

116TH CONGRESS
1ST SESSION

S. 2370

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

IN THE SENATE OF THE UNITED STATES

JULY 31, 2019

Mr. WHITEHOUSE 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 saving and retirement savings coverage by enabling employees not covered by qualifying retirement plans to save for retirement through automatic IRA arrangements, and for other purposes.

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; REFERENCE.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Automatic IRA Act of 2019”.

6 (b) AMENDMENT OF 1986 CODE.—Except as other-
7 wise expressly provided, whenever in this Act an amend-

1 ment or repeal is expressed in terms of an amendment
2 to, or repeal of, a section or other provision, the reference
3 shall be considered to be made to a section or other provi-
4 sion of the Internal Revenue Code of 1986.

5 **SEC. 2. QUALIFYING AUTOMATIC IRA ARRANGEMENTS.**

6 (a) IN GENERAL.—Subpart A of part I of subchapter
7 D of chapter 1 of the Internal Revenue Code of 1986 is
8 amended by inserting after section 408A the following new
9 section:

10 **“SEC. 408B. QUALIFYING AUTOMATIC IRA ARRANGEMENTS.**

11 “(a) IN GENERAL.—For purposes of this section, a
12 qualifying automatic IRA arrangement is an automatic
13 IRA arrangement which is offered by a covered employer
14 to each qualifying employee of the employer.

15 “(b) COVERED EMPLOYER.—For purposes of this
16 section—

17 “(1) IN GENERAL.—Except as otherwise pro-
18 vided in this subsection or subsection (c)(2), the
19 term ‘covered employer’ means, with respect to any
20 year, an employer which does not maintain a quali-
21 fying plan or arrangement described in section
22 219(g)(5) for the calendar year.

23 “(2) EXCLUDED PLANS.—A qualifying plan or
24 arrangement shall not be taken into account for pur-
25 poses of paragraph (1) if—

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

4 “(B) in the case of a plan or arrangement
5 under which the only contributions are discre-
6 tionary on the part of the employer or other
7 plan sponsor—

8 “(i) no employer contribution has
9 been made to the plan or arrangement for
10 the 3-plan-year period ending with the last
11 plan year ending in the preceding calendar
12 year, and

13 “(ii) it is not reasonable to assume
14 that an employer contribution will be made
15 for the last plan year ending in the pre-
16 ceding calendar year.

17 “(3) EXCEPTION FOR CERTAIN SMALL AND
18 NEW EMPLOYERS.—

19 “(A) IN GENERAL.—The term ‘covered em-
20 ployer’ does not include an employer for a cal-
21 endar year if the employer—

22 “(i) did not employ more than 10 em-
23 ployees who received at least \$5,000 of
24 compensation (as defined in section

1 3401(a)) from the employer for the pre-
2 ceding calendar year,

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

6 “(iii) was not in existence at all times
7 during the calendar year and the preceding
8 calendar year.

9 “(B) OPERATING RULES.—In determining
10 the number of employees for purposes of sub-
11 paragraph (A)—

12 “(i) rules consistent with any rules
13 applicable in determining the number of
14 employees for purposes of section
15 408(p)(2)(C) and section 4980B(d) shall
16 apply,

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

20 “(iii) any reference to an employer
21 shall include a reference to any predecessor
22 employer.

23 “(4) EXCEPTION FOR GOVERNMENTS AND
24 CHURCHES.—The term ‘covered employer’ does not
25 include—

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

3 “(B) a church or a convention or associa-
4 tion of churches which is exempt from tax
5 under section 501.

6 “(5) COORDINATION WITH QUALIFYING STATE-
7 FACILITATED AUTOMATIC IRA PROGRAMS.—

8 “(A) IN GENERAL.—In the case of an em-
9 ployer all of the employees of which are em-
10 ployed in a single State, if such State maintains
11 or facilitates a qualifying State-facilitated auto-
12 matic IRA program, any employer which is re-
13 quired to participate in such State program is
14 not a covered employer for purposes of this sec-
15 tion.

16 “(B) EMPLOYERS WITH EMPLOYEES IN
17 MULTIPLE STATES.—In the case of an employer
18 which employs employees in more than 1
19 State—

20 “(i) if each such State maintains or
21 facilitates a qualifying State-facilitated
22 automatic IRA program, the employer par-
23 ticipation rules of each such program (and
24 of subparagraph (A)) apply, respectively,
25 to employees employed in such State, and

1 “(ii) if one or more of such States,
2 but not all, maintain or facilitate a quali-
3 fying State-facilitated automatic IRA pro-
4 gram—

5 “(I) the employer participation
6 rules of each such program (and of
7 subparagraph (A)) apply, respectively,
8 to employees employed in such State,
9 and

10 “(II) the employer is a covered
11 employer for purposes of this section
12 with respect to qualifying employees
13 employed in States which do not
14 maintain or facilitate such a program
15 (unless otherwise excluded under
16 paragraph (3)(A)),

17 unless the employer makes an irrevocable
18 election to be treated as a covered em-
19 ployer for purposes of this section with re-
20 spect to all qualifying employees in all
21 States.

