

109<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION

# S. 723

To amend the Internal Revenue Code of 1986 to allow small businesses to set up simple cafeteria plans to provide nontaxable employee benefits to their employees, to make changes in the requirements for cafeteria plans, flexible spending accounts, and benefits provided under such plans or accounts, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

APRIL 6, 2005

Ms. SNOWE (for herself, Mr. BOND, and Mr. BINGAMAN) introduced the following bill; which was read twice and referred to the Committee on Finance

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## A BILL

To amend the Internal Revenue Code of 1986 to allow small businesses to set up simple cafeteria plans to provide nontaxable employee benefits to their employees, to make changes in the requirements for cafeteria plans, flexible spending accounts, and benefits provided under such plans or accounts, 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       (a) **SHORT TITLE.**—This Act may be cited as the  
5       “SIMPLE Cafeteria Plan Act of 2005”.

1 (b) AMENDMENT OF 1986 CODE.—Except as other-  
 2 wise expressly provided, whenever in this Act an amend-  
 3 ment or repeal is expressed in terms of an amendment  
 4 to, or repeal of, a section or other provision, the reference  
 5 shall be considered to be made to a section or other provi-  
 6 sion of the Internal Revenue Code of 1986.

7 **SEC. 2. ESTABLISHMENT OF SIMPLE CAFETERIA PLANS**  
 8 **FOR SMALL BUSINESSES.**

9 (a) IN GENERAL.—Section 125 (relating to cafeteria  
 10 plans) is amended by redesignating subsections (h) and  
 11 (i) as subsections (i) and (j), respectively, and by inserting  
 12 after subsection (g) the following new subsection:

13 “(h) SIMPLE CAFETERIA PLANS FOR SMALL BUSI-  
 14 NESSES.—

15 “(1) IN GENERAL.—An eligible employer main-  
 16 taining a simple cafeteria plan with respect to which  
 17 the requirements of this subsection are met for any  
 18 year shall be treated as meeting any applicable non-  
 19 discrimination requirement with respect to benefits  
 20 provided under the plan during such year.

21 “(2) SIMPLE CAFETERIA PLAN.—For purposes  
 22 of this subsection, the term ‘simple cafeteria plan’  
 23 means a cafeteria plan—

24 “(A) which is established and maintained  
 25 by an eligible employer, and

1           “(B) with respect to which the contribution  
2 requirements of paragraph (3), and the eligi-  
3 bility and participation requirements of para-  
4 graph (4), are met.

5           “(3) CONTRIBUTIONS REQUIREMENTS.—

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

8           “(i) the employer makes matching  
9 contributions on behalf of each employee  
10 who is eligible to participate in the plan  
11 and who is not a highly compensated or  
12 key employee in an amount equal to the  
13 elective plan contributions of the employee  
14 to the plan to the extent the employee’s  
15 elective plan contributions do not exceed 3  
16 percent of the employee’s compensation, or

17           “(ii) the employer is required, without  
18 regard to whether an employee makes any  
19 elective plan contribution, to make a con-  
20 tribution to the plan on behalf of each em-  
21 ployee who is not a highly compensated or  
22 key employee and who is eligible to partici-  
23 pate in the plan in an amount equal to at  
24 least 2 percent of the employee’s com-  
25 pensation.

1           “(B) MATCHING CONTRIBUTIONS ON BE-  
2 HALF OF HIGHLY COMPENSATED AND KEY EM-  
3 PLOYEES.—The requirements of subparagraph  
4 (A)(i) shall not be treated as met if, under the  
5 plan, the rate of matching contribution with re-  
6 spect to any elective plan contribution of a  
7 highly compensated or key employee at any rate  
8 of contribution is greater than that with respect  
9 to an employee who is not a highly compensated  
10 or key employee.

