To amend the Internal Revenue Code of 1986 to expand personal savings and retirement savings coverage by allowing employees not covered by qualified retirement plans to save for retirement through automatic IRAs, and for other purposes.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 14, 2011

Mr. BINGAMAN (for himself and Mr. KERRY) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend the Internal Revenue Code of 1986 to expand personal savings and retirement savings coverage by allowing employees not covered by qualified retirement plans to save for retirement through automatic IRAs, and for other purposes.

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

3 SECTION 1. SHORT TITLE.

4 This Act may be cited as the “Automatic IRA Act of 2011”.
SEC. 2. EMPLOYEES NOT COVERED BY QUALIFIED RETIREMENT PLANS OR ARRANGEMENTS ENTITLED TO PARTICIPATE IN AUTOMATIC IRA ARRANGEMENTS.

(a) IN GENERAL.—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 at the end the following new part:

“PART IV—AUTOMATIC IRA ARRANGEMENTS

“Sec. 438. Right to automatic IRA arrangements at work.
“Sec. 439. Automatic IRAs.
“Sec. 440. Rules relating to choice of IRA providers.

“SEC. 438. RIGHT TO AUTOMATIC IRA ARRANGEMENTS AT WORK.

“(a) REQUIREMENT TO PROVIDE AUTOMATIC IRA ARRANGEMENT.—If an applicable employer does not maintain a qualified plan or arrangement (as defined in subsection (i)) for any calendar year, the employer shall make available an automatic IRA arrangement which meets the requirements of this section to each qualifying employee of the employer for the calendar year.

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

“(1) IN GENERAL.—The term ‘qualifying employee’ means any employee of the employer other than an excludable employee.
“(2) Excludable Employee.—The term ‘excludable employee’ means any employee who is in one of the following categories of employees that the employer elects to exclude from treatment as qualifying employees:

“(A) Employees described in section 410(b)(3),

“(B) Employees who have not attained the age of 18 before the beginning of the calendar year, or

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

“(3) Exception for Employees of Governments and Churches.—The term ‘qualifying employee’ shall not include an employee of—

“(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, including any employee described in section 414(e)(3)(B).

“(4) Plan Sponsor’s Employees.—

“(A) In General.—If—

“(i) an employer maintains 1 or more qualified plans or arrangements, and
“(ii) the employees of a subsidiary, division, or other major business unit of the employer are not generally eligible to participate in any such qualified plan or arrangement,
then, except as provided in subparagraph (B), the employer shall make available an automatic IRA arrangement which meets the requirements of this section to all qualifying employees described in clause (ii) for the calendar year.

“(B) Exception for certain employees.—An employer may exclude from coverage under the automatic IRA arrangement under subparagraph (A)—

“(i) any employee not eligible to participate in any qualified plan or arrangement solely because the employee has not satisfied the minimum age and service requirements for participation in the plan or arrangement,

“(ii) in the case of an employer which maintains a qualified plan or arrangement which consists of a section 403(b) annuity contract (including a custodial account), an arrangement described in section
408(p), or a simplified employee pension described in section 408(k), any employee who is permitted to be excluded from, or who is not required to be eligible to participate in, any such plan, arrangement, or pension under section 403(b)(12), 408(p)(4), or 408(k)(2), whichever is applicable.

“(5) DESIGNATION OF QUALIFYING EMPLOYEES.—The Secretary shall issue guidelines for determining the class or classes of qualifying employees to be covered by an automatic IRA arrangement. Such guidelines shall permit employers to designate under paragraph (2) the classification or categories of employees who are not eligible for the arrangement.

“(6) EMPLOYEE INCLUDES SELF-EMPLOYED.—For purposes of this part, an employer described in section 401(c)(4) may elect to treat self-employed individuals (within the meaning of section 401(c)(1)) as employees of the trade or business, except that if the employer has employees other than such individuals, the employer may only make the election under this paragraph if the employer makes available an automatic IRA arrangement to such other employees
in accordance with the rules of subsection (a) and paragraph (4).

