

109TH CONGRESS
1ST SESSION

S. 1590

To amend the Internal Revenue Code of 1986 to increase participation and savings in cash or deferred plans through automatic contribution and default investment arrangements, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 29, 2005

Mr. BAYH 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 increase participation and savings in cash or deferred plans through automatic contribution and default investment 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.**

4 This Act may be cited as the “Making Savings Auto-
5 matic Act of 2005”.

1 **SEC. 2. INCREASING PARTICIPATION AND SAVINGS IN**
 2 **CASH OR DEFERRED PLANS THROUGH AUTO-**
 3 **MATIC CONTRIBUTION ARRANGEMENTS.**

4 (a) **AUTOMATIC CONTRIBUTION ARRANGEMENTS RE-**
 5 **QUIRED FOR SECTION 401(k) SAFE HARBOR.**—Section
 6 401(k)(12)(A) of the Internal Revenue Code of 1986 (re-
 7 lating to alternative methods of meeting nondiscrimination
 8 requirements) is amended by striking “and” at the end
 9 of clause (i), by striking the period at the end of clause
 10 (ii), and by adding at the end the following new clause:

11 “(iii) constitutes an automatic con-
 12 tribution trust under paragraph (13).”.

13 (b) **AUTOMATIC CONTRIBUTION TRUST.**—Section
 14 401(k) of the Internal Revenue Code of 1986 (relating to
 15 cash or deferred arrangement) is amended by adding at
 16 the end the following new paragraph:

17 “(13) **AUTOMATIC CONTRIBUTION TRUST.**—

18 “(A) **AUTOMATIC CONTRIBUTION TRUST**
 19 **DEFINED.**—

20 “(i) **IN GENERAL.**—For purposes of
 21 paragraph (12)(A)(iii), the term ‘automatic
 22 contribution trust’ means an arrange-
 23 ment—

24 “(I) except as provided in clause
 25 (ii), under which each employee eligi-
 26 ble to participate in the arrangement

1 is treated as having elected to have
 2 the employer make elective contribu-
 3 tions in an amount equal to the appli-
 4 cable percentage of the employee's
 5 compensation, and

6 “(II) which meets the require-
 7 ments of subparagraph (B).

8 “(ii) EXCEPTIONS.—

9 “(I) EXCEPTION FOR EXISTING
 10 EMPLOYEES.—Clause (i)(I) shall not
 11 apply to any employee who was eligi-
 12 ble to participate in the arrangement
 13 (or a predecessor arrangement) imme-
 14 diately before the first date on which
 15 the arrangement is an automatic con-
 16 tribution trust.

17 “(II) ELECTION OUT.—Each em-
 18 ployee eligible to participate in the ar-
 19 rangement may specifically elect not
 20 to have contributions made under
 21 clause (i), and such clause shall cease
 22 to apply to compensation paid on or
 23 after the effective date of the election.

24 “(iii) APPLICABLE PERCENTAGE.—

25 For purposes of this subparagraph—

1 “(I) IN GENERAL.—The term
2 ‘applicable percentage’ means, with
3 respect to any employee, the percent-
4 age (not less than 3 percent) deter-
5 mined under the arrangement.

6 “(II) INCREASE IN PERCENT-
7 AGE.—In the case of the second plan
8 year beginning after the first date on
9 which the election under clause (i)(I)
10 is in effect with respect to the em-
11 ployee and any succeeding plan year,
12 the applicable percentage shall be a
13 percentage equal to the sum of the
14 applicable percentage for the employee
15 as of the close of the preceding plan
16 year plus the number of percentage
17 points (not less than 1 percentage
18 point) specified by the plan. Such in-
19 crease shall continue until the applica-
20 ble percentage is at least 10 percent
21 or such higher percentage specified by
22 the plan.

23 “(B) NOTICE REQUIREMENTS.—

1 “(i) IN GENERAL.—The requirements
2 of this subparagraph are met if the re-
3 quirements of clauses (ii) and (iii) are met.