11           “(C) SPECIAL RULES.—

12           “(i) TIME FOR MAKING CONTRIBU-  
13 TIONS.—An employer shall not be treated  
14 as failing to meet the requirements of this  
15 paragraph with respect to any elective plan  
16 contributions of any compensation, or em-  
17 ployer contributions required under this  
18 paragraph with respect to any compensa-  
19 tion, if such contributions are made no  
20 later than the 15th day of the month fol-  
21 lowing the last day of the calendar quarter  
22 which includes the date of payment of the  
23 compensation.

24           “(ii) FORM OF CONTRIBUTIONS.—Em-  
25 ployer contributions required under this

1 paragraph may be made either to the plan  
2 to provide benefits offered under the plan  
3 or to any person as payment for providing  
4 benefits offered under the plan.

5 “(iii) ADDITIONAL CONTRIBUTIONS.—  
6 Subject to subparagraph (B), nothing in  
7 this paragraph shall be treated as prohib-  
8 iting an employer from making contribu-  
9 tions to the plan in addition to contribu-  
10 tions required under subparagraph (A).

11 “(D) DEFINITIONS.—For purposes of this  
12 paragraph—

13 “(i) ELECTIVE PLAN CONTRIBU-  
14 TION.—The term ‘elective plan contribu-  
15 tion’ means any amount which is contrib-  
16 uted at the election of the employee and  
17 which is not includible in gross income by  
18 reason of this section.

19 “(ii) HIGHLY COMPENSATED EM-  
20 PLOYEE.—The term ‘highly compensated  
21 employee’ has the meaning given such term  
22 by section 414(q).

23 “(iii) KEY EMPLOYEE.—The term  
24 ‘key employee’ has the meaning given such  
25 term by section 416(i).

1           “(4) MINIMUM ELIGIBILITY AND PARTICIPA-  
2           TION REQUIREMENTS.—

3           “(A) IN GENERAL.—The requirements of  
4           this paragraph shall be treated as met with re-  
5           spect to any year if, under the plan—

6                   “(i) all employees who had at least  
7                   1,000 hours of service for the preceding  
8                   plan year are eligible to participate, and

9                   “(ii) each employee eligible to partici-  
10                  pate in the plan may, subject to terms and  
11                  conditions applicable to all participants,  
12                  elect any benefit available under the plan.

13           “(B) CERTAIN EMPLOYEES MAY BE EX-  
14           CLUDED.—For purposes of subparagraph  
15           (A)(i), an employer may elect to exclude under  
16           the plan employees—

17                   “(i) who have less than 1 year of serv-  
18                   ice with the employer as of any day during  
19                   the plan year,

20                   “(ii) who have not attained the age of  
21                   21 before the close of a plan year,

22                   “(iii) who are covered under an agree-  
23                   ment which the Secretary of Labor finds to  
24                   be a collective bargaining agreement if  
25                   there is evidence that the benefits covered

1 under the cafeteria plan were the subject  
2 of good faith bargaining between employee  
3 representatives and the employer, or

4 “(iv) who are described in section  
5 410(b)(3)(C) (relating to nonresident  
6 aliens working outside the United States).

7 A plan may provide a shorter period of service  
8 or younger age for purposes of clause (i) or (ii).

9 “(5) ELIGIBLE EMPLOYER.—For purposes of  
10 this subsection—

11 “(A) IN GENERAL.—The term ‘eligible em-  
12 ployer’ means, with respect to any year, any  
13 employer if such employer employed an average  
14 of 100 or fewer employees on business days  
15 during either of the 2 preceding years. For pur-  
16 poses of this subparagraph, a year may only be  
17 taken into account if the employer was in exist-  
18 ence throughout the year.

19 “(B) EMPLOYERS NOT IN EXISTENCE DUR-  
20 ING PRECEDING YEAR.—If an employer was not  
21 in existence throughout the preceding year, the  
22 determination under subparagraph (A) shall be  
23 based on the average number of employees that  
24 it is reasonably expected such employer will em-  
25 ploy on business days in the current year.

