

107TH CONGRESS
2D SESSION

S. 2733

To amend the Internal Revenue Code of 1986 to expand retirement savings for moderate and lower income workers, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 16, 2002

Mr. BINGAMAN 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 retirement savings for moderate and lower income workers, 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; ETC.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Retirement Security for All Americans Act”.

6 (b) AMENDMENT OF 1986 CODE.—Except as other-
7 wise expressly provided, whenever in this Act an amend-
8 ment or repeal is expressed in terms of an amendment
9 to, or repeal of, a section or other provision, the reference

1 shall be considered to be made to a section or other provi-
 2 sion of the Internal Revenue Code of 1986.

3 **SEC. 2. EXPANSION OF RETIREMENT SAVINGS CREDIT.**

4 (a) CREDIT TO BE REFUNDABLE; EXPANSION OF
 5 ELIGIBILITY; CREDIT MADE PERMANENT.—Subpart C of
 6 part IV of subchapter A of chapter 1 (relating to refund-
 7 able credits) is amended by redesignating section 35 as
 8 section 36 and by inserting after section 34 the following
 9 new section:

10 **“SEC. 35. ELECTIVE DEFERRALS AND INDIVIDUAL RETIRE-
 11 MENT PLAN ACCOUNT CONTRIBUTIONS BY
 12 CERTAIN INDIVIDUALS.**

13 “(a) ALLOWANCE OF CREDIT.—In the case of an eli-
 14 gible individual, there shall be allowed as a credit against
 15 the tax imposed by this subtitle for the taxable year an
 16 amount equal to the applicable percentage of so much of
 17 the qualified retirement savings contributions of the eligi-
 18 ble individual for the taxable year as do not exceed \$2,000.

19 “(b) APPLICABLE PERCENTAGE.—For purposes of
 20 this section—

21 “(1) IN GENERAL.—The applicable percentage
 22 is 50 percent, reduced (but not below zero) by the
 23 percentage determined under paragraph (2).

1 “(2) AMOUNT OF REDUCTION.— The percent-
2 age determined under this paragraph shall be equal
3 to the ratio that—

4 “(A) the excess of—

5 “(i) the taxpayer’s adjusted gross in-
6 come for such taxable year, over

7 “(ii) the applicable dollar amount,
8 bears to

9 “(B) the phaseout range.

10 “(3) APPLICABLE DOLLAR AMOUNT.—The ap-
11 plicable dollar amount equals \$30,000 in the case of
12 a taxpayer filing a joint return, \$22,500 in the case
13 of a taxpayer filing as a head of a household (as de-
14 fined in section 2(b)), and \$15,000 in the case of all
15 other taxpayers.

16 “(4) PHASEOUT RANGE.—The phaseout range
17 equals \$25,000 in the case of a taxpayer filing a
18 joint return, \$18,750 in the case of a taxpayer filing
19 as a head of a household (as so defined), and
20 \$12,500 in the case of all other taxpayers.

21 “(c) ELIGIBLE INDIVIDUAL.—For purposes of this
22 section—

23 “(1) IN GENERAL.—The term ‘eligible indi-
24 vidual’ means any individual if such individual has

1 attained the age of 18 as of the close of the taxable
2 year.

3 “(2) DEPENDENTS AND FULL-TIME STUDENTS
4 NOT ELIGIBLE.—The term ‘eligible individual’ shall
5 not include—

6 “(A) any individual with respect to whom
7 a deduction under section 151 is allowed to an-
8 other taxpayer for a taxable year beginning in
9 the calendar year in which such individual’s
10 taxable year begins, and

11 “(B) any individual who is a student (as
12 defined in section 151(c)(4)).

13 “(d) QUALIFIED RETIREMENT SAVINGS CONTRIBU-
14 TIONS.—For purposes of this section—

15 “(1) IN GENERAL.—The term ‘qualified retire-
16 ment savings contributions’ means, with respect to
17 any taxable year, the sum of—

18 “(A) the amount of the qualified retire-
19 ment contributions (as defined in section
20 219(e)) made by the eligible individual,

21 “(B) the amount of—

22 “(i) any elective deferrals (as defined
23 in section 402(g)(3)) of such individual,
24 and

1 “(ii) any elective deferral of com-
2 pensation by such individual under an eli-
3 gible deferred compensation plan (as de-
4 fined in section 457(b)) of an eligible em-
5 ployer described in section 457(e)(1)(A),
6 and

7 “(C) the amount of voluntary employee
8 contributions by such individual to any qualified
9 retirement plan (as defined in section 4974(c)).