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

8 “(I) receives a notice explaining
9 the employee’s right under the ar-
10 rangement to elect not to have elective
11 contributions made on the employee’s
12 behalf, and how contributions made
13 under the arrangement will be in-
14 vested in the absence of any invest-
15 ment election by the employee, and

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

20 “(iii) ANNUAL NOTICE OF RIGHTS
21 AND OBLIGATIONS.—The requirements of
22 this clause are met if each employee eligi-
23 ble to participate in the arrangement is,
24 within a reasonable period before any year,

1 given notice of the employee’s rights and
2 obligations under the arrangement.

3 The requirements of clauses (i) and (ii) of para-
4 graph (12)(D) shall be met with respect to the
5 notices described in clauses (ii) and (iii) of this
6 subparagraph.”

7 (c) MATCHING CONTRIBUTIONS.—Section
8 401(m)(11)(A) of the Internal Revenue Code of 1986 (re-
9 lating to additional alternative method of satisfying non-
10 discrimination test for matching contributions and em-
11 ployee contributions) is amended by striking “and” at the
12 end of clause (ii), by striking the period at the end of
13 clause (iii) and inserting “, and” and by adding at the
14 end the following new clause:

15 “(iii) meets the requirements of sub-
16 section (k)(12)(A)(iii).”.

17 (d) INVESTMENTS AND PREEMPTION.—

18 (1) CONTROL DEEMED TO HAVE BEEN EXER-
19 CISED WITH RESPECT TO DEFAULT INVESTMENT AR-
20 RANGEMENTS.—Section 404(c) of the Employee Re-
21 tirement Income Security Act of 1974 (29 U.S.C.
22 1104(c)) is amended by adding at the end the fol-
23 lowing new paragraph:

24 “(4) TREATMENT OF DEFAULT INVESTMENT
25 ARRANGEMENT.—

1 “(A) IN GENERAL.—A participant in an
2 individual account plan shall, for purposes of
3 paragraph (1), be treated as exercising control
4 over the assets in the account with respect to
5 the amount of contributions made under a de-
6 fault investment arrangement.

7 “(B) DEFAULT INVESTMENT ARRANGE-
8 MENT DEFINED.—For purposes of this para-
9 graph, the term ‘default investment arrange-
10 ment’ means an arrangement—

11 “(i) which meets the requirements of
12 subparagraph (C),

13 “(ii) under which the participant is
14 treated as having elected to have the em-
15 ployer exercise control over the assets in
16 his account until the participant specifi-
17 cally elects to exercise such control, and

18 “(iii) under which assets described in
19 clause (ii) are invested in accordance with
20 regulations prescribed by the Secretary.

21 Such regulations shall provide guidance on the
22 appropriateness of designating default invest-
23 ments that include a mix of asset classes con-
24 sistent with long-term capital appreciation. The
25 regulations shall also provide guidance on the

1 designation of default investments in individual
2 account plans that are not designed to meet the
3 requirements of this section.

4 “(C) NOTICE REQUIREMENTS.—

5 “(i) TIME FOR NOTICE.—The admin-
6 istrator of a default investment arrange-
7 ment shall, within a reasonable period be-
8 fore each plan year, give to each employee
9 to whom a default investment arrangement
10 applies for such plan year notice of the em-
11 ployee’s rights and obligations under the
12 arrangement which—

13 “(I) is sufficiently accurate and
14 comprehensive to apprise the employee
15 of such rights and obligations, and

16 “(II) is written in a manner cal-
17 culated to be understood by the aver-
18 age employee to whom the arrange-
19 ment applies.

20 “(ii) FORM OF NOTICE; RESPONSE.—
21 A notice shall not be treated as meeting
22 the requirements of clause (i) with respect
23 to an employee unless—

24 “(I) the notice includes a notice
25 explaining the employee’s right under

1 the arrangement to elect to exercise
2 control over the assets in his account,

3 “(II) the employee has a reason-
4 able period of time after receipt of the
5 notice described in subclause (I) and
6 before the assets are first invested to
7 make such election, and

8 “(III) the notice explains how
9 contributions made under the ar-
10 rangement will be invested in the ab-
11 sence of any investment election by
12 the employee.”.