1                   “(C) GROWING EMPLOYERS RETAIN  
2 TREATMENT AS SMALL EMPLOYER.—If—

3                   “(i) an employer was an eligible em-  
4 ployer for any year (a ‘qualified year’), and

5                   “(ii) such employer establishes a sim-  
6 ple cafeteria plan for its employees for  
7 such year, then, notwithstanding the fact  
8 the employer fails to meet the require-  
9 ments of subparagraph (A) for any subse-  
10 quent year, such employer shall be treated  
11 as an eligible employer for such subsequent  
12 year with respect to employees (whether or  
13 not employees during a qualified year) of  
14 any trade or business which was covered  
15 by the plan during any qualified year. This  
16 subparagraph shall cease to apply if the  
17 employer employs an average of 200 more  
18 employees on business days during any  
19 year preceding any such subsequent year.

20                   “(D) SPECIAL RULES.—The rules of sec-  
21 tion 220(c)(4)(D) shall apply for purposes of  
22 this paragraph.

23                   “(6) APPLICABLE NONDISCRIMINATION RE-  
24 QUIREMENT.—For purposes of this subsection, the  
25 term ‘applicable nondiscrimination requirement’

1 means any requirement under subsection (b) of this  
 2 section, section 79(d), section 105(h), or paragraph  
 3 (2), (3), (4), or (8) of section 129(d).

4 “(7) COMPENSATION.—The term ‘compensa-  
 5 tion’ has the meaning given such term by section  
 6 414(s).”

7 (b) EFFECTIVE DATE.—The amendments made by  
 8 this section shall apply to years beginning after December  
 9 31, 2004.

10 **SEC. 3. MODIFICATIONS OF RULES APPLICABLE TO CAFETE-**  
 11 **TERIA PLANS.**

12 (a) APPLICATION TO SELF-EMPLOYED INDIVID-  
 13 UALS.—

14 (1) IN GENERAL.—Section 125(d) (defining caf-  
 15 eteria plan) is amended by adding at the end the fol-  
 16 lowing new paragraph:

17 “(3) EMPLOYEE TO INCLUDE SELF-EM-  
 18 PLOYED.—

19 “(A) IN GENERAL.—The term ‘employee’  
 20 includes an individual who is an employee with-  
 21 in the meaning of section 401(c)(1) (relating to  
 22 self-employed individuals).

23 “(B) LIMITATION.—The amount which  
 24 may be excluded under subsection (a) with re-  
 25 spect to a participant in a cafeteria plan by rea-

1 son of being an employee under subparagraph  
 2 (A) shall not exceed the employee’s earned in-  
 3 come (within the meaning of section 401(c)) de-  
 4 rived from the trade or business with respect to  
 5 which the cafeteria plan is established.”

6 (2) APPLICATION TO BENEFITS WHICH MAY BE  
 7 PROVIDED UNDER CAFETERIA PLAN.—

8 (A) GROUP-TERM LIFE INSURANCE.—Sec-  
 9 tion 79 (relating to group-term life insurance  
 10 provided to employees) is amended by adding at  
 11 the end the following new subsection:

12 “(f) EMPLOYEE INCLUDES SELF-EMPLOYED.—

13 “(1) IN GENERAL.—For purposes of this sec-  
 14 tion, the term ‘employee’ includes an individual who  
 15 is an employee within the meaning of section  
 16 401(c)(1) (relating to self-employed individuals).

17 “(2) LIMITATION.—The amount which may be  
 18 excluded under the exceptions contained in sub-  
 19 section (a) or (b) with respect to an individual treat-  
 20 ed as an employee by reason of paragraph (1) shall  
 21 not exceed the employee’s earned income (within the  
 22 meaning of section 401(c)) derived from the trade or  
 23 business with respect to which the individual is so  
 24 treated.”

1 (B) ACCIDENT AND HEALTH PLANS.—Sec-  
 2 tion 105(g) is amended to read as follows:

3 “(g) EMPLOYEE INCLUDES SELF-EMPLOYED.—

4 “(1) IN GENERAL.—For purposes of this sec-  
 5 tion, the term ‘employee’ includes an individual who  
 6 is an employee within the meaning of section  
 7 401(c)(1) (relating to self-employed individuals).

