

104TH CONGRESS  
1ST SESSION

# H. R. 2584

To amend the Internal Revenue Code of 1986 to provide for the establishment of simple retirement accounts, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 2, 1995

Mr. PORTMAN (for himself and Mr. CARDIN) 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 provide for the establishment of simple retirement 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. ESTABLISHMENT OF SAVINGS INCENTIVE**  
4                   **MATCH PLANS FOR EMPLOYEES OF SMALL**  
5                   **EMPLOYERS.**

6       (a) IN GENERAL.—Section 408 of the Internal Reve-  
7       nue Code of 1986 (relating to individual retirement ac-  
8       counts) is amended by redesignating subsection (p) as  
9       subsection (q) and by inserting after subsection (o) the  
10      following new subsection:

## 1       “(p) SIMPLE RETIREMENT ACCOUNTS.—

2           “(1) IN GENERAL.—For purposes of this title,  
3           the term ‘simple retirement account’ means an individual  
4           retirement plan—5           “(A) with respect to which the requirements of paragraphs (3), (4), and (5) are met;  
6           and

7           “(B) with respect to which the only contributions allowed are contributions under a qualified salary reduction arrangement.

8           “(2) QUALIFIED SALARY REDUCTION ARRANGEMENT.—

9           “(A) IN GENERAL.—For purposes of this subsection, the term ‘qualified salary reduction arrangement’ means a written arrangement of an eligible employer under which—

10           “(i) an employee eligible to participate in the arrangement may elect to have the employer make payments—

11           “(I) as elective employer contributions to a simple retirement account on behalf of the employee, or

12           “(II) to the employee directly in cash,

1                   “(ii) the amount which an employee  
2       may elect under clause (i) for any year is  
3       required to be expressed as a percentage of  
4       compensation and may not exceed a total  
5       of \$6,000 for any year,

6                   “(iii) the employer is required to make  
7       a matching contribution to the simple re-  
8       tirement account for any year in an  
9       amount equal to so much of the amount  
10      the employee elects under clause (i)(I) as  
11      does not exceed the applicable percentage  
12      of compensation for the year, and

13                  “(iv) no contributions may be made  
14      other than contributions described in  
15      clause (i) or (iii).

16                  “(B) DEFINITIONS.—For purposes of this  
17      subsection—

18                  “(i) ELIGIBLE EMPLOYER.—The term  
19      ‘eligible employer’ means an employer who  
20      normally employs 100 or fewer employees  
21      on any day during the year.

22                  “(ii) APPLICABLE PERCENTAGE.—

23                  “(I) IN GENERAL.—The term  
24      ‘applicable percentage’ means 3 per-  
25      cent.

1                             “(II) ELECTION OF LOWER PER-  
2                             CENTAGE.—An employer may elect to  
3                             apply a lower percentage (not less  
4                             than 1 percent) for any year for all  
5                             employees eligible to participate in the  
6                             plan for such year if the employer no-  
7                             tifies the employees of such lower per-  
8                             centage within a reasonable period of  
9                             time before the 60-day election period  
10                            for such year under paragraph (5)(C).  
11                            An employer may not elect a lower  
12                            percentage under this subclause for  
13                            any year if that election would result  
14                            in the applicable percentage being  
15                            lower than 3 percent in more than 2  
16                            of the years in the 5-year period end-  
17                            ing with such year.

18                             “(III) SPECIAL RULE FOR YEARS  
19                             ARRANGEMENT NOT IN EFFECT.—If  
20                             any year in the 5-year period de-  
21                             scribed in subclause (II) is a year  
22                             prior to the first year for which any  
23                             qualified salary reduction arrange-  
24                             ment is in effect with respect to the  
25                             employer (or any predecessor), the

1 employer shall be treated as if the  
2 level of the employer matching con-  
3 tribution was at 3 percent of com-  
4 pensation for such year.

5                   “(C) ARRANGEMENT MAY BE ONLY PLAN  
6                   OF EMPLOYER.—

23                   “(D) NO FEE OR PENALTY ON EMPLOY-  
24                   EE’S INITIAL INVESTMENT DETERMINATION.—  
25                   An arrangement shall not be treated as a quali-

1 fied salary reduction arrangement unless it pro-  
2 vides that no fee or penalty will be imposed on  
3 an employee's initial determination with respect  
4 to the investment of any contribution.