22 “(6) AGGREGATION RULE.—All persons treated
23 as a single employer under subsection (a) or (b) of
24 section 52 or subsection (m) or (o) of section 414
25 shall be treated as a single employer.

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

3 “(1) IN GENERAL.—The term ‘qualifying em-
4 ployee’ means any employee of the employer other
5 than—

6 “(A) an excluded employee, and

7 “(B) an employee who participates in (or
8 is eligible to, and has elected not to, participate
9 in) a qualifying State-facilitated automatic IRA.

10 “(2) PLAN SPONSOR’S EMPLOYEES.—If—

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

14 “(B) the employees of any subsidiary, divi-
15 sion, or other major business unit of the em-
16 ployer are generally not eligible to participate in
17 any such qualifying plan or arrangement, and

18 “(C) the number of employees of the em-
19 ployer described in subparagraph (B) for a cal-
20 endar year is—

21 “(i) at least 50, and

22 “(ii) at least 10 percent of the em-
23 ployees of the employer (other than exclud-
24 able employees),

1 then, for purposes of this section, the employer shall
2 be treated as a covered employer with respect to
3 such employees (other than excluded employees) for
4 the calendar year, and such employees (other than
5 excluded employees) shall be treated as qualifying
6 employees.

7 “(3) EXCLUDED EMPLOYEES.—

8 “(A) IN GENERAL.—The term ‘excluded
9 employee’ means an employee of the employer
10 who is an excludable employee and who is in a
11 class or category that the employer elects to ex-
12 clude from treatment as qualifying employees.

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

15 “(i) any employee described in section
16 410(b)(3),

17 “(ii) any employee who has not at-
18 tained the age of 18 before the first day of
19 the calendar year,

20 “(iii) any employee who has not com-
21 pleted at least 3 months of service with the
22 employer,

23 “(iv) in the case of an employer that
24 maintains a qualifying plan or arrange-
25 ment which excludes employees who have

1 not satisfied the minimum age and service
2 requirements for participation in the plan,
3 any employee who has not satisfied such
4 requirements,

5 “(v) in the case of an employer that
6 maintains a section 403(b) annuity con-
7 tract (including a custodial account or re-
8 tirement income account), any employee
9 who is permitted to be excluded from any
10 salary reduction arrangement under the
11 contract pursuant to section 403(b)(12),

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

17 “(vii) in the case of an employer that
18 maintains a simplified employee pension
19 described in section 408(k), any employee
20 who is permitted to be excluded from par-
21 ticipation under section 408(k)(2).

22 “(4) GUIDANCE.—The Secretary shall issue
23 regulations or other guidance to carry out this sub-
24 section, including—

1 “(A) guidelines for determining the classes
2 or categories of employees to be covered by an
3 automatic IRA arrangement,

4 “(B) if an employer excludes employees
5 from the automatic IRA arrangement, guide-
6 lines providing that the employer shall specify
7 the classification or categories of employees who
8 are so excluded, and

9 “(C) rules to prevent avoidance of the re-
10 quirements of this section.

11 “(d) AUTOMATIC IRA ARRANGEMENT.—For pur-
12 poses of this section—

13 “(1) IN GENERAL.—The term ‘automatic IRA
14 arrangement’ means an arrangement of an employer
15 (determined without regard to whether the employer
16 is required to maintain the arrangement)—

17 “(A) under which a qualifying employee—

18 “(i) may elect—

19 “(I) to contribute to an indi-
20 vidual retirement plan, or to purchase
21 a qualifying retirement bond, by hav-
22 ing the employer deposit payroll de-
23 duction amounts or make other peri-
24 odic direct deposits (including elec-
25 tronic payments) to the plan or invest

1 such amounts in such qualifying re-
2 tirement bonds, or

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

5 “(ii) is treated as having made the
6 election under clause (i)(I) in the amount
7 specified in paragraph (5) until the indi-
8 vidual specifically elects not to have such
9 contributions or purchases made (or spe-
10 cifically elects to have such contributions
11 or purchases made at a different percent-
12 age or in a different amount), and

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

16 “(B) which meets the administrative re-
17 quirements of paragraph (3), including the no-
18 tice requirement of paragraph (3)(C), and

19 “(C) which does not charge unreasonable
20 additional fees solely on the basis that the bal-
21 ance in an automatic IRA is small.

22 “(2) EMPLOYER’S OPTION TO OBTAIN AFFIRMA-
23 TIVE ELECTIONS FROM EMPLOYEES INSTEAD OF
24 AUTOMATIC ENROLLMENT.—As an alternative to
25 automatic enrollment, an employer may choose to

1 comply with paragraph (1)(A)(ii) by notifying em-
2 ployees that the employer wishes to obtain from each
3 qualifying employee an affirmative election either to
4 contribute or not to contribute to an automatic IRA,
5 provided that any qualifying employee who fails to
6 make such an election is treated in the manner pro-
7 vided under paragraph (1)(A)(ii).