13 (2) PREEMPTION OF CONFLICTING STATE REG-
14 ULATION.—Section 514 of such Act (29 U.S.C.
15 1144) is amended by adding at the end the following
16 new subsection:

17 “(e) AUTOMATIC CONTRIBUTION ARRANGEMENTS.—

18 “(1) IN GENERAL.—Notwithstanding any other
19 provision of this section, any law of a State which
20 would directly or indirectly prohibit or restrict the
21 inclusion in any plan of an automatic contribution
22 arrangement shall be superseded. The Secretary may
23 prescribe regulations which would establish min-
24 imum standards that such arrangements would be

1 required to satisfy in order for this subsection to
2 apply.

3 “(2) AUTOMATIC CONTRIBUTION ARRANGE-
4 MENT DEFINED.—For purposes of this subsection,
5 the term ‘automatic contribution arrangement’
6 means an arrangement—

7 “(A) which meets the requirements of
8 paragraph (3),

9 “(B) under which a participant may elect
10 to have the employer make payments as con-
11 tributions under the plan on behalf of the par-
12 ticipant, or to the participant directly in cash,

13 “(C) under which the participant is treated
14 as having elected to have the employer make
15 such contributions in an amount equal to a uni-
16 form percentage of compensation provided
17 under the plan until the participant specifically
18 elects not to have such contributions made (or
19 specifically elects to have such contributions
20 made at a different percentage), and

21 “(D) under which contributions described
22 in subparagraph (C) are invested in accordance
23 with regulations prescribed by the Secretary.

24 Such regulations shall provide guidance on the ap-
25 propriateness of designating default investments

1 that include a mix of asset classes consistent with
2 long-term capital appreciation.

3 “(3) NOTICE REQUIREMENT.—

4 “(A) IN GENERAL.—The administrator of
5 an individual account plan shall, within a rea-
6 sonable period before each plan year, give to
7 each employee to whom an automatic contribu-
8 tion arrangement applies for such plan year no-
9 tice of the employee’s rights and obligations
10 under the arrangement which—

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

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

17 “(B) OTHER REQUIREMENTS.—A notice
18 shall not be treated as meeting the require-
19 ments of subparagraph (A) with respect to an
20 employee unless—

21 “(i) the notice includes a notice ex-
22 plaining the employee’s right under the ar-
23 rangement to elect not to have elective con-
24 tributions made on the employee’s behalf

1 (or to elect to have such contributions
2 made at a different percentage),

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

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

12 (e) CORRECTIVE DISTRIBUTIONS.—

13 (1) IN GENERAL.—Section 414 of the Internal
14 Revenue Code of 1986 (relating to definitions and
15 special rules) is amended by adding at the end the
16 following new subsection:

17 “(w) AUTOMATIC CONTRIBUTION ARRANGEMENTS.—

18 “(1) IN GENERAL.—For purposes of this title,
19 the amount of any corrective distribution from a
20 plan shall be treated as if such amount had never
21 been held in such plan and shall be treated as a pay-
22 ment of compensation from the employer maintain-
23 ing the plan to the employee receiving such distribu-
24 tion.

1 “(2) CORRECTIVE DISTRIBUTION.—For pur-
2 poses of this subsection, the term ‘corrective dis-
3 tribution’ means a distribution from an applicable
4 employer plan of all amounts attributable to an erro-
5 neous automatic contribution.

6 “(3) ERRONEOUS AUTOMATIC CONTRIBU-
7 TION.—For purposes of this subsection, the term
8 ‘erroneous automatic contribution’ means an elective
9 contribution made on behalf of an employee under
10 any applicable employer plan pursuant to a plan pro-
11 vision treating the employee as having elected to
12 have the employer make such elective contribution
13 until the employee affirmatively elects not to have
14 such contribution made or affirmatively elects to
15 make contributions at a specified level, if the fol-
16 lowing requirements are satisfied:

17 “(A) Within the applicable period, the em-
18 ployee notifies the plan administrator that the
19 employee elects to have the elective contribution
20 treated as an erroneous automatic contribution.

21 “(B) The sum of the elective contributions
22 that are treated as erroneous automatic con-
23 tributions with respect to an employee does not
24 exceed the greater of—

25 “(i) \$400, or

1 “(ii) the amount of the elective con-
2 tributions described in paragraph (3) with
3 respect to the employee which were made
4 during the first 4 payroll periods to which
5 the arrangement applies.