10 “(2) REDUCTION FOR CERTAIN DISTRIBUTIONS.—
11

12 “(A) IN GENERAL.—The qualified retire-
13 ment savings contributions determined under
14 paragraph (1) shall be reduced (but not below
15 zero) by the aggregate distributions received by
16 the individual during the testing period from
17 any entity of a type to which contributions
18 under paragraph (1) may be made. The pre-
19 ceding sentence shall not apply to the portion of
20 any distribution which is not includible in gross
21 income by reason of a trustee-to-trustee trans-
22 fer or a rollover distribution.

23 “(B) TESTING PERIOD.—For purposes of
24 subparagraph (A), the testing period, with re-

1 spect to a taxable year, is the period which
2 includes—

3 “(i) such taxable year,

4 “(ii) the 2 preceding taxable years,

5 and

6 “(iii) the period after such taxable
7 year and before the due date (including ex-
8 tensions) for filing the return of tax for
9 such taxable year.

10 “(C) EXCEPTED DISTRIBUTIONS.—There
11 shall not be taken into account under subpara-
12 graph (A)—

13 “(i) any distribution referred to in
14 section 72(p), 401(k)(8), 401(m)(6),
15 402(g)(2), 404(k), or 408(d)(4), and

16 “(ii) any distribution to which section
17 408A(d)(3) applies.

18 “(D) TREATMENT OF DISTRIBUTIONS RE-
19 CEIVED BY SPOUSE OF INDIVIDUAL.—For pur-
20 poses of determining distributions received by
21 an individual under subparagraph (A) for any
22 taxable year, any distribution received by the
23 spouse of such individual shall be treated as re-
24 ceived by such individual if such individual and
25 spouse file a joint return for such taxable year

1 and for the taxable year during which the
2 spouse receives the distribution.

3 “(e) ADJUSTED GROSS INCOME.—For purposes of
4 this section, adjusted gross income shall be determined
5 without regard to sections 911, 931, and 933.

6 “(f) INVESTMENT IN THE CONTRACT.—Notwith-
7 standing any other provision of law, a qualified retirement
8 savings contribution shall not fail to be included in deter-
9 mining the investment in the contract for purposes of sec-
10 tion 72 by reason of the credit under this section.”.

11 (b) CREDIT TREATED AS OVERPAYMENT OF TAX.—
12 Section 6401(b) (relating to excessive credits) is
13 amended—

14 (1) by striking “If” in paragraph (1) and in-
15 serting “Except as provided in paragraph (3)”, and

16 (2) by adding at the end the following new
17 paragraph:

18 “(3) SPECIAL RULE FOR CREDIT UNDER SEC-
19 TION 35.—If the amount allowable as a credit under
20 section 35 (relating to retirement savings credit) for
21 any taxable year exceeds the tax imposed for such
22 taxable year by subtitle A (reduced by the credits al-
23 lowable under subparts A, B, D, and G of part IV
24 of subchapter A of chapter 1), the amount of such

1 excess shall be considered an overpayment and shall
2 be subject to the provisions of section 6401(1).”.

3 (c) TRANSFER OF OVERPAYMENT TO SECURE RE-
4 TIREMENT SAVINGS BOND.—Section 6402 (relating to au-
5 thority to make credits or refunds) is amended at the end
6 the following new subsection:

7 “(1) TRANSFER OF OVERPAYMENT TO SECURE RE-
8 TIREMENT SAVINGS BOND.—

9 “(1) IN GENERAL.—In the case of any overpay-
10 ment described in section 6401(b)(3), the Secretary
11 shall, in the name of the taxpayer, issue a Secure
12 Retirement savings bond under section 3105(f)(1) of
13 title 31, United States Code, in an amount equal to
14 such overpayment.

15 “(2) JOINT RETURNS.—In the case of a tax-
16 payer filing a joint return, any overpayment de-
17 scribed in section 6401(b)(3) shall be divided equally
18 among both spouses, and the Secretary shall, sepa-
19 rately in the name of each spouse, issue a Secure
20 Retirement savings bond under section 3105(f)(1) of
21 title 31, United States Code, in an amount equal to
22 such overpayments.”.