8 “(3) ADMINISTRATIVE REQUIREMENTS.—

9 “(A) PAYMENTS.—The requirements of
10 this paragraph are met with respect to any
11 automatic IRA arrangement if the employer
12 makes the payments elected or treated as elect-
13 ed under paragraph (1)(A)—

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

18 “(ii) before such later deadline pre-
19 scribed by the Secretary for making such
20 payments, but not later than the due date
21 for the deposit of tax required to be de-
22 ducted and withheld under chapter 24 (re-
23 lating to collection of income tax at source
24 on wages) for the payroll period to which
25 such payments relate, or

1 “(iii) as early as administratively
2 practicable.

3 “(B) TERMINATION OF EMPLOYEE PAR-
4 TICIPATION.—Subject to a requirement for rea-
5 sonable notice, an employee may elect to termi-
6 nate participation in the arrangement at any
7 time during a calendar year, except that if an
8 employee so terminates, the arrangement may
9 provide that the employee may not elect to re-
10 sume participation until the beginning of the
11 next calendar year.

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

21 “(i) the payments that may be elected
22 or treated as elected under paragraph
23 (1)(A),

1 “(ii) the opportunity to make the elec-
2 tion to terminate participation in the ar-
3 rangement under subparagraph (B),

4 “(iii) the opportunity to make the
5 election under paragraph (1)(A)(ii) to have
6 contributions or purchases made at a dif-
7 ferent percentage or in a different amount,
8 and

9 “(iv) the opportunity under paragraph
10 (1)(A)(iii) to modify the manner in which
11 such amounts are invested for such year.

12 “(D) INVESTMENT OPTIONS.—The require-
13 ments of this paragraph shall not be treated as
14 met with respect to any year unless an em-
15 ployee electing to have contributions made to an
16 individual retirement plan is provided with the
17 option to choose among all investment options
18 described in subparagraphs (B), (C), (D), and
19 (E) of paragraph (6).

20 “(4) DEFAULT INVESTMENTS.—If an employee
21 is treated under clause (ii) of paragraph (1)(A) as
22 having made an election to participate in an auto-
23 matic IRA arrangement—

24 “(A) the employee shall be deemed to have
25 made an election to make contributions and

1 payments in the amount determined under such
2 clause, and

3 “(B) such contributions shall—

4 “(i) be transferred to an individual re-
5 tirement plan of the designated trustee or
6 issuer, but only if the contributions are in-
7 vested as provided in paragraph (6), or

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

10 “(5) AMOUNT OF CONTRIBUTIONS AND PAY-
11 MENTS.—

12 “(A) IN GENERAL.—The amount specified
13 in this paragraph with respect to any employee
14 is—

15 “(i) 3 percent of the compensation of
16 the employee, or

17 “(ii) such other percentage of com-
18 pensation as is specified in regulations pre-
19 scribed by the Secretary which is not less
20 than 2 percent or more than 6 percent.

21 “(B) AUTHORITY TO PROVIDE FOR PERI-
22 ODIC INCREASES.—In the case of qualifying em-
23 ployees under an automatic IRA arrangement
24 for 2 or more consecutive years, the Secretary
25 may by regulation provide for periodic (not

1 more frequent than annual) increases in the
2 percentage of compensation an employee is
3 deemed to have elected under subparagraph
4 (A). The considerations the Secretary shall take
5 into account in issuing any regulations under
6 this subparagraph and subparagraph (A) shall
7 include the potential effects on lower-income
8 employees as well as on adequacy of savings.

9 “(C) PERMITTED ADDITIONAL PROCE-
10 DURES TO LIMIT CONTRIBUTIONS.—An em-
11 ployer—

12 “(i) shall have no responsibility for
13 any calendar year for determining whether,
14 or ensuring that, the contributions with re-
15 spect to any employee do not exceed the
16 deductible amount in effect for taxable
17 years beginning in the calendar year under
18 section 219(b)(5) (determined without re-
19 gard to subparagraph (B) thereof), and

20 “(ii) shall not be treated as failing to
21 satisfy the requirements of this section or
22 any other provision of this title merely be-
23 cause the employer chooses to limit the
24 contributions under this subsection on be-
25 half of a qualifying employee for any cal-

1 endar year in a manner reasonably de-
2 signed to avoid exceeding such deductible
3 amount.

4 “(6) REQUIRED INVESTMENTS.—

5 “(A) IN GENERAL.—Amounts contributed
6 under paragraph (4)(B)(i) shall be invested
7 only in the class of assets or funds described in
8 subparagraph (B) unless the employee elects a
9 class of assets or funds described in subpara-
10 graph (C), (D), or (E).

11 “(B) TARGET DATE OR LIFECYCLE OP-
12 TION.—The class of assets or funds described
13 in this subparagraph is the class of assets or
14 funds that constitutes a qualified default invest-
15 ment alternative under section 2550.404c-
16 5(e)(4)(i) of title 29, Code of Federal Regula-
17 tions.