“(c) AUTOMATIC IRA ARRANGEMENT.—For purposes of this section, the term ‘automatic IRA arrangement’ means an arrangement of an employer—

“(1) under which, in accordance with subsection (d)—

“(A) a qualifying employee may elect to have an amount contributed to a designated automatic IRA established on behalf of the employee instead of having that amount paid to the employee directly in cash,

“(B) a qualifying employee is treated as having elected such contributions in the amount specified in subsection (d)(2) until the employee specifically elects not to have such contributions made (or specifically elects to have such contributions made at a different percentage or in a different amount), and

“(C) the contributions are invested as provided in subsection (d)(3),

“(2) under which payments are to be made to the designated automatic IRA of each qualifying employee by having the employer of the employee—
“(A) make periodic direct deposit or other payroll deposit payments (including electronic payments) to the plan by payroll deduction, or

“(B) in the case of employees not paid through regular periodic payments, make such deposit or payments in such manner as the Secretary may provide in guidance, including through available automatic debit or similar arrangements or the use of authorized intermediary entities such as business, professional, or trade associations,

“(3) under which the payments described in paragraph (1) are to be made by the employer on or before—

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

“(B) such later date as the Secretary may prescribe, except that the Secretary may not prescribe a date 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, and
“(4) which meets the notice and election requirements of subsection (e).

“(d) Definitions and Rules Relating to Automatic Enrollment Requirements.—For purposes of this section—

“(1) Designated Automatic IRA.—

“(A) In general.—Except as provided in subparagraph (B), the term ‘designated automatic IRA’ means, with respect to any automatic IRA arrangement of an employer, an automatic IRA of a provider designated by, or on behalf of, the employer under subsection (g).

“(B) IRA specified by employee.—An employer may also elect to allow each of its qualifying employees to designate an individual retirement plan (whether or not an automatic IRA) established by or on behalf of the employee as the designated automatic IRA with respect to that employee.

“(C) Special rules.—

“(i) Notice requirement.—If contributions are made to designated automatic IRAs that are designated by the employer in accordance with subparagraph (A), the employer shall provide each par-
participating employee a standard written notice, as provided by the Secretary, that the employee’s balance may be periodically transferred without cost or penalty from the designated automatic IRA to another individual retirement plan, or to a retirement bond described in section 440(d), established by or on behalf of the employee.

“(ii) TREATMENT OF PERIODIC TRANSFERS.—For tax treatment of transfers described in clause (i), see subsection (f)(3).

“(D) CONTRIBUTIONS TO DESIGNATED AUTOMATIC IRAS.—An employer shall not be treated as failing to satisfy the requirements of this section or any other provision of this title merely because the employer makes all contributions (or all contributions on behalf of qualifying employees who do not specify a designated automatic IRA under subparagraph (B)) to a designated automatic IRA or to a retirement bond described in section 440(d) and held on behalf of the employee.

“(2) AMOUNT OF CONTRIBUTIONS.—
“(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 4 percent.

“(B) AUTHORITY OF SECRETARY 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).

“(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.

“(3) INVESTMENT OF ASSETS IN AUTOMATIC IRAS.—

“(A) INVESTMENT IN SPECIFIED OPTIONS.—Amounts contributed under this subsection for a calendar year shall, unless otherwise directed by the qualifying employee, be invested in—

“(i) the principal preservation investment option of the designated automatic IRA described in section 439(c)(2)(A) if, as of the close of the preceding calendar year or at such other time as may be prescribed by the Secretary, the outstanding balance of such plan was less than the
amount described in paragraph (2)(C)(i),

and

“(ii) if clause (i) does not apply, the

blended investment option of the des-

ignated automatic IRA described in section

439(c)(2)(B),

except that the Secretary may provide by regu-

lation or other guidance that, in the case of a
designated automatic IRA to which clause (ii)
applies, amounts previously invested in the
principal preservation option shall be reinvested
in the blended investment option.

“(B) TYPE OF AUTOMATIC IRA.—A quali-
fying employee for whom a designated auto-
matic IRA is established under paragraph
(1)(A) may elect, at such time and in such
manner and form as the Secretary may pre-
scribe, whether to treat the 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.

“(4) ALTERNATIVE AUTOMATIC ENROLLMENT
PROCEDURE.—An arrangement shall not be treated
as failing to meet the automatic enrollment require-
ments under subsection (c)(1)(B) merely because the
employer, in accordance with guidance prescribed by
the Secretary, elects to provide employees with com-
munications informing the employees that the em-
ployer wishes to obtain from each employee an af-
firmative election either to contribute (including
specification by the employee of the information nec-
essary to permit the election to be implemented) or
not to contribute to an automatic IRA, except that
such employer shall treat any employee who fails to
make such an election in the manner provided under
subsection (c)(1)(B).