23 (d) SECURE RETIREMENT SAVINGS BONDS.—Section
24 3105 of title 31, United States Code, is amended by add-
25 ing at the end the following new subsection:

1 “(f)(1) The Secretary shall issue Secure Retirement
2 savings bonds as required under section 6402(l) of the In-
3 ternal Revenue Code of 1986.

4 “(2) For purposes of paragraph (1), a Secure Retire-
5 ment savings bond is an inflation-indexed savings bond
6 otherwise authorized to be issued under this section, ex-
7 cept that, notwithstanding any other provision of this sec-
8 tion, such bond shall not mature before the earlier of the
9 date on which the bondholder—

10 “(A) dies;

11 “(B) becomes disabled (within the meaning of
12 section 72(m)(7) of the Internal Revenue Code of
13 1986); or

14 “(C) attains social security retirement age
15 under section 216(l)(2) of the Social Security Act
16 (without regard to any early retirement age per-
17 mitted under such section).

18 “(3) The Secretary may, in lieu of actually issuing
19 Secure Retirement savings bonds, provide an annual ac-
20 count statement to the bondholder reflecting the current
21 value of the bonds, including accrued interest, nominally
22 issued on behalf of such bondholder.”.

23 (e) REPEAL OF NONREFUNDABLE CREDIT.—

24 (1) Section 25B is hereby repealed.

1 (2) Subparagraph (B) of section 25(b)(3) is
2 amended by striking “and 25B”.

3 (3) Subparagraph (C) of section 25(e)(1) is
4 amended by striking “25B,”.

5 (4) Sections 26(a)(1), 901(h), and 1400C are
6 each amended by striking “24, and 25B” and insert-
7 ing “and 24”.

8 (5) The table of sections for subpart A of part
9 IV of subchapter A of chapter 1 is amended by
10 striking the item relating to section 25B.

11 (f) TECHNICAL AMENDMENTS.—

12 (1) Paragraph (2) of section 1324(b) of title
13 31, United States Code, is amended by inserting be-
14 fore the period “, or from section 35 of such Code”.

15 (2) The table of sections for subpart C of part
16 IV of subchapter A of chapter 1 is amended by
17 striking the last item and inserting the following
18 new items:

“Sec. 35. Elective deferrals and individual retirement plan ac-
count contributions by certain individuals.

“Sec. 36. Overpayments of tax.”.

19 (g) EFFECTIVE DATE.—The amendments made by
20 this section shall apply to taxable years beginning after
21 December 31, 2002.

1 **SEC. 3. UNIVERSAL ACCESS TO DIRECT DEPOSIT RETIRE-**
2 **MENT SAVINGS.**

3 (a) IN GENERAL.—Chapter 43 (relating to qualified
4 pension, etc., plans) is amended by adding at the end the
5 following new section:

6 **“SEC. 4980G. REQUIREMENTS FOR EMPLOYERS TO PRO-**
7 **VIDE EMPLOYEES ACCESS TO SALARY RE-**
8 **DUCTION CONTRIBUTIONS TO INDIVIDUAL**
9 **RETIREMENT PLANS.**

10 “(a) GENERAL RULE.—There is hereby imposed a
11 tax on any failure by an employer to meet the require-
12 ments of subsection (d) for a calendar year.

13 “(b) AMOUNT.—The amount of the tax imposed by
14 subsection (a) on any failure for any calendar year shall
15 be \$100 with respect to each employee to whom such fail-
16 ure relates.

17 “(c) PROCEDURES FOR NOTICE AND GRACE PE-
18 RIOD.—Not later than 6 months after the date of the en-
19 actment of this section, the Secretary shall prescribe and
20 initiate implementation of procedures for obtaining from
21 employers confirmation that such employers are in compli-
22 ance with the requirements of subsection (d). The Sec-
23 retary, in the Secretary’s discretion, may prescribe that
24 the confirmation shall be obtained on an annual or less
25 frequent basis, and may use for this purpose the annual
26 report or quarterly report for employment taxes, or such

1 other means as the Secretary may deem advisable. The
2 tax imposed by subsection (a) shall not be imposed with
3 respect to any failure that ends before the expiration of
4 90 days after the employer has responded or has had a
5 reasonable opportunity to respond to a request for con-
6 firmation of compliance.