5 "“(E) COST-OF-LIVING ADJUSTMENT.—The  
6 Secretary shall adjust the \$6,000 amount under  
7 subparagraph (A)(ii) at the same time and in  
8 the same manner as under section 415(d), ex-  
9 cept that the base period taken into account  
10 shall be the calendar quarter ending September  
11 30, 1995, and any increase under this subpara-  
12 graph which is not a multiple of \$500 shall be  
13 rounded to the next lower multiple of \$500.

14 "“(3) VESTING REQUIREMENTS.—The require-  
15 ments of this paragraph are met with respect to a  
16 simple retirement account if the employee's rights to  
17 any contribution to the simple retirement account  
18 are nonforfeitable. For purposes of this paragraph,  
19 the rules similar to the rules of subsection (k)(4)  
20 shall apply.

21 "“(4) PARTICIPATION REQUIREMENTS.—

22 "“(A) IN GENERAL.—The requirements of  
23 this paragraph are met with respect to any sim-  
24 ple retirement account for a year only if, under

1 the qualified salary reduction arrangement, all  
2 employees of the employer who—

9                   are eligible to make the election under para-  
10                   graph (2)(A)(i).

11                   “(B) EXCLUDABLE EMPLOYEES.—An em-  
12                   ployer may elect to exclude from the require-  
13                   ment under subparagraph (A) employees de-  
14                   scribed in section 410(b)(3).

15           “(5) ADMINISTRATIVE REQUIREMENTS.—The  
16        requirements of this paragraph are met with respect  
17        to any simplified retirement account if, under the  
18        qualified salary reduction arrangement—

1                         “(ii) make the matching contributions  
2                         under paragraph (2)(A)(iii) not later than  
3                         the date described in section  
4                         404(m)(2)(B),

5                         “(B) an employee may elect to terminate  
6                         participation in such arrangement at any time  
7                         during the year, except that if an employee so  
8                         terminates, the arrangement may provide that  
9                         the employee may not elect to resume participa-  
10                         tion until the beginning of the next year, and

11                         “(C) each employee eligible to participate  
12                         may elect, during the 60-day period before the  
13                         beginning of any year, to participate in the ar-  
14                         rangement, or to modify the amounts subject to  
15                         such arrangement, for such year.

16                         “(6) DEFINITIONS.—For purposes of this sub-  
17                         section—

18                         “(A) COMPENSATION.—

19                         “(i) IN GENERAL.—The term ‘com-  
20                         pensation’ means amounts described in  
21                         paragraphs (3) and (8) of section 6051(a).

22                         “(ii) SELF-EMPLOYED.—In the case  
23                         of an employee described in subparagraph  
24                         (B), compensation means net earnings  
25                         from self-employment determined under

1 section 1402(a) without regard to any con-  
2 tribution under this subsection.

3                             “(B) EMPLOYEE.—The term ‘employee’ in-  
4                             cludes an employee as defined in section  
5                             401(c)(1).

6                           “(C) YEAR.—The term ‘year’ means the  
7                           calendar year.”.

8 (b) SIMPLE RETIREMENT ACCOUNTS NOT TREATED  
9 AS PENSION PLANS.—Notwithstanding any other provi-  
10 sion of law, a simplified retirement account or qualified  
11 salary reduction arrangement under section 408(p) of the  
12 Internal Revenue Code of 1986 shall not be treated as an  
13 employee benefit plan or pension plan for purposes of the  
14 Employee Retirement Income Security Act of 1974.

15 (c) TAX TREATMENT OF SIMPLE RETIREMENT Ac-  
16 COUNTS.—

23       “(4) SPECIAL RULE FOR SIMPLE RETIREMENT  
24       ACCOUNTS.—This section shall not apply with re-

1 spect to any amount contributed to a simple retire-  
2 ment account established under section 408(p).”.

15        "(m) SPECIAL RULES FOR SIMPLE RETIREMENT Ac-  
16 COUNTS.—

17           “(1) IN GENERAL.—Employer contributions to  
18        a simple retirement account shall be treated as if  
19        they are made to a plan subject to the requirements  
20        of this section.

## 21                   “(2) TIMING.—

22                   “(A)    DEDUCTION.—Contributions    de-  
23                   scribed in paragraph (1) shall be deductible in  
24                   the taxable year of the employer with or within

10 (3) CONTRIBUTIONS AND DISTRIBUTIONS.—

15       “(k) TREATMENT OF SIMPLE RETIREMENT Ac-  
16 COUNTS.—Rules similar to the rules of paragraphs (1)  
17 and (3) of subsection (h) shall apply to contributions and  
18 distributions with respect to a simple retirement account  
19 under section 408(p).”.