“(e) Election and Notice Requirements.—

“(1) Election requirements.—Each auto-
matic IRA arrangement shall permit—

“(A) each qualifying employee to elect,
during the 60-day period or other period speci-
fied by the Secretary before the beginning of
any calendar year (and during the 60-day pe-
period or other period specified by the Secretary
before the first day the employee is eligible to
participate), to participate in the arrangement,
or to modify the employee’s election under the
arrangement (including the amounts subject to
the arrangement and the manner in which such
amounts are invested), for such year, and
“(B) subject to a requirement for reasonable notice, an employee to elect to terminate participation in the arrangement at any time during a calendar year, except that if an employee so terminates, the employer may provide that the employee may not resume participation until the beginning of the next calendar year.

“(2) EMPLOYER NOTICE.—Under an automatic IRA arrangement, the employer shall provide, within a reasonable period before the beginning of each period described in paragraph (1)(A), a notice to each qualifying employee meeting the requirements of section 414(w)(4).

“(3) MODEL NOTICE, FORMS, AND WEBSITE.—The Secretary, in consultation with the Secretary of Labor, shall—

“(A) provide a model notice, written in a manner calculated to be understandable to the average worker, that is simple for employers to use, that meets the requirements of paragraph (2), and that informs qualifying employees of the automatic enrollment arrangement (including the types of individual retirement plans to which contributions may be deposited),
“(B) provide model forms for enrollment, including automatic enrollment, in an automatic IRA arrangement, and

“(C) establish an Internet website under section 440 that allows employers and individuals to obtain information on automatic IRA arrangements and on saving and investing for retirement, and to obtain required notices and forms.

“(4) COORDINATION WITH WITHHOLDING.——

The Secretary shall modify the withholding exemption 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.

“(f) AUTOMATIC IRA CONTRIBUTIONS TREATED LIKE OTHER CONTRIBUTIONS TO INDIVIDUAL RETIREMENT PLANS.——

“(1) TAX TREATMENT UNAFFECTED.——The fact that a contribution to an individual retirement plan is made on behalf of a qualifying 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 made on behalf of a qualifying 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 had been made directly by the employee.

“(3) Rollover Limit Not to Apply.—For purposes of section 408(d)(3)(B), there shall be disregarded any qualified rollover contribution which is a transfer described in subsection (d)(1)(C)(i).

“(g) Designation of Provider for Employer’s Automatic IRA Arrangement.—

“(1) In General.—For purposes of subsection (d)(1)(A), the provider of an automatic IRA under any automatic IRA arrangement of an employer shall be the trustee or issuer of the individual retirement plan and shall be determined under one of the following methods:

“(A) Provider Designated by Employer.—
“(i) IN GENERAL.—An employer may designate a single provider for the automatic IRA arrangement.

“(ii) EXEMPTION FROM ERISA.—If the provider designated by the employer is included on the list of providers contained in the website established under section 440(b), see the exemption under section 3(2)(C) of the Employee Retirement Income Security Act of 1974 of the arrangement from such Act.

“(B) ELECTION TO USE DEFAULT PROVIDER.—An employer may elect to have the provider selected on the employer’s behalf under the procedures established under section 440(c).

“(C) ELECTION TO INVEST IN RETIREMENT BONDS.—An employer may elect to have the provider be the Secretary by electing to have contributions under an automatic IRA arrangement invested in retirement bonds described in section 440(d).

“(2) MULTIPLE EMPLOYER ARRANGEMENTS AND USE OF RECORD KEEPERS.—An employer shall be treated as meeting the requirements of this subsection if, in accordance with the procedures estab-
lished under section 440(e), the provider is selected through the use of a record keeper described in section 440(e)(1)(A), a sponsor of a multiple employer arrangement described in section 440(e)(1)(B), or another intermediary authorized by the Secretary under section 440(e)(1)(C).