8 “(2) LIMITATION.—The amount which may be  
 9 excluded under this section by reason of subsection  
 10 (b) or (c) with respect to an individual treated as an  
 11 employee by reason of paragraph (1) shall not ex-  
 12 ceed the employee’s earned income (within the mean-  
 13 ing of section 401(c)) derived from the trade or  
 14 business with respect to which the accident or health  
 15 insurance was established.”

16 (C) CONTRIBUTIONS BY EMPLOYERS TO  
 17 ACCIDENT AND HEALTH PLANS.—

18 (i) IN GENERAL.—Section 106, as  
 19 amended by subsection (b), is amended by  
 20 adding after subsection (b) the following  
 21 new subsection:

22 “(c) EMPLOYER TO INCLUDE SELF-EMPLOYED.—

23 “(1) IN GENERAL.—For purposes of this sec-  
 24 tion, the term ‘employee’ includes an individual who

1 is an employee within the meaning of section  
2 401(c)(1) (relating to self-employed individuals).

3 “(2) LIMITATION.—The amount which may be  
4 excluded under subsection (a) with respect to an in-  
5 dividual treated as an employee by reason of para-  
6 graph (1) shall not exceed the employee’s earned in-  
7 come (within the meaning of section 401(c)) derived  
8 from the trade or business with respect to which the  
9 accident or health insurance was established.”

10 (ii) CLARIFICATION OF LIMITATIONS ON  
11 OTHER COVERAGE.—The first sentence of sec-  
12 tion 162(l)(2)(B) is amended to read as follows:  
13 “Paragraph (1) shall not apply to any taxpayer  
14 for any calendar month for which the taxpayer  
15 participates in any subsidized health plan main-  
16 tained by any employer (other than an employer  
17 described in section 401(c)(4)) of the taxpayer  
18 or the spouse of the taxpayer.

19 (b) LONG-TERM CARE INSURANCE PERMITTED TO  
20 BE OFFERED UNDER CAFETERIA PLANS AND FLEXIBLE  
21 SPENDING ARRANGEMENTS.—

22 (1) CAFETERIA PLANS.—The last sentence of  
23 section 125(f) (defining qualified benefits) is amend-  
24 ed to read as follows: “Such term shall include the  
25 payment of premiums for any qualified long-term

1 care insurance contract (as defined in section  
 2 7702B) to the extent the amount of such payment  
 3 does not exceed the eligible long-term care premiums  
 4 (as defined in section 213(d)(10)) for such con-  
 5 tract”.

6 (2) FLEXIBLE SPENDING ARRANGEMENTS.—  
 7 Section 106 (relating to contributions by employer to  
 8 accident and health plans) is amended by striking  
 9 subsection (c).

10 (c) EFFECTIVE DATE.—The amendments made by  
 11 this section shall apply to taxable years beginning after  
 12 December 31, 2004.

13 **SEC. 4. MODIFICATION OF RULES APPLICABLE TO FLEXI-**  
 14 **BLE SPENDING ARRANGEMENTS.**

15 (a) IN GENERAL.—Section 125, as amended by sec-  
 16 tion 2, is amended by redesignating subsections (i) and  
 17 (j) as subsections (j) and (k), respectively, and by insert-  
 18 ing after subsection (h) the following new subsection:

19 “(i) SPECIAL RULES APPLICABLE TO FLEXIBLE  
 20 SPENDING ARRANGEMENTS.—

21 “(1) IN GENERAL.—For purposes of this title,  
 22 a plan or other arrangement shall not fail to be  
 23 treated as a flexible spending or similar arrangement  
 24 solely because under the plan or arrangement—

1           “(A) the amount of the reimbursement for  
2 covered expenses at any time may not exceed  
3 the balance in the participant’s account for the  
4 covered expenses as of such time,

5           “(B) except as provided in paragraph  
6 (4)(A)(ii), a participant may elect at any time  
7 specified by the plan or arrangement to make  
8 or modify any election regarding the covered  
9 benefits, or the level of covered benefits, of the  
10 participant under the plan, and

11           “(C) a participant is permitted access to  
12 any unused balance in the participant’s ac-  
13 counts under such plan or arrangement in the  
14 manner provided under paragraph (2) or (3).

