

107TH CONGRESS
1ST SESSION

H. R. 738

To amend the Internal Revenue Code of 1986 to provide additional retirement savings opportunities for small employers, including self-employed individuals.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 27, 2001

Mr. BLUNT (for himself, Mr. BENTSEN, Mr. LARGENT, Mr. SHADEGG, Mr. RILEY, Mr. SHIMKUS, Mr. CHAMBLISS, Mr. RADANOVICH, Mr. SESSIONS, Mr. COOKSEY, Mr. LATOURETTE, Mr. YOUNG of Alaska, Mrs. WILSON, Mr. ALLEN, Mr. BALDACCI, Mr. DELAHUNT, Mr. FROST, Mr. KANJORSKI, Mr. MOORE, Mr. SANDLIN, Mr. MALONEY of Connecticut, Mr. SHOWS, Ms. PRYCE of Ohio, Mr. BONILLA, Mr. HILLIARD, Mr. HINCHEY, Mr. STENHOLM, Mr. SKEEN, Mr. SCHAFFER, Mr. MCHUGH, Mr. JONES of North Carolina, Mr. SIMPSON, Mr. HUTCHINSON, Mr. PITTS, Mr. CALVERT, Ms. BERKLEY, Mr. HALL of Texas, Mr. DOOLITTLE, Ms. HOOLEY of Oregon, Mr. PASCRELL, Mr. THOMPSON of Mississippi, Mr. MORAN of Kansas, Mr. THUNE, Mr. LEWIS of Kentucky, Ms. MCCARTHY of Missouri, Mr. HALL of Ohio, Mr. POMEROY, Mr. WALDEN of Oregon, Mr. WHITFIELD, Mr. OXLEY, Mr. OTTER, Mr. MCINTYRE, Mr. PETERSON of Pennsylvania, Mr. SUNUNU, Mrs. BONO, Mr. WATTS of Oklahoma, Mr. GILLMOR, Mr. SANDERS, Mr. CLEMENT, Mr. FOSSELLA, Mr. HASTINGS of Washington, Mr. JOHNSON of Illinois, Mr. MORAN of Virginia, Mr. TAYLOR of North Carolina, Mr. LAMPSON, Mrs. NORTHUP, Mr. SOUDER, Mr. DEMINT, Mr. WATKINS, Mr. TERRY, Mr. PETERSON of Minnesota) introduced the following bill; which was referred to the Committee on Ways and Means

A BILL

To amend the Internal Revenue Code of 1986 to provide additional retirement savings opportunities for small employers, including self-employed individuals.

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. REFERENCE.**

4 Except as otherwise expressly provided, whenever in
5 this Act an amendment or repeal is expressed in terms
6 of an amendment to, or repeal of, a section or other provi-
7 sion, the reference shall be considered to be made to a
8 section or other provision of the Internal Revenue Code
9 of 1986.

10 **SEC. 2. QUALIFIED SMALL EMPLOYER PLAN.**

11 (a) IN GENERAL.—Section 401 is amended by redesi-
12 gnating subsection (o) as subsection (p) and by inserting
13 after subsection (n) the following new subsection:

14 “(o) QUALIFIED SMALL EMPLOYER PLAN.—

15 “(1) IN GENERAL.—A trust created or orga-
16 nized in the United States and forming part of a
17 small employer plan of a small employer for the ex-
18 clusive benefit of its employees or their beneficiaries
19 constitutes a qualified trust under subsection (a) if
20 such plan meets the requirements of paragraph (2).

21 “(2) REQUIREMENTS.—A plan meets the re-
22 quirements of this paragraph if—

23 “(A) such plan is the only qualified retire-
24 ment plan of a small employer,

1 “(B) the plan year for such plan is the cal-
2 endar year,

3 “(C) as of the 1st day of the plan year,
4 such plan covers all eligible employees of the
5 employer,

6 “(D) such plan meets the contribution re-
7 quirements of paragraph (4),

8 “(E) such plan meets the vesting require-
9 ments of paragraph (5),

10 “(F) such plan meets the funding require-
11 ments of section 412, if applicable, and

12 “(G) such plan meets the other require-
13 ments specified in paragraph (6).

14 “(3) ELIGIBLE EMPLOYEE.—For purposes of
15 paragraph (2)(C), the term ‘eligible employee’ means
16 an individual who—

17 “(A) has attained age 21, and

18 “(B) has completed not less than 1,000
19 hours of service for the employer during the cal-
20 endar year preceding the plan year.