“(h) APPLICABLE EMPLOYER.—For purposes of this section—

“(1) IN GENERAL.—The term ‘applicable employer’ means, with respect to any calendar year, an employer which had at least the applicable number of employees who received at least $5,000 of compensation (as defined in section 408(p)(6)(A)) from the employer for the preceding calendar year.

“(2) EMPLOYERS NOT IN EXISTENCE.—Such term shall not include an employer which was not in existence at all times during the calendar year and the preceding calendar year.

“(3) OPERATING RULES.—In determining the number of employees for purposes of this subsection—

“(A) any rule applicable in determining the number of employees for purposes of section 408(p)(2)(C) shall be applicable under this subsection,
“(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 in-
clude a reference to any predecessor employer.

“(4) APPLICABLE NUMBER.—For purposes of
paragraph (1), the term ‘applicable number’ means
the number of employees determined in accordance
with the following table:

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<td>2015 .................................................................................. 25</td>
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<td>2016 or thereafter ............................................................. 10.</td>
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“(i) QUALIFIED PLAN OR ARRANGEMENT.—For pur-
poses of this section—

“(1) IN GENERAL.—The term ‘qualified plan or
arrangement’ means a plan, contract, pension, or
trust described in section 219(g)(5).

“(2) EXCLUDED PLANS.—Such term shall not
include a plan or arrangement 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 disere-

not been an employer contribution 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 plan year ending in the preceding calendar year.

“(j) AUTHORITY.—The Secretary may prescribe rules to prevent avoidance of the requirements of this section through the use of insubstantial, frozen, or suspended plans or arrangements or by other means.

“SEC. 439. AUTOMATIC IRAS.

“(a) GENERAL RULE.—For purposes of this title—

“(1) an automatic IRA shall be treated in the same manner as an individual retirement plan, and

“(2) the determination of whether the automatic IRA is described in section 408 or 408A shall be made on the basis of whether it meets the requirements of either such section.

“(b) AUTOMATIC IRA.—For purposes of this section, the term ‘automatic IRA’ means an individual retirement plan (as defined in section 7701(a)(37)) which meets the investment and fee requirements set forth in this section.

“(c) INVESTMENT OPTIONS.—
“(1) IN GENERAL.—The Secretary of Labor and the Secretary, in consultation with the Chairman of the Securities and Exchange Commission, shall, not later than 18 months after the date of the enactment of this section, prescribe regulations which set forth the requirements for each of the classes of investments described in paragraph (2) and procedures for determining which assets meet the requirements for each of such classes.

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

“(A) PRINCIPAL PRESERVATION.—A class of assets or fund 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), or similar classes of assets.

“(B) BLENDED INVESTMENT OPTION.—A broadly diversified class of assets or fund, as specified in such regulations, that is substan-
tially similar to target date, life cycle, balanced
or similar funds, as so specified.

“(C) THIRD OPTION.—A broadly diversi-
fied class of assets or fund providing a some-
what higher investment in equities than the in-
vestment options under subparagraph (B), as
specified in such regulations.

“(3) USE OF LOW-COST FUNDS; AVOIDANCE OF
COMPLEXITY.—The Secretary of Labor and the Sec-
retary shall, in the regulations prescribed under
paragraph (1), provide that the investment options
under subparagraphs (A), (B), and (C) thereof be
based on low-cost investment options, which may in-
clude index funds, and provide that such investment
options avoid undue complexity.

“(4) FLEXIBILITY.—The Secretary of Labor
and the Secretary, in consultation with the Chair-
man of the Securities and Exchange Commission,
shall periodically review the investment options
under paragraph (2) to ensure that such options in-
clude appropriate alternative investment options that
become available after the initial investment options
are established. The Secretary of Labor and the Sec-
retary, in consultation with the Chairman of the Se-
curities and Exchange Commission, may revise such
options if the Secretary of Labor and the Secretary
determine necessary, but only to the extent that the
new options—

“(A) are consistent with the risk-return
profiles of the investment classes described in
paragraph (2), and

“(B) are low-cost investment options as
provided in paragraph (3).

“(d) INVESTMENT FEES.—

“(1) IN GENERAL.—The Secretary of Labor
and the Secretary, in consultation with the Chair-
man of the Securities and Exchange Commission,
shall include in the regulations under subsection
(c)(1)—

“(A) clear and uniform methods for report-
ing the fees imposed with respect to the invest-
ment options provided under subsection (c), and

“(B) a prohibition on charging additional
fees solely on the basis that the balance in an
automatic IRA is small.