6 “(4) APPLICABLE EMPLOYER PLAN.—For pur-
7 poses of this subsection, the term ‘applicable em-
8 ployer plan’ has the meaning given such term by
9 subsection (v)(6)(A).

10 “(5) APPLICABLE PERIOD.—For purposes of
11 this subsection, the term ‘applicable period’ means,
12 with respect to an employee, the 3-month period
13 that begins on the first date that an amount is with-
14 held from compensation payable to the employee in
15 order to make a plan contribution pursuant to a
16 plan provision described in paragraph (3).”.

17 (2) VESTING CONFORMING AMENDMENTS.—

18 (A) INTERNAL REVENUE CODE OF 1986.—

19 (i) Section 411(a)(3)(G) of such Code
20 is amended by inserting “an erroneous
21 automatic contribution under section
22 414(w),” after “402(g)(2)(A),”.

23 (ii) The heading of section
24 411(a)(3)(G) of such Code is amended by

1 inserting “OR ERRONEOUS AUTOMATIC
2 CONTRIBUTION” before the period.

3 (iii) Section 401(k)(8)(E) of such
4 Code is amended by inserting “an erro-
5 neous automatic contribution under section
6 414(w),” after “402(g)(2)(A),”.

7 (iv) The heading of section
8 401(k)(8)(E) of such Code is amended by
9 inserting “OR ERRONEOUS AUTOMATIC
10 CONTRIBUTION” before the period.

11 (B) EMPLOYEE RETIREMENT INCOME SE-
12 CURITY ACT OF 1974.—Section 203(a)(3)(F) of
13 the Employee Retirement Income Security Act
14 of 1974 (29 U.S.C. 1053(a)(3)(F)) is amended
15 by inserting “an erroneous automatic contribu-
16 tion under section 414(w) of such Code,” after
17 “402(g)(2)(A) of such Code,”.

18 (f) APPLICATION OF AUTOMATIC CONTRIBUTION RE-
19 QUIREMENT TO FEDERAL THRIFT SAVINGS PLAN.—Sec-
20 tion 8432(a) of title 5, United States Code, is amended
21 by adding at the end the following:

22 “(4)(A) An employee who begins employment
23 after January 1, 2006, or any Member who is elect-
24 ed or appointed to office after that date (regardless
25 of whether that employee (or Member) has prior pe-

1 riods of service covered under this chapter or chap-
2 ter 83) shall be treated as having made an election
3 to make contributions under subsection (b) in an
4 amount equal to the applicable percentage of the
5 employees compensation unless the employee specifi-
6 cally elects not to have such contributions made

7 “(B)(i) For purposes of this paragraph, the
8 term ‘applicable percentage’ means, with respect to
9 any employee, 3 percent.

10 “(ii) In the case of the second plan year begin-
11 ning after the first date on which the election under
12 subparagraph (A) is in effect with respect to the em-
13 ployee and any succeeding plan year, the applicable
14 percentage shall be a percentage equal to the sum of
15 the applicable percentage for the employee as of the
16 close of the preceding plan year plus the number of
17 percentage points (not less than 1 percentage point)
18 specified by the plan. Such increase shall continue
19 until the applicable percentage is 10 percent.

20 “(C) Each employee to whom subparagraph (A)
21 applies shall—

22 “(i) receive a notice explaining the employ-
23 ee’s right under the Thrift Savings Plan to
24 elect not to have elective contributions made on
25 the employee’s behalf, and how contributions

1 made under the Thrift Savings Plan will be in-
2 vested in the absence of any investment election
3 by the employee, and

4 “(ii) have a reasonable period of time after
5 receipt of such notice and before the first elec-
6 tive contribution is made to make such election.

7 A similar notice shall be provided within a reason-
8 able period of time before each calendar year.

9 “(D) In the case of an employee who does not
10 make an investment election, the Thrift Savings
11 Plan shall invest the contributions in accordance
12 with the regulations prescribed by the Secretary of
13 Labor under section 404(c)(4)(B) of the Employee
14 Retirement Income Security Act of 1974.”.

