

111TH CONGRESS  
1ST SESSION

# S. 988

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

MAY 6, 2009

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 2009”.

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 (i) and (j)  
 11 as subsections (j) and (k), respectively, and by inserting  
 12 after subsection (h) the following new subsection:

13 “(i) 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.

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

“(C) SPECIAL RULES.—

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

“(ii) FORM OF CONTRIBUTIONS.—Em-  
 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.—

21                   “(i) PREDECESSORS.—Any reference  
22 in this paragraph to an employer shall in-  
23 clude a reference to any predecessor of  
24 such employer.



1 “(ii) AGGREGATION RULES.—All per-  
 2 sons treated as a single employer under  
 3 subsection (a) or (b) of section 52, or sub-  
 4 section (n) or (o) of section 414, shall be  
 5 treated as one person.

6 “(6) APPLICABLE NONDISCRIMINATION RE-  
 7 QUIREMENT.—For purposes of this subsection, the  
 8 term ‘applicable nondiscrimination requirement’  
 9 means any requirement under subsection (b) of this  
 10 section, section 79(d), section 105(h), or paragraph  
 11 (2), (3), (4), or (8) of section 129(d).

12 “(7) COMPENSATION.—The term ‘compensa-  
 13 tion’ has the meaning given such term by section  
 14 414(s).”.

15 (b) EFFECTIVE DATE.—The amendments made by  
 16 this section shall apply to years beginning after December  
 17 31, 2009.

18 **SEC. 3. MODIFICATIONS OF RULES APPLICABLE TO CAFETERIA PLANS.**  
 19

20 (a) APPLICATION TO SELF-EMPLOYED INDIVID-  
 21 UALS.—

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

1           “(3) EMPLOYEE TO INCLUDE SELF-EM-  
2       PLOYED.—

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

7           “(B) LIMITATION.—The amount which  
8       may be excluded under subsection (a) with re-  
9       spect to a participant in a cafeteria plan by rea-  
10      son of being an employee under subparagraph  
11      (A) shall not exceed the employee’s earned in-  
12      come (within the meaning of section 401(c)) de-  
13      rived from the trade or business with respect to  
14      which the cafeteria plan is established.”.

15          (2) APPLICATION TO BENEFITS WHICH MAY BE  
16      PROVIDED UNDER CAFETERIA PLAN.—

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

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

22          “(1) IN GENERAL.—For purposes of this sec-  
23      tion, the term ‘employee’ includes an individual who  
24      is an employee within the meaning of section  
25      401(c)(1) (relating to self-employed individuals).

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

9           (B) ACCIDENT AND HEALTH PLANS.—Sub-  
 10          section (g) of section 105 (relating to amounts  
 11          received under accident and health plans) is  
 12          amended to read as follows:

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

14               “(1) IN GENERAL.—For purposes of this sec-  
 15               tion, the term ‘employee’ includes an individual who  
 16               is an employee within the meaning of section  
 17               401(c)(1) (relating to self-employed individuals).

18               “(2) LIMITATION.—The amount which may be  
 19               excluded under this section by reason of subsection  
 20               (b) or (c) with respect to an individual treated as an  
 21               employee by reason of paragraph (1) shall not ex-  
 22               ceed the employee’s earned income (within the mean-  
 23               ing of section 401(c)) derived from the trade or  
 24               business with respect to which the accident or health  
 25               insurance was established.”.

1 (C) CONTRIBUTIONS BY EMPLOYERS TO  
 2 ACCIDENT AND HEALTH PLANS.—

3 (i) IN GENERAL.—Section 106, as  
 4 amended by subsection (b), is amended by  
 5 inserting after subsection (b) the following  
 6 new subsection:

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

8 “(1) IN GENERAL.—For purposes of this sec-  
 9 tion, the term ‘employee’ includes an individual who  
 10 is an employee within the meaning of section  
 11 401(c)(1) (relating to self-employed individuals).

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

19 (ii) CLARIFICATION OF LIMITATIONS  
 20 ON OTHER COVERAGE.—The first sentence  
 21 of section 162(l)(2)(B) is amended to read  
 22 as follows: “Paragraph (1) shall not apply  
 23 to any taxpayer for any calendar month for  
 24 which the taxpayer participates in any sub-  
 25 sidized health plan maintained by any em-

1           ployer (other than an employer described  
2           in section 401(c)(4)) of the taxpayer or the  
3           spouse of the taxpayer.”.

4           (b) LONG-TERM CARE INSURANCE PERMITTED TO  
5 BE OFFERED UNDER CAFETERIA PLANS AND FLEXIBLE  
6 SPENDING ARRANGEMENTS.—

7           (1) CAFETERIA PLANS.—The last sentence of  
8           section 125(f) (defining qualified benefits) is amend-  
9           ed to read as follows: “Such term shall include the  
10          payment of premiums for any qualified long-term  
11          care insurance contract (as defined in section  
12          7702B) to the extent the amount of such payment  
13          does not exceed the eligible long-term care premiums  
14          (as defined in section 213(d)(10)) for such con-  
15          tract.”.