“(2) AVAILABILITY.—The Secretary shall pro-
vide for the information described in paragraph
(1)(A) to be furnished or made available to employ-
ers and employees, and included on the Internet
website established under section 440, in such a
manner that employers and employees will be able to easily compare fees of all providers under the various investment options.

“(3) Fees.—For purposes of this subsection, the term ‘fee’ includes any fee, commission, asset management charge, compensation for services, or any other charge or expense specified in the regulations described in paragraph (1) which is imposed with respect to the automatic IRA.

“SEC. 440. RULES RELATING TO CHOICE OF INVESTMENT PROVIDERS.

“(a) In General.—The Secretary shall establish a program to assist in the implementation of this part. Such program shall include—

“(1) the establishment of an Internet website meeting the requirements of subsection (b),

“(2) the establishment of an arrangement meeting the requirements of subsection (c) for the default assignment of automatic IRA providers to employers, and

“(3) procedures for record keepers, multiple employer arrangements, and other intermediaries described in section 440(e) to administer any automatic IRA arrangement of an employer required under this section.
“(b) Internet Website.—

“(1) In general.—The Secretary shall develop an Internet website or other electronic means by which—

“(A) employers can obtain information on automatic IRA arrangements, including the required notices and forms described in section 438(e)(3)(C),

“(B) providers of automatic IRAs may register for inclusion in a list of providers of automatic IRAs from which employers may designate for purposes of section 438(g)(1)(A),

“(C) employers may elect to have contributions under an automatic IRA arrangement made to a provider selected under the default provider program established under subsection (c), and

“(D) employers may elect to have contributions under an automatic IRA arrangement made to the retirement bond program established under subsection (d).

“(2) Registration.—A provider seeking to register under paragraph (1)(B) shall provide such information as the Secretary may require in order to ensure that an employer may easily compare and se-
select a provider from among providers that serve the
employer’s geographic area and that are appropriate
for the employer taking into account other relevant
characteristics of the employer.

“(3) SECRETARY MAY LIMIT REGISTRATION.—
The Secretary—

“(A) may by regulation provide standards
for inclusion on the website list described in
paragraph (1)(B), and

“(B) shall establish procedures for a pro-
vider to certify that it meets those standards.

“(c) DEFAULT ASSIGNMENT OF AUTOMATIC IRA
 PROVIDERS.—

“(1) IN GENERAL.—The Secretary shall include
in the program under subsection (a) an arrangement
under which employers electing under section
438(g)(1)(B) to be included in the program would
be randomly assigned a provider from the partici-
pating providers selected under paragraph (2) to es-

tablish automatic IRAs for its employees under the
automatic IRA arrangement.

“(2) ESTABLISHMENT.—The Secretary,
through a competitive process, shall select providers
of automatic IRAs for participation in the arrange-
ment under this subsection from among providers
who apply for inclusion in such arrangement. The Secretary shall select such providers, and the number of such providers, taking into account—

“(A) the extent of the provider’s willingness to accept all employers that are in the geographic area the provider serves, that elect to participate in the arrangement under paragraph (1), and that are randomly assigned to the provider,

“(B) the investment options offered through the provider’s automatic IRA, particularly the value such options offer to participants (taking into account the relative fees), and

“(C) whether or not inclusion of the provider will avoid concentration of assets in too few providers.

“(3) ALTERNATE ARRANGEMENT.—The Secretary may establish an alternate arrangement to carry out the responsibilities of the participating providers under this subsection if the Secretary determines such arrangement would reduce administrative costs and burdens.

“(d) RETIREMENT BOND PROGRAM.—
“(1) IN GENERAL.—The Secretary shall include in the program under subsection (a) an arrangement under which—

“(A) employers may elect for purposes of section 438(g)(1)(C) to have all payments described in section 438(c)(1) with respect to a qualifying employee be deposited for investment in a retirement bond described in paragraph (3) in the name of such qualifying employee, and

“(B) if the value of the retirement bond as of the time specified in clause (i) of section 438(d)(3)(A) exceeds the amount specified in such clause, the Secretary shall, unless otherwise directed by the qualifying employee after receiving written notice, redeem such bond and transfer the proceeds from such redemption (and any subsequent deposits described in subparagraph (A)) to the blended investment option of the automatic IRA described in section 439(c)(2)(B) established for such employee by a provider selected under subsection (c) as the provider for employees of that employer.

