

107TH CONGRESS  
2D SESSION

# H. R. 5190

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

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## IN THE HOUSE OF REPRESENTATIVES

JULY 23, 2002

Mr. POMEROY introduced the following bill; which was referred to the Committee on Ways and Means

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## 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.

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

(4) Sections 26(a)(1), 901(h), and 1400C are each amended by striking “24, and 25B” and inserting “and 24”.

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

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

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

“Sec. 36. Overpayments of tax.”.

(g) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after 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.