18 “(C) PRINCIPAL PRESERVATION.—The
19 class of assets or funds described in this sub-
20 paragraph is the class of assets or funds that
21 is designed to protect the principal of the indi-
22 vidual on an ongoing basis, including passbook
23 savings, certificates of deposit, insurance con-
24 tracts, mutual funds, United States savings

1 bonds (which may be indexed for inflation), and
2 similar assets specified in regulations.

3 “(D) GUARANTEED LIFETIME INCOME OP-
4 TION OR EQUIVALENT.—The class of assets or
5 funds described in this subparagraph is the
6 class of assets or funds that is designed to pro-
7 vide an employee with the right to elect to re-
8 ceive distributions as a defined level of income
9 annually (or more frequently) for at least the
10 remainder of the life of the employee or the
11 joint lives of the employee and the employee’s
12 designated beneficiary.

13 “(E) OTHER.—Any other class of assets or
14 funds determined by the Secretary to be a
15 qualified investment for purposes of this sec-
16 tion.

17 “(7) QUALIFYING RETIREMENT BOND.—For
18 purposes of this section—

19 “(A) IN GENERAL.—The term ‘qualifying
20 retirement bond’ means a bond issued under
21 chapter 31 of title 31, United States Code,
22 which by its terms, or by regulations prescribed
23 by the Secretary under such chapter—

24 “(i) provides for interest to be cred-
25 ited at rates that take into account the ex-

1 pected duration of the funds invested in
2 such bonds and at rates determined or ad-
3 justed in a manner and with sufficient fre-
4 quency to provide substantial protection
5 from inflation,

6 “(ii) is not transferable, and

7 “(iii) is designed for investment for
8 retirement under automatic IRA arrange-
9 ments or other savings vehicles.

10 “(B) INDIVIDUAL RETIREMENT PLAN
11 RULES APPLICABLE.—The provisions of this
12 title applicable to an individual retirement plan
13 (as defined in section 7701(a)(37)), including
14 provisions relating to contributions, holding and
15 distributions, shall apply to a qualifying retire-
16 ment bond, except as determined by the Sec-
17 retary.

18 “(C) ANNUAL STATEMENT.—As soon as
19 practicable after the close of each calendar
20 year, the Secretary shall make available an an-
21 nual statement to each participant on behalf of
22 whom qualifying retirement bonds have been
23 purchased, setting forth—

1 “(i) payments made by or on behalf of
2 the participant for such bonds during such
3 calendar year,

4 “(ii) amounts earned by any such
5 bonds, whether purchased during such year
6 or during a prior year, during such cal-
7 endar year,

8 “(iii) the value of the participant’s ac-
9 count with respect to such bonds as of the
10 close of such calendar year,

11 “(iv) the importance of diversifying
12 retirement savings,

13 “(v) the benefits of a well-balanced
14 and diversified investment portfolio,

15 “(vi) a notice of the internet website
16 of the Department of Labor for sources of
17 information on individual investing and di-
18 versification,

19 “(vii) the procedures for redeeming a
20 qualifying retirement bond and directly
21 transferring the redeemed amount into an
22 individual retirement plan,

23 “(viii) other factors affecting retire-
24 ment savings decisions, and

1 “(ix) such other information as the
2 Secretary determines necessary or appro-
3 priate.

4 “(8) TREATMENT AS ROTH IRA.—A qualifying
5 employee for whom an automatic IRA is established
6 under paragraph (1) may elect, at such time and in
7 such manner and form as the Secretary may pre-
8 scribe but not later than the due date of the return
9 for the taxable year in which such automatic IRA is
10 established, whether to treat the individual retire-
11 ment plan as described, or not described, in section
12 408A. If no such election is made, the plan shall be
13 treated as described in section 408A and shall meet
14 the requirements of section 408A (including any ap-
15 propriate adjustment or conversion as may be pro-
16 vided by the Secretary).

17 “(e) TREATMENT OF CONTRIBUTIONS.—

18 “(1) IN GENERAL.—A contribution to an indi-
19 vidual retirement plan or purchase of a retirement
20 bond on behalf of an employee under a qualifying
21 automatic IRA arrangement shall be treated for pur-
22 poses of this title as if it had been made directly by
23 the employee, including for purposes of limitations
24 on contributions to individual retirement plans.

1 “(2) COORDINATION WITH WITHHOLDING.—
2 The Secretary shall modify the withholding exemp-
3 tion certificate under section 3402(f) so that, in the
4 case of any qualifying employee covered under an
5 automatic IRA arrangement, any notice and election
6 requirements with respect to the arrangement may
7 be met through the use of an attachment to such
8 certificate or other modifications of the withholding
9 exemption procedures.

10 “(3) INDIVIDUAL RETIREMENT PLAN RULES AP-
11 PLICABLE.—The provisions of this title applicable to
12 an individual retirement plan (as defined in section
13 7701(a)(37)), including provisions relating to con-
14 tributions, holding and distributions, shall apply to
15 a qualifying retirement bond, except as determined
16 by the Secretary.