16          (2) FLEXIBLE SPENDING ARRANGEMENTS.—  
17          Section 106 (relating to contributions by employer to  
18          accident and health plans) is amended by striking  
19          subsection (c).

20          (c) EFFECTIVE DATE.—The amendments made by  
21 this section shall apply to taxable years beginning after  
22 December 31, 2009.

23 **SEC. 4. MODIFICATION OF RULES APPLICABLE TO FLEXI-**  
24 **BLE SPENDING ARRANGEMENTS.**

25          (a) MODIFICATION OF RULES.—

1           (1) IN GENERAL.—Section 125, as amended by  
 2           section 2, is amended by redesignating subsections  
 3           (j) and (k) as subsections (k) and (l), respectively,  
 4           and by inserting after subsection (i) the following  
 5           new subsection:

6           “(j) SPECIAL RULES APPLICABLE TO FLEXIBLE  
 7           SPENDING ARRANGEMENTS.—

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

12                 “(A) the amount of the reimbursement for  
 13                 covered expenses at any time may not exceed  
 14                 the balance in the participant’s account for the  
 15                 covered expenses as of such time,

16                 “(B) except as provided in paragraph  
 17                 (4)(A)(ii), a participant may elect at any time  
 18                 specified by the plan or arrangement to make  
 19                 or modify any election regarding the covered  
 20                 benefits, or the level of covered benefits, of the  
 21                 participant under the plan, and

22                 “(C) a participant is permitted access to  
 23                 any unused balance in the participant’s ac-  
 24                 counts under such plan or arrangement in the  
 25                 manner provided under paragraph (2) or (3).

1           “(2) CARRYOVERS AND ROLLOVERS OF UNUSED  
2           BENEFITS IN HEALTH AND DEPENDENT CARE AR-  
3           RANGEMENTS.—

4           “(A) IN GENERAL.—A plan or arrange-  
5           ment may permit a participant in a health flexi-  
6           ble spending arrangement or dependent care  
7           flexible spending arrangement to elect—

8           “(i) to carry forward any aggregate  
9           unused balances in the participant’s ac-  
10          counts under such arrangement as of the  
11          close of any year to the succeeding year, or

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

14          Such carryforward or transfer shall be treated  
15          as having occurred within 30 days of the close  
16          of the year.

17          “(B)           DOLLAR           LIMIT           ON  
18          CARRYFORWARDS.—

19          “(i) IN GENERAL.—The amount which  
20          a participant may elect to carry forward  
21          under subparagraph (A)(i) from any year  
22          shall not exceed \$500. For purposes of this  
23          paragraph, all plans and arrangements  
24          maintained by an employer or any related  
25          person shall be treated as 1 plan.

1 “(ii) COST-OF-LIVING ADJUSTMENT.—

2 In the case of any taxable year beginning  
3 in a calendar year after 2010, the \$500  
4 amount under clause (i) shall be increased  
5 by an amount equal to—

6 “(I) \$500, multiplied by

7 “(II) the cost-of-living adjust-  
8 ment determined under section 1(f)(3)  
9 for such calendar year, determined by  
10 substituting ‘2009’ for ‘1992’ in sub-  
11 paragraph (B) thereof.

12 If any dollar amount as increased under  
13 this clause is not a multiple of \$100, such  
14 amount shall be rounded to the next lowest  
15 multiple of \$100.

16 “(C) EXCLUSION FROM GROSS INCOME.—

17 No amount shall be required to be included in  
18 gross income under this chapter by reason of  
19 any carryforward or transfer under this para-  
20 graph.

21 “(D) COORDINATION WITH LIMITS.—

22 “(i) CARRYFORWARDS.—The max-  
23 imum amount which may be contributed to  
24 a health flexible spending arrangement or  
25 dependent care flexible spending arrange-



1           ment for any year to which an unused  
 2           amount is carried under this paragraph  
 3           shall be reduced by such amount.

4           “(ii) ROLLOVERS.—Any amount  
 5           transferred under subparagraph (A)(ii)  
 6           shall be treated as an eligible rollover  
 7           under section 219, 223(f)(5), 401(k),  
 8           403(b), or 457, whichever is applicable, ex-  
 9           cept that—

10           “(I) the amount of the contribu-  
 11           tions which a participant may make to  
 12           the plan under any such section for  
 13           the taxable year including the transfer  
 14           shall be reduced by the amount trans-  
 15           ferred, and

16           “(II) in the case of a transfer to  
 17           a plan described in clause (ii) or (iii)  
 18           of subparagraph (E), the transferred  
 19           amounts shall be treated as elective  
 20           deferrals for such taxable year.

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

23           “(i) an individual retirement plan,

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

1 “(iii) a plan under which amounts are  
 2 contributed by an individual’s employer for  
 3 an annuity contract described in section  
 4 403(b),

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

7 “(v) a health savings account de-  
 8 scribed in section 223.