“(2) DETAILS OF ARRANGEMENT.—

“(A) SIMPLIFICATION.—The Secretary shall ensure that under the arrangement no
more than 1 retirement bond of each type (traditional or Roth) is issued for each TIN and that contributions may be applied to the purchase of retirement bonds without undue administrative or paperwork requirements.

“(B) TREATMENT OF CONTRIBUTIONS.—

For purposes of this title—

“(i) any payment invested under the arrangement shall be treated as if it were contributed to and held under an individual retirement plan established on behalf of the employee and as if the provider of the individual retirement plan were described in section 408(a)(2), and

“(ii) for purposes of section 408(d)(3)(B), the transfer under paragraph (1)(B) or subparagraph (C) shall be disregarded.

“(C) FORWARDING OF CERTAIN PAYMENTS.—If—

“(i) an employer has elected to make contributions to the Secretary, and

“(ii) either—
“(I) an employee has designated a provider to receive automatic payroll deduction contributions, or

“(II) the Secretary has transferred the proceeds of a redeemed retirement bond to the provider selected under the procedures under paragraph (1)(B),

then the Secretary shall periodically forward the amount contributed to the designated or selected provider.

“(D) NOTICE.—The Secretary shall provide notice to a qualifying employee within a reasonable period before a redemption under paragraph (1)(B) that informs the employee of the option to direct the Secretary not to redeem such bond or to transfer the proceeds of the redemption to an individual retirement plan of a provider selected by the employee.

“(3) RETIREMENT BONDS.—For purposes of this subsection, the term ‘retirement bond’ means a bond issued under chapter 31 of title 31, which by its terms, or by regulations or other guidance 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,

“(B) provides for the interest to be determined or adjusted in a manner and with sufficient frequency to provide substantial protection from inflation,

“(C) is designed for investment under an automatic IRA, and

“(D) is not transferable.

“(e) ALTERNATIVE STRUCTURES.—

“(1) IN GENERAL.—The Secretary may, under the program established under subsection (a), establish procedures under which the responsibilities for implementing an automatic IRA arrangement under this part may be carried out through—

“(A) record keepers (including persons performing recordkeeping services in connection with their investment products, payroll processors, or payroll software providers) that meet such requirements as the Secretary and the Secretary of Labor may establish and that contract with providers of automatic IRAs,

“(B) sponsors of arrangements involving multiple employers, or
“(C) other intermediaries authorized by the Secretary and the Secretary of Labor.

“(2) OTHER RULES.—

“(A) BONDING.—The requirements under paragraph (1)(A) may include bonding requirements similar to the requirements under section 412 of the Employee Retirement Income Security Act of 1974 for persons who handle money or other property of automatic IRAs.

“(B) SEPARATE ACCOUNTS.—For purposes of this part, each separate account under a trust created or organized in the United States by a person described in paragraph (1) or a provider of an automatic IRA shall, except to the extent provided by the Secretary, be treated as an individual retirement account described in section 408(a) if the trust would be described in section 408(c) had it been created or organized by an employer.

“(3) RULE OF CONSTRUCTION.—Nothing in this subsection shall be construed to prohibit a person described in paragraph (1) that otherwise qualifies as a trustee or issuer of an automatic IRA from registering for inclusion in the list described in sub-
section (b)(1)(B) or participating in the competitive
process under subsection (e)(2).”.

(b) Notice of Availability of Investment
Guidelines.—Section 408(i) of the Internal Revenue
Code of 1986 (relating to reports) is amended by adding
at the end the following new sentence: “Any report fur-
nished under paragraph (2) to an individual shall include
notice of the availability of, and methods of acquiring, the
basic investment guidelines prepared by the Secretary of
Labor.”.