17 “(4) ROLLOVER FROM BONDS TO IRA.—The
18 Secretary shall provide for procedures by which an
19 individual may periodically elect to transfer quali-
20 fying retirement bonds (with their proceeds) held by
21 the individual to an individual retirement account.
22 Any such transfer shall be treated as a rollover con-
23 tribution for purposes of section 408(d)(3) (other
24 than subparagraph (B) thereof).

1 “(f) MODEL NOTICE.—The Secretary, in coordina-
2 tion with the Director of the Consumer Financial Protec-
3 tion Bureau, shall—

4 “(1) provide a model notice, written in a man-
5 ner calculated to be understandable to the average
6 worker, that is simple for employers to use—

7 “(A) to notify employees of the require-
8 ment under section 4980J for the employer to
9 provide certain employees with the opportunity
10 to participate in a qualifying automatic IRA ar-
11 rangement, and

12 “(B) to satisfy the requirements of sub-
13 section (d)(3)(C),

14 “(2) provide uniform forms for enrollment, in-
15 cluding automatic enrollment, in an automatic IRA
16 arrangement, and

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

21 The information referred to in paragraph (3) shall be pro-
22 vided in a manner designed to assist employers and pro-
23 viders by facilitating the identification by employers of pri-
24 vate-sector providers of individual retirement plans and

1 associated investment options that are appropriate for use
2 in automatic IRA arrangements.

3 “(g) QUALIFYING STATE-FACILITATED AUTOMATIC
4 IRA.—For purposes of this section—

5 “(1) IN GENERAL.—The term ‘qualifying State-
6 facilitated automatic IRA’ means an arrangement of
7 an employer (determined without regard to whether
8 the employer is required to maintain the arrange-
9 ment) which operates as part of a program main-
10 tained or facilitated by any State, if—

11 “(A) such program is established and
12 maintained as a State-sponsored or State-facili-
13 tated payroll deduction savings program using
14 automatic enrollment and is expressly estab-
15 lished pursuant to State law providing specifi-
16 cally for such program,

17 “(B) such program is implemented and ad-
18 ministered by the State establishing the pro-
19 gram, which is responsible for investing the em-
20 ployee savings or for selecting investment alter-
21 natives for employees to choose,

22 “(C) such program treats employees as
23 having automatically elected payroll deductions
24 in an amount or percentage of compensation,
25 including any automatic increases in such

1 amount or percentage, unless the employee spe-
2 cifically elects not to have such deductions
3 made (or specifically elects to have the deduc-
4 tions made in a different amount or percentage
5 of compensation allowed by the program), and
6 provides that employees are given adequate ad-
7 vance notice of their right to make such elec-
8 tions,

9 “(D) contributions under such program
10 are invested in individual retirement plans or
11 qualifying retirement bonds,

12 “(E) such program generally requires par-
13 ticipation by certain employers in the State
14 which do not offer their employees certain types
15 of tax-favored retirement plans or arrangements
16 specified in the terms of the program,

17 “(F) under such program, employers do
18 not make employer contributions, but are re-
19 quired to participate in activities including col-
20 lection of employee contributions through pay-
21 roll deduction and remittance of contributions
22 to the program, maintenance of records regard-
23 ing such collections and remittances, provision
24 of notice to employees, and provision of infor-

1 mation to the State necessary to facilitate the
2 operation and administration of the program,

3 “(G) employers participating in the pro-
4 gram receive no direct or indirect consideration
5 for participation in the form of cash or other-
6 wise, other than consideration (including tax
7 credits or other tax or financial incentives) re-
8 ceived directly from the State or from the Fed-
9 eral government,

10 “(H) under such program, the State as-
11 sumes responsibility for the security of payroll
12 deductions and employee savings, and

13 “(I) under such program, the State adopts
14 measures to ensure that employees are notified
15 of their rights under the program and creates
16 a mechanism for enforcement of those rights.

17 For purposes of subparagraph (B), the State admin-
18 istering a program may delegate to and utilize one
19 or more service or investment providers, or other
20 private- or public-sector entities, to operate and ad-
21 minister the program, if the State retains full re-
22 sponsibility for the operation and administration of
23 the program.

24 “(2) PARTICIPATION AVAILABLE TO NON-EM-
25 PLOYEES.—A program of a State described in para-

1 graph (1) may permit participation by individuals
2 who are not employees, including self-employed indi-
3 viduals, independent contractors, sole proprietors,
4 and partners.

5 “(3) PROGRAM MAY BE MAINTAINED BY MUL-
6 TIPLE STATES.—The program described in para-
7 graph (1) may be part of a multi-State program,
8 plan, compact, alliance, partnership, or other multi-
9 State or regional arrangement.

10 “(4) STATE.—For purposes of this section, the
11 term ‘State’ has the meaning given such term in sec-
12 tion 3(10) of the Employee Retirement Income Se-
13 curity Act of 1974, except that such term also in-
14 cludes any governmental agency or instrumentality
15 of a State.