15           “(2) CARRYOVERS AND ROLLOVERS OF UNUSED  
16 BENEFITS IN HEALTH AND DEPENDENT CARE AR-  
17 RANGEMENTS.—

18           “(A) IN GENERAL.—A plan or arrange-  
19 ment may permit a participant in a health flexi-  
20 ble spending arrangement or dependent care  
21 flexible spending arrangement to elect—

22           “(i) to carry forward any aggregate  
23 unused balances in the participant’s ac-  
24 counts under such arrangement as of the  
25 close of any year to the succeeding year, or

1                   “(ii) to have such balance transferred  
2                   to a plan described in subparagraph (E).

3                   Such carryforward or transfer shall be treated  
4                   as having occurred within 30 days of the close  
5                   of the year.

6                   “(B)           DOLLAR           LIMIT           ON  
7                   CARRYFORWARDS.—

8                   “(i) IN GENERAL.—The amount which  
9                   a participant may elect to carry forward  
10                  under subparagraph (A)(i) from any year  
11                  shall not exceed \$500. For purposes of this  
12                  paragraph, all plans and arrangements  
13                  maintained by an employer or any related  
14                  person shall be treated as 1 plan.

15                  “(ii) COST-OF-LIVING ADJUSTMENT.—  
16                  In the case of any taxable year beginning  
17                  in a calendar year after 2005, the \$500  
18                  amount under clause (i) shall be increased  
19                  by an amount equal to—

20                               “(I) \$500, multiplied by

21                               “(II) the cost-of-living adjust-  
22                               ment determined under section 1(f)(3)  
23                               for such calendar year, determined by  
24                               substituting ‘2004’ for ‘1992’ in sub-  
25                               paragraph (B) thereof.

1           If any dollar amount as increased under  
2           this clause is not a multiple of \$100, such  
3           amount shall be rounded to the next lowest  
4           multiple of \$100.

5           “(C) EXCLUSION FROM GROSS INCOME.—  
6           No amount shall be required to be included in  
7           gross income under this chapter by reason of  
8           any carryforward or transfer under this para-  
9           graph.

10          “(D) COORDINATION WITH LIMITS.—

11           “(i) CARRYFORWARDS.—The max-  
12           imum amount which may be contributed to  
13           a health flexible spending arrangement or  
14           dependent care flexible spending arrange-  
15           ment for any year to which an unused  
16           amount is carried under this paragraph  
17           shall be reduced by such amount.

18           “(ii) ROLLOVERS.—Any amount  
19           transferred under subparagraph (A)(ii)  
20           shall be treated as an eligible rollover  
21           under section 219, 223(f)(5), 401(k),  
22           403(b), or 457, whichever is applicable, ex-  
23           cept that—

24                   “(I) the amount of the contribu-  
25                   tions which a participant may make to

1 the plan under any such section for  
2 the taxable year including the transfer  
3 shall be reduced by the amount trans-  
4 ferred, and

5 “(II) in the case of a transfer to  
6 a plan described in clause (ii) or (iii)  
7 of subparagraph (E), the transferred  
8 amounts shall be treated as elective  
9 deferrals for such taxable year.

10 “(E) PLANS.—A plan is described in this  
11 subparagraph if it is—

12 “(i) an individual retirement plan,

13 “(ii) a qualified cash or deferred ar-  
14 rangement described in section 401(k),

15 “(iii) a plan under which amounts are  
16 contributed by an individual’s employer for  
17 an annuity contract described in section  
18 403(b),

19 “(iv) an eligible deferred compensa-  
20 tion plan described in section 457, or

21 “(v) a health savings account de-  
22 scribed in section 223.