7 “(d) EMPLOYEE ACCESS TO SALARY REDUCTION
8 CONTRIBUTIONS TO INDIVIDUAL RETIREMENT PLANS.—

9 “(1) IN GENERAL.—Every employer which does
10 not maintain a qualified plan or arrangement for a
11 calendar year shall provide a salary reduction ar-
12 rangement for the calendar year which meets the re-
13 quirements of paragraphs (3), (4) and (5).

14 “(2) QUALIFIED PLAN OR ARRANGEMENT.—For
15 purposes of this section, an employer is treated as
16 maintaining a qualified plan or arrangement for a
17 calendar year if the employer maintains for such
18 year a plan, contract, pension, or trust described in
19 subparagraph (A) or (B) of section 219(g)(5) or an
20 eligible deferred compensation plan (within the
21 meaning of section 457(b)) with respect to which
22 contributions are made, or benefits are accrued, for
23 service in such year.

24 “(3) SALARY REDUCTION ARRANGEMENT.—For
25 purposes of this section, the term ‘salary reduction

1 arrangement' means a written arrangement of an
2 employer under which—

3 “(A) an employee eligible to participate in
4 the arrangement may elect to—

5 “(i) contribute to an individual retire-
6 ment plan established by or on behalf of
7 the employee by having the employer make
8 direct deposit payments to the plan by pay-
9 roll deduction, or

10 “(ii) receive the amounts directly as
11 cash compensation, and

12 “(B) no other contributions may be made
13 under the arrangement.

14 “(4) PARTICIPATION REQUIREMENTS.—

15 “(A) IN GENERAL.—The requirements of
16 this paragraph are met with respect to a salary
17 reduction arrangement for a year only if, under
18 the arrangement, all employees of the employer
19 are eligible to make the election under para-
20 graph (3)(A).

21 “(B) EXCLUDABLE EMPLOYEES.—An em-
22 ployer may exclude from the requirement under
23 paragraph (3) employees described in section
24 410(b)(3) and any employee who has not com-
25 pleted hours of service for the employer on a

1 regular basis during a period of at least 30 con-
2 secutive days during the calendar year.

3 “(5) ADMINISTRATIVE REQUIREMENTS.—The
4 requirements of this paragraph are met with respect
5 to any salary reduction arrangement if, under the
6 arrangement—

7 “(A) the employer must make the pay-
8 ments elected under paragraph (3)(A) not later
9 than the close of the 30-day period following
10 the last day of the month with respect to which
11 the contributions are to be made, or, if later,
12 the deadline under applicable rules and regula-
13 tions for the employer to deposit tax under sec-
14 tion 3102 for wages paid in that month,

15 “(B) an employee may elect to terminate
16 participation in the arrangement at any time
17 during the year, except that if an employee so
18 terminates, the arrangement may provide that
19 the employee may not elect to resume participa-
20 tion until the beginning of the next year,

21 “(C) each employee eligible to participate
22 may elect, during the 60-day period before the
23 beginning of any year (and the 60-day period
24 before the first day the employee is eligible to
25 participate), to participate in the arrangement,

1 or to modify the amounts subject to the ar-
2 rangement, for such year, and

3 “(D) immediately before the period for
4 which an election described in paragraph (3)(A)
5 may be made, the employer provides a notice to
6 each employee of the employee’s opportunity to
7 make the election and the maximum amount
8 which may be contributed to an individual re-
9 tirement plan on an annual basis.

10 “(6) EXCEPTION FOR CERTAIN SMALL EMPLOY-
11 ERS.—The requirements of this subsection shall not
12 apply for any calendar year to an employer which
13 had not more than 10 employees who received at
14 least \$5,000 of compensation from the employer for
15 the preceding calendar year.

16 “(7) USE OF DESIGNATED FINANCIAL INSTITU-
17 TION.—An employer shall not be treated as failing
18 to satisfy the requirements of this subsection or any
19 other provision of this title merely because the em-
20 ployer makes all contributions (or all contributions
21 on behalf of employees who do not specify an indi-
22 vidual retirement plan, trustee, or issuer to receive
23 the contributions) to individual retirement plans of
24 a designated trustee or issuer. The preceding sen-
25 tence shall not apply unless each participant is noti-

1 fied in writing that the participant’s balance may be
2 transferred without cost or penalty to another indi-
3 vidual retirement plan in accordance with subsection
4 (d)(3).

5 “(8) MODEL NOTICE.—The Secretary shall pro-
6 vide a model notice, written in a manner calculated
7 to be understandable to the average worker, that
8 employers may use to satisfy the requirement of
9 paragraphs (5)(D) and (7). Model notices shall be
10 provided in English, in Spanish, and in any other
11 language deemed appropriate by the Secretary.

