respect to the first payroll period to which the automatic enrollment system applies to the employee and any succeeding payroll period beginning before the effective date of the election (and earnings attributable thereto).

“(iv) Treatment of Distribution.—In the case of any distribution to an employee pursuant to an election under clause (i)—

“(I) the amount of such distribution shall be includible in the gross income of the employee for the taxable year of the employee in which the distribution is made, and

“(II) no tax shall be imposed under section 72(t) with respect to the distribution.

“(v) Employer Matching Contributions.—In the case of any distribution to an employee by reason of an election under clause (i), employer matching contributions shall be forfeited or subject to such other treatment as the Secretary may prescribe.”
(b) Matching Contributions.—Section 401(m) of the Internal Revenue Code of 1986 (relating to non-discrimination test for matching contributions and employee contributions) is amended by redesignating paragraph (12) as paragraph (13) and by inserting after paragraph (11) the following new paragraph:

“(12) Alternate method for automatic contribution trusts.—A defined contribution plan shall be treated as meeting the requirements of paragraph (2) with respect to matching contributions if the plan—

“(A) meets the contribution requirements of subparagraphs (B)(i) and (C) of subsection (k)(13); 

“(B) meets the notice requirements of subparagraph (D) of subsection (k)(13); and 

“(C) meets the requirements of paragraph (11)(B) (ii) and (iii).”.

(c) Exclusion from definition of top-heavy plans.—

(1) Elective contribution rule.—Clause (i) of section 416(g)(4)(H) of the Internal Revenue Code of 1986 is amended by inserting “or 401(k)(13)” after “section 401(k)(12)”. 
(2) Matching contribution rule.—Clause (ii) of section 416(g)(4)(H) of such Code is amended by inserting “or 401(m)(12)” after “section 401(m)(11)”.

(d) Definition of compensation.—

(1) Base pay or rate of pay.—The Secretary of the Treasury shall, no later than December 31, 2006, modify Treasury Regulation section 1.414(s)–1(d)(3) to facilitate the use of the safe harbors in sections 401(k)(12), 401(k)(13), 401(m)(11), and 401(m)(12) of the Internal Revenue Code of 1986, and in Treasury Regulation section 1.401(a)(4)–3(b), by plans that use base pay or rate of pay in determining contributions or benefits. Such modifications shall include increased flexibility in satisfying section 414(s) of such Code in any case where the amount of overtime compensation payable in a year can vary significantly.

(2) Application of requirements to separate payroll periods.—Not later than December 31, 2006, the Secretary of the Treasury shall issue rules under subparagraphs (B)(i) and (C)(i) of section 401(k)(13) of such Code and under clause (i) of section 401(m)(12)(A) of such Code that, effective for plan years beginning after December 31,
2006, permit such requirements to be applied separately to separate payroll periods based on rules similar to the rules described in Treasury Regulation sections 1.401(k)–3(e)(5)(ii) and 1.401(m)–3(d)(4).

(e) SECTION 403(b) CONTRACTS.—Paragraph (11) of section 401(m) of the Internal Revenue Code of 1986 is amended by adding at the end the following:

“(C) SECTION 403(b) CONTRACTS.—An annuity contract under section 403(b) shall be treated as meeting the requirements of paragraph (2) with respect to matching contributions if such contract meets requirements similar to the requirements under subparagraph (A).”

(f) PREEMPTION OF CONFLICTING STATE REGULATION.—Section 514 of the Employee Retirement Income Security of 1974 (29 U.S.C. 1144) is amended by inserting at the end the following new subsection:

“(e) AUTOMATIC CONTRIBUTION ARRANGEMENTS.—

“(1) IN GENERAL.—Notwithstanding any other provision of this section, any law of a State shall be superseded if it would directly or indirectly prohibit or restrict the inclusion in any plan of an eligible automatic contribution arrangement.
“(2) Eligible automatic contribution arrangement.—For purposes of this subsection, the term ‘eligible automatic contribution arrangement’ means an arrangement—

“(A) under which a participant may elect to have the employer make payments as contributions under the plan on behalf of the participant, or to the participant directly in cash,

“(B) under which the participant is treated as having elected to have the employer make such contributions in an amount equal to a uniform percentage of compensation provided under the plan until the participant specifically elects not to have such contributions made (or specifically elects to have such contributions made at a different percentage),

“(C) under which contributions described in subparagraph (B) are invested in accordance with regulations prescribed by the Secretary under section 404(c)(4), and

“(D) which meets the requirements of paragraph (3).

“(3) Notice requirements.—

“(A) In general.—The administrator of an individual account plan shall, within a rea-
sonable period before each plan year, give to
each employee to whom an arrangement de-
scribed in paragraph (2) applies for such plan
year notice of the employee’s rights and obliga-
tions under the arrangement which—

“(i) is sufficiently accurate and com-
prehensive to apprise the employee of such
rights and obligations, and

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

“(B) TIME AND FORM OF NOTICE.—A no-
tice shall not be treated as meeting the require-
ments of subparagraph (A) with respect to an
employee unless—

“(i) the notice includes a notice ex-
plaining the employee’s right under the ar-
angement to elect not to have elective con-
tributions made on the employee’s behalf
(or to elect to have such contributions
made at a different percentage),

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

“(iii) the notice explains how contribu-
tions made under the arrangement will be
invested in the absence of any investment
election by the employee.”.

(g) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided by para-
graph (2), the amendments made by this section
shall apply to plan years beginning after December
31, 2005.

(2) SECTION 403(b) CONTRACTS.—The amend-
ments made by subsection (e) shall apply to years
ending after the date of the enactment of this Act.

SEC. 3. TREATMENT OF INVESTMENT OF ASSETS BY PLAN
WHERE PARTICIPANT FAILS TO EXERCISE IN-
VESTMENT ELECTION.

(a) IN GENERAL.—Section 404(c) of the Employee
1104(c)) is amended by adding at the end the following
new paragraph:

“(4) DEFAULT INVESTMENT ARRANGE-
MENTS.—

“(A) IN GENERAL.—For purposes of para-
graph (1), a participant in an individual ac-
count plan meeting the notice requirements of subparagraph (B) shall be treated as exercising control over the assets in the account with respect to the amount of contributions and earnings which, in the absence of an investment election by the participant, are invested by the plan in accordance with regulations prescribed by the Secretary. The regulations under this subparagraph shall provide guidance on the appropriateness of designating default investments that include a mix of asset classes consistent with long-term capital appreciation.

“(B) NOTICE REQUIREMENTS.—

“(i) IN GENERAL.—The requirements of this subparagraph are met if each participant—

“(I) receives, within a reasonable period of time before each plan year, a notice explaining the employee’s right under the plan to designate how contributions and earnings will be invested and explaining how, in the absence of any investment election by the participant, such contributions and earnings will be invested, and
“(II) has a reasonable period of time after receipt of such notice and before the beginning of the plan year to make such designation.

“(ii) FORM OF NOTICE.—The requirements of clauses (i) and (ii) of section 401(k)(12)(D) of the Internal Revenue Code of 1986 shall be met with respect to the notices described in this subparagraph.”

(b) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply to plan years beginning after December 31, 2005.

(2) REGULATIONS.—Final regulations under section 404(e)(4)(A) of the Employee Retirement Income Security Act of 1974 (as added by this section) shall be issued no later than 6 months after the date of the enactment of this Act.