16 “(h) CROSS REFERENCE.—For provision preempting
17 conflicting State laws, see section 2(j) of the Automatic
18 IRA Act of 2019.”

19 (b) MANDATORY TRANSFERS.—Section
20 401(a)(31)(B)(i) of the Internal Revenue Code of 1986
21 is amended—

22 (1) by inserting “(including a plan established
23 through a qualifying automatic IRA arrangement
24 (as defined in section 408B))” after “individual re-
25 tirement plan” each place it appears, and

1 (2) by adding at the end the following new sen-
2 tence: “Any amount so transferred (and any earn-
3 ings thereon) shall be invested only in investments
4 described in section 408B(d)(6).”.

5 (c) PENALTY FOR FAILURE TO TIMELY REMIT CON-
6 TRIBUTIONS TO AUTOMATIC IRA ARRANGEMENTS.—Sec-
7 tion 4975(c) of the Internal Revenue Code of 1986 is
8 amended by adding at the end the following new para-
9 graph:

10 “(7) SPECIAL RULE FOR QUALIFYING AUTO-
11 MATIC IRA ARRANGEMENTS.—For purposes of para-
12 graph (1), if an employer is required under a quali-
13 fying automatic IRA arrangement under section
14 408B to deposit amounts withheld from an employ-
15 ee’s compensation into an individual retirement ac-
16 count or toward the purchase of a qualifying retire-
17 ment bond (as defined in section 408B(d)(7)) but
18 fails to do so within the time prescribed under sec-
19 tion 408B(d)(3)(A), such amounts shall be treated
20 as assets of the individual retirement account.”.

21 (d) COORDINATION WITH EMPLOYEE RETIREMENT
22 INCOME SECURITY ACT OF 1974.—

23 (1) EXEMPTION.—

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

4 (i) by inserting “or (C)” after “sub-
5 paragraph (B)” in subparagraph (A), and

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

8 “(C) A qualifying automatic IRA arrange-
9 ment described in section 408B of the Internal
10 Revenue Code of 1986 shall not be treated as
11 an employee pension benefit plan or pension
12 plan if, under the arrangement, contributions
13 are to be made to an individual retirement ac-
14 count the provider of which is included in the
15 website list established under section
16 408B(f)(3) of such Code, are to be made to an
17 individual retirement plan designated by the
18 employee, or are to be invested in qualifying re-
19 tirement bonds (as defined in section
20 408B(d)(7)).”.

21 (B) CUSTOMER IDENTIFICATION PRO-
22 GRAM.—Notwithstanding the amendment made
23 by subparagraph (A), an individual retirement
24 plan established pursuant to an automatic IRA
25 arrangement described in section 408B(d) of

1 the Internal Revenue Code of 1986 shall, for
2 purposes of any customer identification pro-
3 gram established under section 5318(l) of title
4 31, United States Code, be treated as an ac-
5 count opened for the purpose of participating in
6 an employee benefit plan established under the
7 Employee Retirement Income Security Act of
8 1974.

9 (2) FIDUCIARY DUTIES.—Section 404(c) of
10 such Act is amended by adding at the end the fol-
11 lowing new paragraph:

12 “(6) In the case of an individual retirement ac-
13 count opened under a qualifying automatic IRA ar-
14 rangement under section 408B of such Code that is
15 not exempt under section 3(2)(C), a participant or
16 beneficiary shall, for purposes of paragraph (1), be
17 treated as exercising control over the assets in the
18 account on and after the 7th day after notice has
19 been given to an employee that such account has
20 been established on behalf of the employee. No re-
21 ports, other than those required under section
22 101(g), shall be required with respect to an account
23 opened under a qualifying automatic IRA arrange-
24 ment under section 408B of such Code.”.

1 (e) NOTICE OF AVAILABILITY OF INVESTMENT
2 GUIDELINES.—

3 (1) IN GENERAL.—Section 408(i) of the Inter-
4 nal Revenue Code of 1986 is amended by adding at
5 the end the following new sentence: “Any report fur-
6 nished under paragraph (2) to an individual shall in-
7 clude notice of the Internet website of the Depart-
8 ment of Labor for sources of information on indi-
9 vidual investing and diversification.”.

10 (2) UPDATED INFORMATION.—Such informa-
11 tion shall be modified (or updated) by the Secretary
12 of Labor in consultation with the Secretary of the
13 Treasury and the Chairman of the Securities and
14 Exchange Commission to address needed changes
15 due to the creation of automatic IRAs.

16 (f) FAILURE TO PROVIDE QUALIFYING AUTOMATIC
17 IRA ARRANGEMENTS.—Chapter 43 of the Internal Rev-
18 enue Code of 1986 is amended by adding at the end the
19 following new section:

20 **“SEC. 4980J. REQUIREMENTS FOR COVERED EMPLOYERS**
21 **TO PROVIDE QUALIFYING AUTOMATIC IRA**
22 **ARRANGEMENTS.**

23 “(a) GENERAL RULE.—There is hereby imposed a
24 tax on any failure by a covered employer (as defined in
25 section 408B) to maintain a qualifying IRA arrangement

1 (as defined in such section), and to meet the requirements
2 under such arrangement, for a calendar year.