(c) Development of Basic Investment Guidelines.—

(1) In General.—The Secretary of Labor
shall, in consultation with the Secretary of the
Treasury, develop and publish basic guidelines for
investing for retirement. Except as otherwise pro-
vided by the Secretary of Labor, such guidelines
shall include—

(A) information on the benefits of divers-
sification,

(B) information on the essential dif-
ferences, in terms of risk and return, between
various pension plan investments, including
stocks, bonds, mutual funds, and money market
investments,
(C) information on how an individual’s pension plan investment allocations may differ depending on the individual’s age and years to retirement and on other factors determined by the Secretary of Labor,

(D) sources of information where individuals may learn more about pension rights, individual investing, and investment advice, and

(E) such other information related to individual investing as the Secretary of Labor determines appropriate.

(2) CALCULATION INFORMATION.—The guidelines under paragraph (1) shall include addresses for Internet sites and worksheets which a participant or beneficiary in a pension plan may use to calculate—

(A) the retirement age value of the participant’s or beneficiary’s nonforfeitable pension benefits under the plan (expressed as an annuity amount and determined by reference to varied historical annual rates of return and annuity interest rates), and

(B) other important amounts relating to retirement savings, including the amount which a participant or beneficiary would be required to save annually to provide a retirement income
equal to various percentages of current salary
(adjusted for expected growth prior to retire-
ment).

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

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

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

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

ficiaries.

(d) FAILURE TO PROVIDE ACCESS TO AUTOMATIC
IRA ARRANGEMENTS.—Chapter 43 of the Internal Rev-

enue Code of 1986 (relating to qualified pension, etc.,
plans) is amended by adding at the end the following new
section:
“SEC. 4980J. REQUIREMENTS FOR APPLICABLE EMPLOYERS TO PROVIDE EMPLOYEES ACCESS TO AUTOMATIC IRA ARRANGEMENTS.

“(a) GENERAL RULE.—There is hereby imposed a tax on any failure by an applicable employer (as defined in section 438(h)) to meet the requirements of section 438 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 section 438.

“(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 section 438, and

“(B) the employer provides the automatic IRA arrangement described in section 438 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. The Secretary, in consultation with the Secretary of Labor, may establish a voluntary corrections program as part of the waiver authority under this paragraph.

“(c) PROCEDURES FOR NOTICE.—The Secretary may prescribe and implement procedures for obtaining from employers confirmation that such employers are in compliance with the requirements of section 438. 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.”.

(e) Provisions Relating to Penalties.—

(1) Penalty for failure timely to remit contributions to automatic IRA arrangements.—Section 4975(c) of the Internal Revenue Code of 1986 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 438 to deposit amounts withheld from an employee’s compensation into a designated automatic IRA but fails to do so within the time prescribed under such arrangement, such amounts shall be treated as assets of the automatic IRA.”.

(2) Waiver of early withdrawal penalty for certain distributions following initial election to participate in qualified automatic IRA arrangement.—Subsection (t) of section 72 of such Code is amended by adding at the end the following new paragraph:
“(11) Distribution following initial election to participate in qualified 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 438(c)(1)(A).”.

(f) Coordination with ERISA.—

(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 “subparagraph (B)” in subparagraph (A), and

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

“(C) An automatic IRA arrangement described in section 438(c) of the Internal Revenue 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 a designated automatic IRA the provider of which is included on the website list established under section 440(b) of such Code, are to be made to an individual retirement plan pursuant to section 440(e), or are to be made
to the Secretary of the Treasury for investment in retirement bonds pursuant to section 440(d).”.

(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 438(c) 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 designated by the employer under section 438 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 no-
tice 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 designated by an employer
under section 438 of such Code” after “ar-
rangement” in the last sentence.

(g) PREEMPTION OF CONFLICTING STATE LAWS.—
Section 514(e) of the Employee Retirement Income Secu-
rity Act of 1974 (29 U.S.C. 1144(e)(1)) is amended by
adding at the end the following:

“(5) Notwithstanding any other provision of
this section, this title shall supersede any law of a
State which would directly or indirectly prohibit or
restrict the establishment or operation of an auto-
matic IRA arrangement in accordance with section
in this title shall be construed to impair or supersede
any State law to the extent it provides a remedy for
the failure to make payments required under such
arrangement within the required time period under
such section 438.”.

(h) MANDATORY TRANSFERS.—Section
401(a)(31)(B) of the Internal Revenue Code of 1986 is
amended by inserting “(including an automatic IRA)” after “individual retirement plan” each place it appears.