20 (B) Section 408(d)(3) of such Code is  
21 amended by adding at the end the following  
22 new subparagraph:

23                   “(G) SIMPLE RETIREMENT ACCOUNTS.—  
24                   This paragraph shall not apply to any amount  
25                   paid or distributed out of a simple retirement

1                   account (as defined in section 408(p)) unless it  
2                   is paid into another simple retirement ac-  
3                   count.”.

4                   (C) Clause (i) of section 457(c)(2)(B) of  
5                   such Code is amended by striking “section  
6                   402(h)(1)(B)” and inserting “section  
7                   402(h)(1)(B) or (k)”.

8                   (4) PENALTIES.—

9                   (A) EARLY WITHDRAWALS.—Section 72(t)  
10                  of such Code (relating to additional tax in early  
11                  distributions) is amended by adding at the end  
12                  the following new paragraph:

13                  “(6) SPECIAL RULES FOR SIMPLE RETIREMENT  
14                  ACCOUNTS.—In the case of any amount received  
15                  from a simple retirement account (within the mean-  
16                  ing of section 408(p)) during the 2-year period be-  
17                  ginning on the date such individual first participated  
18                  in any qualified salary reduction arrangement main-  
19                  tained by the individual’s employer under section  
20                  408(p)(2), paragraph (1) shall be applied by sub-  
21                  stituting ‘25 percent’ for ‘10 percent’.”.

22                  (B) FAILURE TO REPORT.—Section 6693  
23                  of such Code is amended by redesignating sub-  
24                  section (c) as subsection (d) and by inserting

1                   after subsection (b) the following new sub-  
2                   section:

3                 “(c) PENALTIES RELATING TO SIMPLE RETIREMENT  
4                 ACCOUNTS.—

5                 “(1) EMPLOYER PENALTIES.—An employer who  
6                 fails to provide 1 or more notices required by section  
7                 408(l)(2)(C) shall pay a penalty of \$50 for each day  
8                 on which such failures continue.

9                 “(2) TRUSTEE PENALTIES.—A trustee who  
10                 fails—

11                 “(A) to provide 1 or more statements re-  
12                 quired by the last sentence of section 408(i)  
13                 shall pay a penalty of \$50 for each day on  
14                 which such failures continue, or

15                 “(B) to provide 1 or more summary de-  
16                 scriptions required by section 408(l)(2)(B) shall  
17                 pay a penalty of \$50 for each day on which  
18                 such failures continue.

19                 “(3) REASONABLE CAUSE EXCEPTION.—No  
20                 penalty shall be imposed under this subsection with  
21                 respect to any failure which the taxpayer shows was  
22                 due to reasonable cause.”.

23                 (5) REPORTING REQUIREMENTS.—

1 (A)(i) Section 408(l) of such Code is  
2 amended by adding at the end the following  
3 new paragraph:

4           “(2) SIMPLE RETIREMENT ACCOUNTS.—

10                             “(B) SUMMARY DESCRIPTION.—The trust-  
11                             ee of any simple retirement account established  
12                             pursuant to a qualified salary reduction ar-  
13                             rangement under subsection (p) shall provide to  
14                             the employer maintaining the arrangement,  
15                             each year a description containing the following  
16                             information:

1                             “(v) The procedures for, and effects  
2                             of, withdrawals from the arrangement.

3                             “(C) EMPLOYEE NOTIFICATION.—The em-  
4                             ployer shall notify each employee immediately  
5                             before the period for which an election de-  
6                             scribed in subsection (p)(5)(C) may be made of  
7                             the employee’s opportunity to make such elec-  
8                             tion. Such notice shall include a copy of the de-  
9                             scription described in subparagraph (B).”.

10                             (ii) Section 408(l) of such Code is amend-  
11                             ed by striking “An employer” and inserting—  
12                             “(1) IN GENERAL.—An employer”.

13                             (B) Section 408(i) of such Code is amend-  
14                             ed by adding at the end the following new flush  
15                             sentence:

16     “In the case of a simple retirement account under sub-  
17     section (p), only one report under this subsection shall be  
18     required to be submitted each calendar year to the Sec-  
19     retary (at the time provided under paragraph (2)) but, in  
20     addition to the report under this subsection, there shall  
21     be furnished, within 30 days after each calendar year, to  
22     the individual on whose behalf the account is maintained  
23     a statement with respect to the account balance as of the  
24     close of, and the account activity during, such calendar  
25     year.”.

6           The term ‘top-heavy plan’ shall not include a  
7           simple retirement account under section  
8           408(p).”.