12 “(e) SALARY REDUCTION CONTRIBUTIONS TREATED
13 LIKE OTHER CONTRIBUTIONS TO INDIVIDUAL RETIRE-
14 MENT PLANS.—

15 “(1) TAX TREATMENT UNAFFECTED.—The fact
16 that a contribution to an individual retirement plan
17 is made on behalf of an employee under a salary re-
18 duction arrangement instead of being made directly
19 by the employee shall not affect the deductibility or
20 other income tax treatment of the contribution or of
21 other amounts under this title.

22 “(2) SALARY REDUCTION CONTRIBUTIONS
23 TAKEN INTO ACCOUNT.—Any contribution made on
24 behalf of an employee under a salary reduction ar-
25 rangement shall be taken into account in applying

1 the limitations on contributions to individual retire-
 2 ment plans and the other provisions of this title ap-
 3 plicable to individual retirement plans as if the con-
 4 tribution had been made to the plan directly by the
 5 employee.”.

6 (b) CREDIT FOR SMALL EMPLOYERS MAINTAINING
 7 SALARY REDUCTION ARRANGEMENTS FACILITATING EM-
 8 PLOYEE CONTRIBUTIONS TO INDIVIDUAL RETIREMENT
 9 PLANS.—

10 (1) IN GENERAL.—Subpart D of part IV of
 11 subchapter A of chapter 1 (relating to business re-
 12 lated credits) is amended by adding at the end the
 13 following new section:

14 **“SEC. 45G. SMALL EMPLOYER SALARY REDUCTION COSTS.**

15 “(a) GENERAL RULE.—For purposes of section 38,
 16 in the case of an eligible employer, the small employer sal-
 17 ary reduction cost credit determined under this section for
 18 any taxable year is the amount determined under sub-
 19 section (b).

20 “(b) AMOUNT OF CREDIT.—The amount of the credit
 21 determined under this section for any taxable year with
 22 respect to an eligible employer shall be—

23 “(1) \$200 for the taxable year which includes
 24 the date that the arrangement referred to subsection
 25 (a) becomes effective, and

1 “(2) \$50 for each subsequent taxable year dur-
2 ing which the arrangement is in effect.

3 “(c) ELIGIBLE EMPLOYER.—For purposes of this
4 section, the term ‘eligible employer’ means, with respect
5 to any calendar year in which the taxable year begins, an
6 employer which maintains a salary reduction arrangement
7 meeting the requirements of section 4980G(d) and which
8 did not maintain a qualified plan or arrangement (within
9 the meaning of section 4980G(d)(2)) for the preceding 2
10 calendar years.”.

11 (2) CREDIT ALLOWED AS PART OF GENERAL
12 BUSINESS CREDIT.—Section 38(b) (defining current
13 year business credit) is amended by striking “plus”
14 at the end of paragraph (14), by striking the period
15 at the end of paragraph (15) and inserting “, plus”,
16 and by adding at the end the following new para-
17 graph:

18 “(16) in the case of an eligible employer (as de-
19 fined in section 45G(c)), the small employer salary
20 reduction cost credit determined under section
21 45G(a).”.

22 (c) CLERICAL AMENDMENTS.—

23 (1) The table of sections for chapter 43 is
24 amended by adding at the end the following new
25 item:

“Sec. 4980G. Requirements for employers to provide employees access to salary reduction contributions to individual retirement plans.”.

1 (2) The table of sections for subpart D of part
2 IV of subchapter A of chapter 1 is amended by add-
3 ing at the end the following new item:

“Sec. 45G. Small employer salary reduction costs.”.

4 (d) **EFFECTIVE DATE.**—The amendments made by
5 this section shall apply to taxable years beginning after
6 December 31, 2002.

7 **SEC. 4. CREDIT FOR QUALIFIED PENSION PLAN CONTRIBU-**
8 **TIONS OF SMALL EMPLOYERS.**

9 (a) **IN GENERAL.**—Subpart D of part IV of sub-
10 chapter A of chapter 1 (relating to business related cred-
11 its), as amended by section 3(b)(1), is amended by adding
12 at the end the following new section:

13 **“SEC. 45H. SMALL EMPLOYER PENSION PLAN CONTRIBU-**
14 **TIONS.**

15 “(a) **GENERAL RULE.**—For purposes of section 38,
16 in the case of an eligible employer, the small employer pen-
17 sion plan contribution credit determined under this section
18 for any taxable year is an amount equal to 50 percent
19 of the amount which would (but for subsection (f)(1)) be
20 allowed as a deduction under section 404 for such taxable
21 year for qualified employer contributions made to any
22 qualified retirement plan on behalf of any employee who
23 is not a highly compensated employee.