(i) AUTOMATIC IRA ADVISORY GROUP.—

(1) IN GENERAL.—Not later than 60 days after the date of 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 requirements for the automatic IRA investment options and procedures described in section 439(c) of the Internal Revenue Code of 1986, including disclosure of information regarding fees and expenses 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 an-
nuities 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) REPORTS 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 AMENDMENT.—The table of parts for subchapter A of chapter 1 of the Internal Revenue
Code of 1986 is amended by inserting after the item relating to part III the following new item:

“PART IV—AUTOMATIC IRA ARRANGEMENTS.”

(k) EFFECTIVE DATE.—The amendments made by this section shall apply to calendar years beginning after December 31, 2012.

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

(a) IN GENERAL.—Subpart D of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 (relating to business related credits) is amended by adding at the end the following new section:

“SEC. 45S. SMALL EMPLOYER AUTOMATIC IRA CREDIT.

“(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 438 (without regard to whether the employer is required to maintain the arrangement), the small employer automatic IRA 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 equal to the lesser of—
“(A) $25 multiplied by the number of qualifying employees (within the meaning of section 438(b)) 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, or

“(B) $250.

“(2) DURATION OF CREDIT.—No credit shall be determined under this section for any taxable year other than a taxable year which begins during the first 2 calendar years in which the eligible employer maintains an automatic IRA arrangement meeting the requirements of section 438.

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

“(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 maintains an automatic IRA arrangement meeting the requirements of section 438, which had no more than 100 employees on each day during the preceding calendar year, and which did not maintain a quali-
fied plan or arrangement (as defined in section 438(i))
during any portion of the calendar year preceding the
adoption of the automatic IRA arrangement or any por-
tion of 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) of the Internal Revenue
Code of 1986 (defining current year business credit) 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 de-
defined in section 45S(c)) maintaining an automatic
IRA arrangement meeting the requirements of sec-
tion 438, the small employer automatic IRA 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
of the Internal Revenue Code of 1986 is amended by add-
ing at the end the following new item:

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

(d) Effective Date.—The amendments made by
this section shall apply to taxable years beginning after
December 31, 2012.
SEC. 4. PROMOTING QUALIFIED PLANS.

(a) INCREASE IN CREDIT FOR SMALL EMPLOYER PENSION PLAN STARTUP COSTS.—

(1) IN GENERAL.—Section 45E(b)(1) of the Internal Revenue Code of 1986 is amended by striking “$500” and inserting “$1,000”.

(2) EFFECTIVE DATE.—The amendment made by this subsection shall apply to taxable years beginning after December 31, 2011.

(b) ELIMINATING BARRIERS TO USE OF MULTIPLE EMPLOYER PLANS.—The Secretaries of the Treasury and Labor shall, within 12 months after the date of the enactment of this Act—

(1) prescribe guidance establishing conditions under which an employer participating 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 Income Security Act of 1974 with respect to the acts or omissions of one or more other participating employers, which regulations may require that the portion of the plan attributable to such participating employers be spun off to plans maintained by such employers,

(2) prescribe guidance establishing conditions under which a plan described in section 413(c) of such Code may be treated as satisfying the qualifica-
tion 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 participating employers be spun off to plans maintained by such employers, and

(3) prescribe guidance providing simplified means, including a model plan document, by which plans described in section 413(c) of such Code may satisfy the requirements of sections 102, 103, and 105 of the Employee Retirement Income Security Act of 1974.

SEC. 5. STUDIES.

(a) STUDIES OF SPOUSAL CONSENT REQUIREMENTS AND PROMOTION OF CERTAIN LIFETIME INCOME ARRANGEMENTS.—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 IRAs 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 the requirements to automatic IRAs.
(2) Promoting the use of low-cost annuities, longevity insurance, or other guaranteed lifetime income arrangements in automatic IRAs, including consideration of—

(A) appropriate means of arranging for, or encouraging, individuals to receive at least a portion of their distributions in some form of low-cost guaranteed lifetime income, and

(B) issues presented by possible additional differences in, or uniformity of, provisions governing different IRAs.

(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 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 subsections (a) and (b), together with any recommendations for legislative changes, to the Committees on Finance and Health, Education, Labor, and Pensions of the Senate and the Committees on Ways and Means and Education and Labor of the House of Representatives.