23 “(3) DISTRIBUTION UPON TERMINATION.—

24 “(A) IN GENERAL.—A plan or arrange-  
25 ment may permit a participant (or any des-

1           ignated heir of the participant) to receive a  
 2           cash payment equal to the aggregate unused ac-  
 3           count balances in the plan or arrangement as of  
 4           the date the individual is separated (including  
 5           by death or disability) from employment with  
 6           the employer maintaining the plan or arrange-  
 7           ment.

8           “(B) INCLUSION IN INCOME.—Any pay-  
 9           ment under subparagraph (A) shall be includ-  
 10          ible in gross income for the taxable year in  
 11          which such payment is distributed to the em-  
 12          ployee.

13          “(4) TERMS RELATING TO FLEXIBLE SPENDING  
 14          ARRANGEMENTS.—

15                 “(A) FLEXIBLE SPENDING ARRANGE-  
 16                 MENTS.—

17                         “(i) IN GENERAL.—For purposes of  
 18                         this subsection, a flexible spending ar-  
 19                         rangement is a benefit program which pro-  
 20                         vides employees with coverage under which  
 21                         specified incurred expenses may be reim-  
 22                         bursed (subject to reimbursement maxi-  
 23                         mums and other reasonable conditions).

24                         “(ii) ELECTIONS REQUIRED.—A plan  
 25                         or arrangement shall not be treated as a

1 flexible spending arrangement unless a  
 2 participant may at least 4 times during  
 3 any year make or modify any election re-  
 4 garding covered benefits or the level of cov-  
 5 ered benefits.

6 “(B) HEALTH AND DEPENDENT CARE AR-  
 7 RANGEMENTS.—The terms ‘health flexible  
 8 spending arrangement’ and ‘dependent care  
 9 flexible spending arrangement’ means any flexi-  
 10 ble spending arrangement (or portion thereof)  
 11 which provides payments for expenses incurred  
 12 for medical care (as defined in section 213(d))  
 13 or dependent care (within the meaning of sec-  
 14 tion 129), respectively.”

15 (b) CONFORMING AMENDMENT.—

16 (1) The heading for section 125 is amended by  
 17 inserting “**AND FLEXIBLE SPENDING ARRANGE-**  
 18 **MENTS**” after “**PLANS**”.

19 (2) The item relating to section 125 in the table  
 20 of sections for part III of subchapter B of chapter  
 21 1 is amended by inserting “and flexible spending ar-  
 22 rangements” after “plans”.

23 (c) EFFECTIVE DATE.—The amendments made by  
 24 this section shall apply to years beginning after December  
 25 31, 2004.

1 **SEC. 5. RULES RELATING TO EMPLOYER-PROVIDED**  
 2 **HEALTH AND DEPENDENT CARE BENEFITS.**

3 (a) HEALTH BENEFITS.—Section 106, as amended  
 4 by section 3, is amended by adding at the end the fol-  
 5 lowing new subsection:

6 “(e) LIMITATION ON CONTRIBUTIONS TO HEALTH  
 7 FLEXIBLE SPENDING ARRANGEMENTS.—

8 “(1) IN GENERAL.—Gross income of an em-  
 9 ployee for any taxable year shall include employer-  
 10 provided coverage provided through 1 or more health  
 11 flexible spending arrangements (within the meaning  
 12 of section 125(i)) to the extent that the amount oth-  
 13 erwise excludable under subsection (a) with regard  
 14 to such coverage exceeds the applicable dollar limit  
 15 for the taxable year.

16 “(2) APPLICABLE DOLLAR LIMIT.—For pur-  
 17 poses of this subsection—

18 “(A) IN GENERAL.—The applicable dollar  
 19 limit for any taxable year is an amount equal  
 20 to the sum of—

21 “(i) \$7,500, plus

22 “(ii) if the arrangement provides cov-  
 23 erage for 1 or more individuals in addition  
 24 to the employee, an amount equal to one-  
 25 third of the amount in effect under clause

1 (i) (after adjustment under subparagraph  
2 (B)).