9 (7) CONFORMING AMENDMENTS.—

16                             “(D) a simple retirement account described  
17                             in section 408(p).”.

18 (B) Section 402(g)(3) of such Code is  
19 amended by striking “and” at the end of sub-  
20 paragraph (B), by striking the period at the  
21 end of subparagraph (C) and inserting “, and”,  
22 and by adding after subparagraph (C) the fol-  
23 lowing new subparagraph:

12 (d) EFFECTIVE DATE.—The amendments made by  
13 this section shall apply to taxable years beginning after  
14 December 31, 1995.

15 SEC. 2. EXTENSION OF SIMPLE PLAN TO 401(k) ARRANGE-  
16 MENTS.

17 (a) ALTERNATIVE METHOD OF SATISFYING SECTION  
18 401(k) NONDISCRIMINATION TESTS.—Section 401(k) of  
19 the Internal Revenue Code of 1986 (relating to cash or  
20 deferred arrangements) is amended by adding at the end  
21 the following new paragraph:

22           “(11) ADOPTION OF SIMPLE PLAN TO MEET  
23           NONDISCRIMINATION TESTS.—

24                   “(A) IN GENERAL.—A cash or deferred ar-  
25                   rangement maintained by an eligible employer

1 shall be treated as meeting the requirements of  
2 paragraph (3)(A)(ii) if such arrangement  
3 meets—

4 “(i) the contribution requirements of  
5 subparagraph (B),

6 “(ii) the exclusive benefit require-  
7 ments of subparagraph (C), and

8 “(iii) the vesting requirements of sec-  
9 tion 408(p)(3).

10 “(B) CONTRIBUTION REQUIREMENTS.—

11 The requirements of this subparagraph are met  
12 if, under the arrangement—

13 “(i) an employee may elect to have  
14 the employer make elective contributions  
15 for the year on behalf of the employee to  
16 a trust under the plan in an amount which  
17 is expressed as a percentage of compensa-  
18 tion of the employee but which in no event  
19 exceeds \$6,000,

20 “(ii) the employer is required to make  
21 a matching contribution to the trust for  
22 the year in an amount equal to so much of  
23 the amount the employee elects under  
24 clause (i) as does not exceed 3 percent of  
25 compensation for the year, and

1                         “(iii) no other contributions may be  
2                         made other than contributions described in  
3                         clause (i) or (ii).

4                         “(C) EXCLUSIVE BENEFIT.—The require-  
5                         ments of this subparagraph are met for any  
6                         year to which this paragraph applies if no con-  
7                         tributions were made, or benefits were accrued,  
8                         for services during such year under any qual-  
9                         fied plan of the employer on behalf of any em-  
10                         ployee eligible to participate in the cash or de-  
11                         ferred arrangement, other than contributions  
12                         described in subparagraph (B).

13                         “(D) DEFINITIONS AND SPECIAL RULE.—  
14                         “(i) DEFINITIONS.—For purposes of  
15                         this paragraph, any term used in this  
16                         paragraph which is also used in section  
17                         408(p) shall have the meaning given such  
18                         term by such section.

19                         “(ii) COORDINATION WITH TOP-HEAVY  
20                         RULES.—A plan meeting the requirements  
21                         of this paragraph for any year shall not be  
22                         treated as a top-heavy plan under section  
23                         416 for such year.”.

24                         (b) ALTERNATIVE METHODS OF SATISFYING SEC-  
25                         TION 401(m) NONDISCRIMINATION TESTS.—Section

1 401(m) of such Code (relating to nondiscrimination test  
2 for matching contributions and employee contributions) is  
3 amended by redesignating paragraph (10) as paragraph  
4 (11) and by adding after paragraph (9) the following new  
5 paragraph:

6           “(10) ALTERNATIVE METHOD OF SATISFYING  
7 TESTS.—A defined contribution plan shall be treated  
8 as meeting the requirements of paragraph (2) with  
9 respect to matching contributions if the plan—

10           “(A) meets the contribution requirements  
11 of subparagraph (B) of subsection (k)(11),

12           “(B) meets the exclusive benefit require-  
13           ments of subsection (k)(11)(C), and

14           “(C) meets the vesting requirements of  
15           section 408(p)(3).”.

16           (c) EFFECTIVE DATE.—The amendments made by  
17 this section shall apply to plan years beginning after De-  
18 cember 31, 1995.