15 (g) EFFECTIVE DATE.—

16 (1) IN GENERAL.—Except as provided in para-
17 graph (2), the amendments made by this section
18 shall apply to plan years beginning after December
19 31, 2005.

20 (2) REGULATIONS.—Final regulations under
21 section 404(c)(4)(B)(iii) of the Employee Retirement
22 Income Security Act of 1974 (added by this section)
23 shall be issued no later than 6 months after the date
24 of enactment of this Act.

1 **SEC. 3. DIRECT PAYMENT OF TAX REFUNDS TO INDIVIDUAL**
2 **RETIREMENT PLANS.**

3 (a) IN GENERAL.—Paragraph (3) of section 219(f)
4 of the Internal Revenue Code of 1986 is amended to read
5 as follows:

6 “(3) TIME WHEN CONTRIBUTIONS MADE.—

7 “(A) IN GENERAL.—Except as provided in
8 subparagraph (B), for purposes of this sub-
9 section, a taxpayer shall be deemed to have
10 made a contribution to an individual retirement
11 plan on the last day of the preceding taxable
12 year if the contribution is made on account of
13 such taxable year and is made not later than
14 the time prescribed by law for filing the return
15 for such taxable year (not including extensions
16 thereof).

17 “(B) DIRECT PAYMENT OF TAX REFUNDS
18 TO INDIVIDUAL RETIREMENT PLANS.—

19 “(i) IN GENERAL.—To the extent pro-
20 vided in rules prescribed by the Secretary,
21 a tax refund owed to a taxpayer and paid
22 directly to an individual retirement plan
23 shall be deemed a contribution made by
24 the taxpayer—

1 “(I) on the last day of the tax-
2 able year to which such refund re-
3 lates, and

4 “(II) on account of such taxable
5 year.

6 “(ii) LIMITATION.—This subpara-
7 graph shall not apply to a tax refund un-
8 less such refund is shown on a return filed
9 not later than the time prescribed by law
10 for filing the return for the taxable year to
11 which such refund relates (not including
12 extensions thereof).

13 “(iii) DIRECT PAYMENT.—For pur-
14 poses of this subparagraph, a tax refund is
15 paid directly to an individual retirement
16 plan if it is paid in the form of a direct
17 transfer from the Secretary to the trustee
18 or issuer of the individual retirement plan.

19 “(iv) TAX REFUND.—For purposes of
20 this subparagraph, the term ‘tax refund’
21 means any overpayment of an internal rev-
22 enue tax under section 6401 which the
23 Secretary may credit or refund under sec-
24 tion 6402 (after application of subsections
25 (c), (d), and (e) thereof).”.

1 (b) REGULATIONS.—

2 (1) IN GENERAL.—Not later than 1 year after
3 the date of enactment of this Act, the Secretary of
4 the Treasury shall issue rules which permit a tax-
5 payer—

6 (A) to elect to have all or any portion of
7 a tax refund owed to the taxpayer paid directly
8 to an individual retirement plan,

9 (B) to specify the individual retirement
10 plan to which such tax refund is to be paid
11 (and the investment option in which such tax
12 refund is to be invested), and

13 (C) to the extent provided in rules pre-
14 scribed by the Secretary, to specify the taxable
15 year on account of which such payment is
16 made, except that the Secretary may require
17 that the amount subject to such an election ex-
18 ceed a dollar threshold determined by the Sec-
19 retary as necessary or appropriate to ensure the
20 administrability of such elections.

21 (2) INFORMATION.—The Secretary may require
22 that the taxpayer provide, and agree to the disclo-
23 sure of, any information necessary to pay the tax re-
24 fund to the individual retirement plan specified by
25 the taxpayer.

1 (3) SPECIAL RULE.—The Secretary may pro-
2 vide that if, for any reason, the trustee or issuer
3 does not accept payment of a tax refund, the tax re-
4 fund shall instead be paid as if the taxpayer had not
5 elected a direct payment to an individual retirement
6 plan.