9 “(3) DISTRIBUTION UPON TERMINATION.—

10 “(A) IN GENERAL.—A plan or arrange-  
 11 ment may permit a participant (or any des-  
 12 ignated heir of the participant) to receive a  
 13 cash payment equal to the aggregate unused ac-  
 14 count balances in the plan or arrangement as of  
 15 the date the individual is separated (including  
 16 by death or disability) from employment with  
 17 the employer maintaining the plan or arrange-  
 18 ment.

19 “(B) INCLUSION IN INCOME.—Any pay-  
 20 ment under subparagraph (A) shall be includ-  
 21 ible in gross income for the taxable year in  
 22 which such payment is distributed to the em-  
 23 ployee.

24 “(4) TERMS RELATING TO FLEXIBLE SPENDING  
 25 ARRANGEMENTS.—

1           “(A) FLEXIBLE SPENDING ARRANGE-  
2 MENTS.—

3           “(i) IN GENERAL.—For purposes of  
4 this subsection, a flexible spending ar-  
5 rangement is a benefit program which pro-  
6 vides employees with coverage under which  
7 specified incurred expenses may be reim-  
8 bursed (subject to reimbursement maxi-  
9 mums and other reasonable conditions).

10          “(ii) ELECTIONS REQUIRED.—A plan  
11 or arrangement shall not be treated as a  
12 flexible spending arrangement unless a  
13 participant may at least 4 times during  
14 any year make or modify any election re-  
15 garding covered benefits or the level of cov-  
16 ered benefits.

17          “(B) HEALTH AND DEPENDENT CARE AR-  
18 RANGEMENTS.—The terms ‘health flexible  
19 spending arrangement’ and ‘dependent care  
20 flexible spending arrangement’ means any flexi-  
21 ble spending arrangement (or portion thereof)  
22 which provides payments for expenses incurred  
23 for medical care (as defined in section 213(d))  
24 or dependent care (within the meaning of sec-  
25 tion 129), respectively.”.

1 (2) CONFORMING AMENDMENTS.—

2 (A) The heading for section 125 is amend-  
 3 ed by inserting “**AND FLEXIBLE SPENDING**  
 4 **ARRANGEMENTS**” after “**PLANS**”.

5 (B) The item relating to section 125 in the  
 6 table of sections for part III of subchapter B of  
 7 chapter 1 is amended by inserting “and flexible  
 8 spending arrangements” after “plans”.

9 (b) TECHNICAL AMENDMENTS.—

10 (1) Section 106 is amended by striking sub-  
 11 section (e) (relating to FSA and HRA Terminations  
 12 to Fund HSAs).

13 (2) Section 223(c)(1)(B)(iii)(II) is amended to  
 14 read as follows:

15 “(II) the individual is transfer-  
 16 ring the entire balance of such ar-  
 17 rangement as of the end of the plan  
 18 year to a health savings account pur-  
 19 suant to section 125(j)(2)(A)(ii), in  
 20 accordance with rules prescribed by  
 21 the Secretary.”.

22 (c) EFFECTIVE DATE.—The amendments made by  
 23 this section shall take effect on the date of the enactment  
 24 of this Act.

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 4(b)(1), is amended by adding at the end the  
5 following 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(j)) 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 2010, 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 ‘2009’ 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 \$7,500 (\$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.—In  
 11 the case of taxable years beginning after 2010,  
 12 each dollar amount under subparagraph (A)  
 13 shall be increased by an amount equal to—

14 “(i) such dollar, multiplied by

15 “(ii) the cost-of-living adjustment de-  
 16 termined under section 1(f)(3) for the cal-  
 17 endar year in which the taxable year be-  
 18 gins, determined by substituting ‘2009’ for  
 19 ‘1992’ in subparagraph (B) thereof.

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

24 (2) AVERAGE BENEFITS TEST.—

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

3 (i) by striking “55 percent” and in-  
 4 serting “60 percent”, and

5 (ii) by striking “highly compensated  
 6 employees” the second place it appears and  
 7 inserting “employees receiving benefits”.

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

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

13 (ii) by adding at the end the fol-  
 14 lowing: “In the case of years beginning  
 15 after 2010, the \$30,000 amount in the  
 16 first sentence shall be adjusted at the same  
 17 time, and in the same manner, as the ap-  
 18 plicable dollar amount is adjusted under  
 19 subsection (a)(3)(B).”.

20 (3) PRINCIPAL SHAREHOLDERS OR OWNERS.—  
 21 Section 129(d)(4) (relating to principal shareholders  
 22 and owners) is amended by adding at the end the  
 23 following: “In the case of any failure to meet the re-  
 24 quirements of this paragraph for any year, amounts  
 25 shall only be required by reason of the failure to be



1        included in gross income of the shareholders or own-  
2        ers who are members of the class described in the  
3        preceding sentence.”.

4        (c) EFFECTIVE DATE.—The amendments made by  
5        this section shall apply to taxable years beginning after  
6        December 31, 2009.

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