19 **SEC. 3. CREDIT FOR PENSION PLAN START-UP COSTS OF**  
20           **SMALL EMPLOYERS.**

21           (a) ALLOWANCE OF CREDIT.—Section 38(b) of the  
22 Internal Revenue Code of 1986 (defining current year  
23 business credit) is amended by striking “plus” at the end  
24 of paragraph (10), by striking the period at the end of

1 paragraph (11), and inserting “, plus”, and by adding at  
2 the end the following new paragraph:

3           “(12) the small employer pension plan start-up  
4           cost credit.”.

5           (b) **SMALL EMPLOYER PENSION PLAN START-UP**  
6 **COST CREDIT.**—Subpart D of part IV of subchapter A  
7 of chapter 1 of such Code (relating to business related  
8 credits), as amended by this Act is amended by adding  
9 at the end the following new section:

10 **“SEC. 45C. SMALL EMPLOYER PENSION PLAN START-UP**

11           **COST CREDIT.**

12           “(a) **AMOUNT OF CREDIT.**—For purposes of section  
13 38—

14           “(1) **IN GENERAL.**—The small employer pen-  
15 sion plan start-up cost credit for any taxable year is  
16 an amount equal to 50 percent of the qualified start-  
17 up costs of an eligible employer in establishing a  
18 qualified pension plan.

19           “(2) **AGGREGATE LIMITATION.**—The amount of  
20 the credit under paragraph (1) for any taxable year  
21 shall not exceed \$500, reduced by the aggregate  
22 amount determined under this section for all preced-  
23 ing taxable years of the taxpayer.

24           “(b) **QUALIFIED START-UP COSTS; QUALIFIED PEN-**  
25 **SION PLAN.**—For purposes of this section—

1               “(1) QUALIFIED START-UP COSTS.—The term  
2       ‘qualified start-up costs’ means any ordinary and  
3       necessary expenses of an eligible employer which—

4               “(A) are paid or incurred in connection  
5       with the establishment of a qualified pension  
6       plan, and

7               “(B) are of a nonrecurring nature.

8               “(2) QUALIFIED PENSION PLAN.—The term  
9       ‘qualified pension plan’ means—

10               “(A) a qualified salary reduction arrange-  
11       ment described in section 408(p) (relating to  
12       simple retirement accounts), or

13               “(B) an arrangement described in section  
14       401(k)(11).

15               “(c) ELIGIBLE EMPLOYER.—For purposes of this  
16       section—

17               “(1) IN GENERAL.—The term ‘eligible em-  
18       ployer’ means an employer which did not make any  
19       contributions on behalf of any employee to—

20               “(A) a qualified pension plan,

21               “(B) a plan described in section 401(a)  
22       which includes a trust exempt from tax under  
23       section 501(a), or

24               “(C) a simplified employee pension (as de-  
25       fined in section 408(k)),

1       during the 2 taxable years immediately preceding  
2       the taxable year.

3           “(2) PROFESSIONAL SERVICE EMPLOYERS EX-  
4       CLUDED.—Such term shall not include an employer  
5       substantially all of the activities of which involve the  
6       performance of services in the fields of health, law,  
7       engineering, architecture, accounting, actuarial  
8       science, performing arts, financial services, or con-  
9       sulting.

10          “(d) SPECIAL RULES.—For purposes of this sec-  
11       tion—

12           “(1) AGGREGATION RULES.—All persons treat-  
13       ed as a single employer under subsection (a) or (b)  
14       of section 52 or subsection (n) or (o) of section 414  
15       shall be treated as one person.

16           “(2) DISALLOWANCE OF DEDUCTION.—No de-  
17       duction shall be allowable under this chapter for any  
18       qualified start-up costs for which a credit is allow-  
19       able under subsection (a).”.

20          (c) CONFORMING AMENDMENTS.—

21           (1) Section 39(d) of such Code is amended by  
22       adding at the end the following new paragraph:

23           “(7) NO CARRYBACK OF PENSION CREDIT.—No  
24       portion of the unused business credit for any taxable  
25       year which is attributable to the small employer pen-

1 sion plan start-up cost credit determined under sec-  
2 tion 45C may be carried back to a taxable year end-  
3 ing before the date of the enactment of section  
4 45C.”.

5 (2) The table of sections for subpart D of part  
6 IV of subchapter A of chapter 1 of such Code is  
7 amended by adding at the end the following new  
8 item:

“Sec. 45C. Small employer pension plan start-up cost credit.”.

9 (d) EFFECTIVE DATE.—The amendments made by  
10 this section shall apply to costs incurred after the date  
11 of the enactment of this Act in taxable years ending after  
12 such date.

○

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