3 “(b) AMOUNT.—

4 “(1) IN GENERAL.—The amount of the tax im-
5 posed by subsection (a) on any failure for any cal-
6 endar year shall be \$100 with respect to each quali-
7 fying employee (as defined in section 408B(c)) to
8 whom such failure relates.

9 “(2) TAX NOT TO APPLY WHERE FAILURE NOT
10 DISCOVERED AND REASONABLE DILIGENCE EXER-
11 CISED.—No tax shall be imposed by subsection (a)
12 on any failure during any period for which it is es-
13 tablished to the satisfaction of the Secretary that the
14 employer subject to liability for the tax did not know
15 that the failure existed and exercised reasonable dili-
16 gence to maintain a qualifying IRA arrangement
17 and to meet the requirements under such arrange-
18 ment.

19 “(3) TAX NOT TO APPLY TO FAILURES COR-
20 RECTED WITHIN 90 DAYS.—No tax shall be imposed
21 by subsection (a) on any failure if—

22 “(A) the employer subject to liability for
23 the tax under subsection (a) exercised reason-
24 able diligence to maintain a qualifying IRA ar-

1 rangement and to meet the requirements under
2 such arrangement, and

3 “(B) the employer provides a qualifying
4 automatic IRA arrangement described in sec-
5 tion 408B to each qualifying employee (as de-
6 fined in section 408B) by the end of the 90-day
7 period beginning on the first date the employer
8 knew, or exercising reasonable diligence would
9 have known, that such failure existed.

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

16 “(c) PROCEDURES FOR NOTICE.—The Secretary may
17 prescribe and implement procedures for obtaining con-
18 firmation of whether employers are subject to the tax im-
19 posed by subsection (a). The Secretary, in the Secretary’s
20 discretion, may prescribe that the confirmation shall be
21 obtained on an annual or less frequent basis, and may use
22 for this purpose the annual report or quarterly report for
23 employment taxes, or such other means as the Secretary
24 may deem advisable.”.

1 (g) WAIVER OF EARLY WITHDRAWAL PENALTY FOR
 2 CERTAIN DISTRIBUTIONS FOLLOWING INITIAL ELECTION
 3 TO PARTICIPATE IN AUTOMATIC IRA ARRANGEMENT.—

4 Section 72(t) of the Internal Revenue Code of 1986 is
 5 amended by adding at the end the following new para-
 6 graph:

7 “(11) DISTRIBUTION FOLLOWING INITIAL
 8 ELECTION TO PARTICIPATE IN AUTOMATIC IRA AR-
 9 RANGEMENT.—Paragraph (1) shall not apply in the
 10 case of a distribution to a qualifying employee made
 11 not later than 90 days after the initial election
 12 under section 408B(d)(1)(A)(ii).”.

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

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

17 (2) in subsection (n), by inserting “, or in a
 18 qualifying automatic IRA arrangement described in
 19 section 408B” after “section 408(p) of such Code”.

20 (i) CONFORMING AMENDMENTS.—

21 (1) The table of sections for subpart A of part
 22 I of subchapter D of chapter 1 of the Internal Rev-
 23 enue Code of 1986 is amended by inserting after the
 24 item relating to section 408A the following new
 25 item:

“Sec. 408B. Qualifying automatic IRA arrangements.”.

1 (2) The table of sections for chapter 43 of such
2 Act is amended by adding at the end the following
3 new item:

 “Sec. 4980J. Requirements for covered employers to provide qualifying automatic IRA arrangements.”.

4 (j) PREEMPTION OF CONFLICTING STATE LAWS.—

5 The amendments made by this section shall supersede any
6 law of a State that would directly or indirectly prohibit
7 or restrict the establishment or operation of a qualifying
8 automatic IRA arrangement meeting the requirements of
9 section 408B of the Internal Revenue Code of 1986. Nothing
10 in such amendments shall be construed to impair or
11 supersede any State law to the extent it provides a remedy
12 for the failure to make payroll deposit payments under any
13 such automatic IRA arrangement within the period re-
14 quired under such section 408B.

15 (k) EFFECTIVE DATE.—The amendments made by
16 this section shall apply to calendar years beginning after
17 December 31, 2020.

18 (l) REGULATIONS.—Not later than 12 months after
19 the date of the enactment of this Act, the Secretary of
20 the Treasury, in coordination with the Secretary of Labor,
21 shall issue guidance defining the class of guaranteed life-
22 time income or equivalent arrangements which meet the
23 requirements of section 408B(d)(5)(E) of the Internal
24 Revenue Code of 1986, as added by this section.