3 “(B) COST-OF-LIVING ADJUSTMENT.—In  
4 the case of taxable years beginning in any cal-  
5 endar year after 2005, the \$7,500 amount  
6 under subparagraph (A) shall be increased by  
7 an amount equal to—

8 “(i) \$7,500, multiplied by

9 “(ii) the cost-of-living adjustment de-  
10 termined under section 1(f)(3) for the cal-  
11 endar year, determined by substituting  
12 ‘2004’ for ‘1992’ in subparagraph (B)  
13 thereof.

14 If any dollar amount as increased under this  
15 subparagraph is not a multiple of \$100, such  
16 dollar amount shall be rounded to the next low-  
17 est multiple of \$100.”

18 (b) DEPENDENT CARE.—

19 (1) EXCLUSION LIMIT.—

20 (A) IN GENERAL.—Section 129(a)(2) (re-  
21 lating to limitation on exclusion) is amended—

22 (i) by striking “\$5,000” and inserting  
23 “the applicable dollar limit”, and

24 (ii) by striking “\$2,500” and insert-  
25 ing “one-half of such limit”.

1 (B) APPLICABLE DOLLAR LIMIT.—Section  
2 129(a) is amended by adding at the end the fol-  
3 lowing new paragraph:

4 “(3) APPLICABLE DOLLAR LIMIT.—For pur-  
5 poses of this subsection—

6 “(A) IN GENERAL.—The applicable dollar  
7 limit is \$5,000 (\$10,000 if dependent care as-  
8 sistance is provided under the program to 2 or  
9 more qualifying individuals of the employee).

10 “(B) COST-OF-LIVING ADJUSTMENTS.—

11 “(i) \$5,000 AMOUNT.—In the case of  
12 taxable years beginning after 2005, the  
13 \$5,000 amount under subparagraph (A)  
14 shall be increased by an amount equal to—

15 “(I) \$5,000, multiplied by

16 “(II) the cost-of-living adjust-  
17 ment determined under section 1(f)(3)  
18 for the calendar year in which the tax-  
19 able year begins, determined by sub-  
20 stituting ‘2004’ for ‘1992’ in subpara-  
21 graph (B) thereof.

22 If any dollar amount as increased under  
23 this clause is not a multiple of \$100, such  
24 dollar amount shall be rounded to the next  
25 lowest multiple of \$100.

1           “(ii) \$10,000 AMOUNT.—The \$10,000  
2           amount under subparagraph (A) for tax-  
3           able years beginning after 2005 shall be  
4           increased to an amount equal to twice the  
5           amount the \$5,000 amount is increased to  
6           under clause (i).”

7           (2) AVERAGE BENEFITS TEST.—

8           (A) IN GENERAL.—Section 129(d)(8)(A)  
9           (relating to benefits) is amended—

10           (i) by striking “55 percent” and in-  
11           serting “60 percent”, and

12           (ii) by striking “highly compensated  
13           employees” the second place it appears and  
14           inserting “employees receiving benefits”.

15           (B) SALARY REDUCTION AGREEMENTS.—  
16           Section 129(d)(8)(B) (relating to salary reduc-  
17           tion agreements) is amended—

18           (i) by striking “\$25,000” and insert-  
19           ing “\$30,000”, and

20           (ii) by adding at the end the fol-  
21           lowing: “In the case of years beginning  
22           after 2005, the \$30,000 amount in the  
23           first sentence shall be adjusted at the same  
24           time, and in the same manner, as the ap-

1                   plicable dollar amount is adjusted under  
2                   subsection (a)(3)(B).”

3                   (3) PRINCIPAL SHAREHOLDERS OR OWNERS.—

4                   Section 129(d)(4) (relating to principal shareholders  
5                   and owners) is amended by adding at the end the  
6                   following: “In the case of any failure to meet the re-  
7                   quirements of this paragraph for any year, amounts  
8                   shall only be required by reason of the failure to be  
9                   included in gross income of the shareholders or own-  
10                  ers who are members of the class described in the  
11                  preceding sentence.”

12                  (c) EFFECTIVE DATE.—The amendments made by  
13                  this section shall apply to taxable years beginning after  
14                  December 31, 2004.

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