7 (c) EFFECTIVE DATE.—The amendments made by
8 this section shall apply to taxable years the due date for
9 which (without regard to any extension) occurs after the
10 date on which final rules implementing the amendments
11 made by this section are prescribed.

12 **SEC. 4. CREDIT TO ENCOURAGE UNIVERSAL ACCESS TO**
13 **OPT OUT DIRECT DEPOSIT RETIREMENT SAV-**
14 **INGS.**

15 (a) IN GENERAL.—Subpart D of part IV of sub-
16 chapter A of chapter 1 of the Internal Revenue Code of
17 1986 (relating to business related credits) is amended by
18 adding at the end the following new section:

19 **“SEC. 45J. EMPLOYER SALARY REDUCTION COSTS.**

20 “(a) GENERAL RULE.—For purposes of section 38,
21 in the case of the first taxable year which includes the
22 date that a qualified salary reduction arrangement of the
23 eligible employer becomes effective, the employer salary re-
24 duction cost credit determined under this section for such

1 taxable year is the amount determined under subsection
2 (b).

3 “(b) AMOUNT OF CREDIT.—The amount of the credit
4 determined under this section for any taxable year with
5 respect to an eligible employer shall be equal to 50 percent
6 of the costs paid or incurred by the taxpayer in estab-
7 lishing the qualified salary reduction arrangement referred
8 to in subsection (a).

9 “(c) ELIGIBLE EMPLOYER.—For purposes of this
10 section, the term ‘eligible employer’ means, with respect
11 to any calendar year in which the taxable year begins, an
12 employer which maintains a qualified salary reduction ar-
13 rangement meeting the requirements of subsection (d) and
14 which did not maintain a qualified plan or arrangement
15 (within the meaning of subsection (d)(8)) for the pre-
16 ceding 2 calendar years.

17 “(d) EMPLOYEE ACCESS TO OPT OUT SALARY RE-
18 DUCATION CONTRIBUTIONS TO INDIVIDUAL RETIREMENT
19 PLANS.—

20 “(1) IN GENERAL.—Every employer which does
21 not maintain a qualified plan or arrangement for a
22 calendar year may provide a qualified salary reduc-
23 tion arrangement for the calendar year.

24 “(2) QUALIFIED SALARY REDUCTION ARRANGE-
25 MENT.—For purposes of this section, the term

1 ‘qualified salary reduction arrangement’ means a
2 salary reduction arrangement which meets the re-
3 quirements of paragraphs (4) and (5).

4 “(3) SALARY REDUCTION ARRANGEMENT.—For
5 purposes of this section, the term ‘salary reduction
6 arrangement’ means a written arrangement of an
7 employer under which—

8 “(A) an employee eligible to participate in
9 the arrangement may elect to—

10 “(i) contribute to an individual retire-
11 ment plan established by or on behalf of
12 the employee by having the employer make
13 direct deposit payments to the plan by pay-
14 roll deduction, or

15 “(ii) receive the amounts directly as
16 cash compensation,

17 “(B) no other contributions may be made
18 under the arrangement,

19 “(C) each employee eligible to participate
20 in the arrangement is treated as having elected
21 to have the employer make elective contribu-
22 tions under subparagraph (A)(i) in an amount
23 equal to the applicable percentage (within the
24 meaning of section 401(k)(13)(A)(iii)) of the
25 employee’s compensation unless the employee

1 specifically elects not to have such contributions
2 made, and

3 “(D) there is established the methods by
4 which contributions made under the arrange-
5 ment will be invested in the absence of any in-
6 vestment election by the employee.

7 “(4) PARTICIPATION REQUIREMENTS.—

8 “(A) IN GENERAL.—The requirements of
9 this paragraph are met with respect to a salary
10 reduction arrangement for a year only if, under
11 the arrangement, all employees of the employer
12 are eligible to make the election under para-
13 graph (3)(A).

14 “(B) EXCLUDABLE EMPLOYEES.—An em-
15 ployer may exclude from the requirement under
16 paragraph (3) employees described in section
17 410(b)(3) and any employee who has not com-
18 pleted hours of service for the employer on a
19 regular basis during a period of at least 30 con-
20 secutive days during the calendar year.