1 “(b) CREDIT LIMITED TO 3 YEARS.—The credit al-
2 lowable by this section shall be allowed only with respect
3 to the period of 3 taxable years beginning with the first
4 taxable year for which a credit is allowable with respect
5 to a plan under this section.

6 “(c) QUALIFIED EMPLOYER CONTRIBUTION.—For
7 purposes of this section—

8 “(1) DEFINED CONTRIBUTION PLANS.—In the
9 case of a defined contribution plan, the term ‘quali-
10 fied employer contribution’ means the amount of
11 nonelective and matching contributions to the plan
12 made by the employer on behalf of any employee
13 who is not a highly compensated employee to the ex-
14 tent such amount does not exceed 3 percent of such
15 employee’s compensation from the employer for the
16 year.

17 “(2) DEFINED BENEFIT PLANS.—In the case of
18 a defined benefit plan, the term ‘qualified employer
19 contribution’ means the amount of employer con-
20 tributions to the plan made on behalf of any em-
21 ployee who is not a highly compensated employee to
22 the extent that the accrued benefit of such employee
23 derived from employer contributions for the year
24 does not exceed the equivalent (as determined under
25 regulations prescribed by the Secretary and without

1 regard to contributions and benefits under the Social
2 Security Act) of 3 percent of such employee's com-
3 pensation from the employer for the year.

4 “(d) QUALIFIED RETIREMENT PLAN.—

5 “(1) IN GENERAL.—The term ‘qualified retire-
6 ment plan’ means any plan described in section
7 401(a) which includes a trust exempt from tax
8 under section 501(a) if the plan meets—

9 “(A) the contribution requirements of
10 paragraph (2),

11 “(B) the vesting requirements of para-
12 graph (3), and

13 “(C) the distribution requirements of para-
14 graph (4).

15 “(2) CONTRIBUTION REQUIREMENTS.—

16 “(A) IN GENERAL.—The requirements of
17 this paragraph are met if, under the plan—

18 “(i) the employer is required to make
19 nonelective contributions of at least 1 per-
20 cent of compensation (or the equivalent
21 thereof in the case of a defined benefit
22 plan) for each employee who is not a high-
23 ly compensated employee who is eligible to
24 participate in the plan, and

1 “(ii) allocations of nonelective em-
2 ployer contributions, in the case of a de-
3 fined contribution plan, are either in equal
4 dollar amounts for all employees covered
5 by the plan or bear a uniform relationship
6 to the total compensation, or the basic or
7 regular rate of compensation, of the em-
8 ployees covered by the plan (and an equiv-
9 alent requirement is met with respect to a
10 defined benefit plan).

11 “(B) COMPENSATION LIMITATION.—The
12 compensation taken into account under sub-
13 paragraph (A) for any year shall not exceed the
14 limitation in effect for such year under section
15 401(a)(17).

16 “(3) VESTING REQUIREMENTS.—The require-
17 ments of this paragraph are met if the plan satisfies
18 the requirements of either of the following subpara-
19 graphs:

20 “(A) 3-YEAR VESTING.—A plan satisfies
21 the requirements of this subparagraph if an em-
22 ployee who has completed at least 3 years of
23 service has a nonforfeitable right to 100 percent
24 of the employee’s accrued benefit derived from
25 employer contributions.

1 “(B) 5-YEAR GRADED VESTING.—A plan
 2 satisfies the requirements of this subparagraph
 3 if an employee has a nonforfeitable right to a
 4 percentage of the employee’s accrued benefit de-
 5 rived from employer contributions determined
 6 under the following table:

“Years of service:	The nonforfeitable percentage is:
1	20
2	40
3	60
4	80
5	100.

7 “(4) DISTRIBUTION REQUIREMENTS.—In the
 8 case of a profit-sharing or stock bonus plan, the re-
 9 quirements of this paragraph are met if, under the
 10 plan, qualified employer contributions are distribut-
 11 able only as provided in section 401(k)(2)(B).