1 **SEC. 3. CREDIT FOR SMALL EMPLOYERS MAINTAINING**
2 **QUALIFYING AUTOMATIC IRA ARRANGE-**
3 **MENTS.**

4 (a) **IN GENERAL.**—Subpart D of part IV of sub-
5 chapter A of chapter 1 of the Internal Revenue Code of
6 1986 is amended by adding at the end the following new
7 section:

8 **“SEC. 45T. SMALL EMPLOYER AUTOMATIC IRA ARRANGE-**
9 **MENT.**

10 “(a) **GENERAL RULE.**—For purposes of section 38,
11 in the case of an eligible employer maintaining a quali-
12 fying automatic IRA arrangement meeting the require-
13 ments of section 408B (without regard to whether the em-
14 ployer is a covered employer), the small employer auto-
15 matic IRA arrangement credit determined under this sec-
16 tion for any taxable year in the credit period is the amount
17 determined under subsection (b).

18 “(b) **AMOUNT OF CREDIT.**—

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

23 “(A) \$25 multiplied by the number of
24 qualifying employees (within the meaning of
25 section 408B(c)) for whom contributions are
26 made under the qualifying automatic IRA ar-

1 rangement referred to in subsection (a) for the
2 calendar year in which the taxable year begins,
3 plus

4 “(B) the amount determined under para-
5 graph (2) with respect to the taxable year.

6 “(2) AMOUNT DETERMINED.—The amount de-
7 termined under this paragraph is—

8 “(A) \$500 in the case of the taxable year
9 which begins in the first calendar year in which
10 the eligible employer maintains the qualifying
11 automatic IRA arrangement,

12 “(B) \$250 in the case of the taxable year
13 which begins in the second calendar year in
14 which the eligible employer maintains such ar-
15 rangement, and

16 “(C) \$0 thereafter.

17 “(3) LIMITATION.—The amount determined
18 under paragraph (1)(A) for any taxable year shall
19 not exceed \$250.

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

22 “(A) IN GENERAL.—No credit shall be al-
23 lowed under this section to the employer for
24 any taxable year if a credit is determined under

1 section 45E with respect to the employer for
2 the taxable year.

3 “(B) EXTENSION OF CREDIT.—If the eligi-
4 ble employer maintains a qualifying automatic
5 IRA arrangement meeting the requirements of
6 section 408B (without regard to whether the
7 employer is a covered employer) with respect to
8 any of the first 3 calendar years for which the
9 employer could adopt such an arrangement, and
10 subsequently adopts an eligible employer plan
11 for its employees for any of those years which
12 it maintains throughout such 3-calendar-year
13 period, then section 45E(b)(1) shall be applied
14 with respect to the eligible employer by sub-
15 stituting ‘3 taxable years’ for ‘2 taxable years’.

16 “(c) DEFINITIONS.—For purposes of this section—

17 “(1) ELIGIBLE EMPLOYER.—The term ‘eligible
18 employer’ means, with respect to the calendar year
19 in which the taxable year begins, an employer
20 which—

21 “(A) maintains a qualifying automatic IRA
22 arrangement meeting the requirements of sec-
23 tion 408B (without regard to whether the em-
24 ployer is a covered employer),

1 “(B) on each day during the preceding cal-
2 endar year, had no more than 100 employees,
3 and

4 “(C) did not maintain a qualifying plan or
5 arrangement (described in section 408B(b))
6 during the portion of the calendar year pre-
7 ceding the adoption of the qualifying automatic
8 IRA arrangement and the 2 preceding calendar
9 years.

10 “(2) CREDIT PERIOD.—The term ‘credit period’
11 means the first 6 calendar years in which the eligible
12 employer maintains the qualifying automatic IRA
13 arrangement.

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

16 (b) CREDIT ALLOWED AS PART OF GENERAL BUSI-
17 NESS CREDIT.—Section 38(b) of the Internal Revenue
18 Code of 1986 is amended by striking “plus” at the end
19 of paragraph (31), by striking the period at the end of
20 paragraph (32) and inserting “, plus”, and by adding at
21 the end the following new paragraph:

22 “(33) the small employer automatic IRA ar-
23 rangement credit determined under section
24 45T(a).”.

1 (c) CLERICAL AMENDMENT.—The table of sections
 2 for subpart D of part IV of subchapter A of chapter 1
 3 of the Internal Revenue Code of 1986 is amended by add-
 4 ing at the end the following new item:

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

5 (d) EFFECTIVE DATE.—The amendments made by
 6 this section shall apply to taxable years beginning after
 7 December 31, 2020.

8 **SEC. 4. INCREASE IN CREDIT LIMITATION FOR SMALL EM-**
 9 **PLOYER PENSION PLAN STARTUP COSTS.**

10 (a) IN GENERAL.—Section 45E(b)(1) of the Internal
 11 Revenue Code of 1986 is amended to read as follows:

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

15 “(A) \$500, or

16 “(B) the lesser of—

17 “(i) \$250 for each employee of the eli-
 18 gible employer who is not a highly com-
 19 pensated employee (as defined in section
 20 415(q)) and who is eligible to participate
 21 in the eligible employer plan maintained by
 22 the eligible employer, or

23 “(ii) \$5,000, and”.

1 (b) EFFECTIVE DATE.—The amendment made by
2 this section shall apply to taxable years beginning after
3 December 31, 2019.

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