21 “(5) ADMINISTRATIVE REQUIREMENTS.—The
22 requirements of this paragraph are met with respect
23 to any salary reduction arrangement if, under the
24 arrangement—

1 “(A) the employer must make the pay-
2 ments elected under paragraph (3)(A) or re-
3 quired under paragraph (3)(C) not later than
4 the close of the 30-day period following the last
5 day of the month with respect to which the con-
6 tributions are to be made, or, if later, the dead-
7 line under applicable rules and regulations for
8 the employer to deposit tax under section 3102
9 for wages paid in that month,

10 “(B) an employee may elect to terminate
11 participation in the arrangement at any time
12 during the year, except that if an employee so
13 terminates, the arrangement may provide that
14 the employee may not elect to resume partici-
15 pation until the beginning of the next year,

16 “(C) each employee eligible to participate
17 may elect, during the 60-day period before the
18 beginning of any year (and the 60-day period
19 before the first day the employee is eligible to
20 participate), to participate in the arrangement,
21 or to modify the amounts subject to the ar-
22 rangement, for such year, and

23 “(D) immediately before the period for
24 which an election described in paragraph (3)(A)
25 may be made, the employer provides a notice to

1 each employee of the employee’s opportunity to
2 make the election and the maximum amount
3 which may be contributed to an individual re-
4 irement plan on an annual basis.

5 “(6) USE OF DESIGNATED FINANCIAL INSTITU-
6 TION.—An employer shall not be treated as failing
7 to satisfy the requirements of this subsection or any
8 other provision of this title merely because the em-
9 ployer makes all contributions (or all contributions
10 on behalf of employees who do not specify an indi-
11 vidual retirement plan, trustee, or issuer to receive
12 the contributions) to individual retirement plans of
13 a designated trustee or issuer. The preceding sen-
14 tence shall not apply unless each participant is noti-
15 fied in writing that the participant’s balance may be
16 transferred without cost or penalty to another indi-
17 vidual retirement plan in accordance with subsection
18 (d)(3).

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

1 “(8) QUALIFIED PLAN OR ARRANGEMENT.—For
2 purposes of this section, an employer is treated as
3 maintaining a qualified plan or arrangement for a
4 calendar year if the employer maintains for such
5 year a plan, contract, pension, or trust described in
6 subparagraph (A) or (B) of section 219(g)(5) or an
7 eligible deferred compensation plan (within the
8 meaning of section 457(b)) with respect to which
9 contributions are made, or benefits are accrued, for
10 service in such year.

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

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

21 “(2) SALARY REDUCTION CONTRIBUTIONS
22 TAKEN INTO ACCOUNT.—Any contribution made on
23 behalf of an employee under a qualified salary reduc-
24 tion arrangement shall be taken into account in ap-
25 plying the limitations on contributions to individual

1 retirement plans and the other provisions of this
 2 title applicable to individual retirement plans as if
 3 the contribution had been made to the plan directly
 4 by the employee.”.

5 (b) CREDIT ALLOWED AS PART OF GENERAL BUSI-
 6 NESS CREDIT.—Section 38(b) of the Internal revenue
 7 Code of 1986 (defining current year business credit) is
 8 amended by striking “plus” at the end of paragraph (18),
 9 by striking the period at the end of paragraph (19) and
 10 inserting “, plus”, and by adding at the end the following
 11 new paragraph:

12 “(20) in the case of an eligible employer (as de-
 13 fined in section 45J(c)), the employer salary reduc-
 14 tion cost credit determined under section 45J(a).”.

15 (c) TREATMENT AS DEFAULT INVESTMENT AR-
 16 RANGEMENT.—Section 404(c)(4)(B) of the Employee Re-
 17 tirement Income security Act of 1974, as added by section
 18 2 of this Act, is amended by adding at the end the fol-
 19 lowing new sentence: “For purposes of this subsection, an
 20 arrangement described in section 45J(d) shall be treated
 21 as a default investment arrangement.”

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

“Sec. 45J. Employer salary reduction costs.”.

1 (e) EFFECTIVE DATE.—The amendments made by
2 this section shall apply to taxable years beginning after
3 December 31, 2005.

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