12 “(e) OTHER DEFINITIONS.—For purposes of this
 13 section—

14 “(1) ELIGIBLE EMPLOYER.—

15 “(A) IN GENERAL.—The term ‘eligible em-
 16 ployer’ means, with respect to any year, an em-
 17 ployer which has no more than 20 employees
 18 who received at least \$5,000 of compensation
 19 from the employer for the preceding year.

20 “(B) REQUIREMENT FOR NEW QUALIFIED
 21 EMPLOYER PLANS.—Such term shall not in-
 22 clude an employer if, during the 3-taxable year

1 period immediately preceding the 1st taxable
2 year for which the credit under this section is
3 otherwise allowable for a qualified employer
4 plan of the employer, the employer or any mem-
5 ber of any controlled group including the em-
6 ployer (or any predecessor of either) established
7 or maintained a qualified employer plan with
8 respect to which contributions were made, or
9 benefits were accrued, for substantially the
10 same employees as are in the qualified employer
11 plan.

12 “(2) HIGHLY COMPENSATED EMPLOYEE.—The
13 term ‘highly compensated employee’ has the mean-
14 ing given such term by section 414(q) (determined
15 without regard to section 414(q)(1)(B)(ii)).

16 “(f) SPECIAL RULES.—

17 “(1) DISALLOWANCE OF DEDUCTION.—No de-
18 duction shall be allowed for that portion of the quali-
19 fied employer contributions paid or incurred for the
20 taxable year which is equal to the credit determined
21 under subsection (a).

22 “(2) ELECTION NOT TO CLAIM CREDIT.—This
23 section shall not apply to a taxpayer for any taxable
24 year if such taxpayer elects to have this section not
25 apply for such taxable year.

1 “(3) AGGREGATION RULES.—All persons treat-
 2 ed as a single employer under subsection (a) or (b)
 3 of section 52, or subsection (n) or (o) of section 414,
 4 shall be treated as one person. All eligible employer
 5 plans shall be treated as 1 eligible employer plan.

6 “(g) RECAPTURE OF CREDIT ON FORFEITED CON-
 7 TRIBUTIONS.—If any accrued benefit which is forfeitable
 8 by reason of subsection (d)(3) is forfeited, the employer’s
 9 tax imposed by this chapter for the taxable year in which
 10 the forfeiture occurs shall be increased by 35 percent of
 11 the employer contributions from which such benefit is de-
 12 rived to the extent such contributions were taken into ac-
 13 count in determining the credit under this section.”.

14 (b) CREDIT ALLOWED AS PART OF GENERAL BUSI-
 15 NESS CREDIT.—Section 38(b) (defining current year busi-
 16 ness credit), as amended by section 3(b)(2), is amended
 17 by striking “plus” at the end of paragraph (15), by strik-
 18 ing the period at the end of paragraph (16) and inserting
 19 “, plus”, and by adding at the end the following new para-
 20 graph:

21 “(17) in the case of an eligible employer (as de-
 22 fined in section 45H(e)), the small employer pension
 23 plan contribution credit determined under section
 24 45H(a).”.

25 (c) CONFORMING AMENDMENTS.—

1 (1) Section 39(d) is amended by adding at the
2 end the following new paragraph:

3 “(11) NO CARRYBACK OF SMALL EMPLOYER
4 PENSION PLAN CONTRIBUTION CREDIT BEFORE JAN-
5 UARY 1, 2003.—No portion of the unused business
6 credit for any taxable year which is attributable to
7 the small employer pension plan contribution credit
8 determined under section 45H may be carried back
9 to a taxable year beginning before January 1,
10 2003.”.

11 (2) Subsection (c) of section 196 is amended by
12 striking “and” at the end of paragraph (9), by strik-
13 ing the period at the end of paragraph (10) and in-
14 serting “, and”, and by adding at the end the fol-
15 lowing new paragraph:

16 “(11) the small employer pension plan contribu-
17 tion credit determined under section 45H(a).”.

18 (3) The table of sections for subpart D of part
19 IV of subchapter A of chapter 1, as amended by sec-
20 tion 3(c)(2), is amended by adding at the end the
21 following new item:

 “Sec. 45H. Small employer pension plan contributions.”.

22 (d) EFFECTIVE DATE.—The amendments made by
23 this section shall apply to contributions paid or incurred
24 in taxable years beginning after December 31, 2002.

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