21 “(4) CONTRIBUTIONS.—A plan meets the re-
22 quirements of this paragraph if—

23 “(A) employer contributions to the plan—

1 “(i) are not less than 3 percent, and
2 do not exceed 10 percent, of compensation
3 of all participants in the plan, and

4 “(ii) are allocated to all participants
5 in the plan on a uniform basis without re-
6 gard to subsection (l), and

7 “(B) in the case of discretionary employer
8 contributions—

9 “(i) such contributions made to the
10 plan do not exceed 15 percent of com-
11 pensation and are allocated to all
12 participants—

13 “(I) as a level percentage of com-
14 pensation, or

15 “(II) under a formula that meets
16 the requirements of subsection (l)(2)
17 (relating to permitted disparity), or

18 “(ii) are made to the same plan under
19 an arrangement that meets the require-
20 ments of subsection (k), in which case the
21 minimum 3 percent contribution referred
22 to in subparagraph (A)(i) shall be applied
23 against the nonelective contributions of
24 subsection (k)(12)(C).

1 Nothing in subparagraph (B)(ii) shall be construed
 2 to exempt such plan from any other requirement of
 3 subsection (k)(12).

4 “(5) VESTING.—

5 “(A) IN GENERAL.—A plan satisfies the
 6 requirements of this paragraph if it satisfies the
 7 requirements of either of the following clauses:

8 “(i) 3-YEAR VESTING.—A plan satis-
 9 fies the requirements of this clause if an
 10 employee who has completed at least 3
 11 years of service with the employer or em-
 12 ployers maintaining the plan has a non-
 13 forfeitable right to 100 percent of his ac-
 14 crued benefit derived from employer con-
 15 tributions.

16 “(ii) 6-YEAR GRADED VESTING.—A
 17 plan satisfies the requirements of this
 18 clause if an employee has a nonforfeitable
 19 right to a percentage of his accrued benefit
 20 derived from employer contributions deter-
 21 mined under the following table:

“Years of service:	The nonforfeitable percentage is:
2	20
3	40
4	60
5	80
6 or more	100.

1 “(B) CERTAIN RULES MADE APPLICA-
2 BLE.—Except to the extent inconsistent with
3 the provisions of this paragraph, the rules of
4 section 411 shall apply for purposes of this sub-
5 section.

6 “(C) YEAR OF SERVICE.—For purposes of
7 subparagraph (A), years of service shall be de-
8 termined under the last sentence of section
9 410(a)(3)(A).

10 “(6) OTHER REQUIREMENTS.—

11 “(A) ARRANGEMENT MAY BE ONLY PLAN
12 OF EMPLOYER.—

13 “(i) IN GENERAL.—An arrangement
14 shall not be treated as a qualified small
15 employer plan for any year if the employer
16 (or any predecessor employer) maintained
17 a qualified plan with respect to which con-
18 tributions were made, or benefits were ac-
19 crued, for service in any year in the period
20 beginning with the year such arrangement
21 became effective and ending with the year
22 for which the determination is being made.
23 If only individuals other than employees
24 described in subparagraph (A) or (B) of
25 section 410(b)(3) are eligible to participate

1 in such arrangement, then the preceding
2 sentence shall be applied without regard to
3 any qualified plan in which only employees
4 so described are eligible to participate.

5 “(ii) QUALIFIED PLAN.—For purposes
6 of this subparagraph, the term ‘qualified
7 plan’ means a plan, contract, pension, or
8 trust described in subparagraph (A) or (B)
9 of section 219(g)(5).

10 “(iii) GRACE PERIOD.—In the case of
11 an employer who establishes and maintains
12 a plan under this subsection for 1 or more
13 years and who fails to meet any require-
14 ment of this subsection for any subsequent
15 year due to any acquisition, disposition, or
16 similar transaction involving another such
17 employer, rules similar to the rules of sec-
18 tion 410(b)(6)(C) shall apply for purposes
19 of this subsection.

20 “(iv) RULE OF CONSTRUCTION.—
21 Clauses (i), (ii), and (iii) shall not be con-
22 strued to prevent a rollover contribution
23 that meets the requirements of section
24 402(e) or to prevent the adoption of the

1 qualified small employer plan as a suc-
2 cessor plan.

3 “(B) PLAN MAY NOT BE ESOP.—A small
4 employer plan does not meet the requirements
5 of paragraph (1) if such plan is—

6 “(i) a tax credit employee stock own-
7 ership plan (as defined in section 409(a)),
8 or

9 “(ii) an employee stock ownership
10 plan (as defined in section 4975(e)(7)).

11 “(C) OTHER APPLICABLE PROVISIONS.—A
12 plan shall not be treated as a qualified small
13 employer plan unless the plan meets the re-
14 quirements of—

15 “(i) paragraphs (1), (2), (9), (11),
16 (12), (13), (14), (15), (16), (17), (19),
17 (20), (22), (23), (27), (30), and (31) of
18 subsection (a), and

19 “(ii) subsections (b), (c), and (d).

20 “(7) TOP-HEAVY RULES INAPPLICABLE.—
21 Section 416 shall not apply to a trust that
22 meets the requirements of this subsection.

23 “(8) COMPENSATION DEFINED.—For pur-
24 poses of this subsection, the term ‘compensa-

1 tion’ has the meaning given such term by sec-
2 tion 404(a)(3)(A)(v).”.

3 (b) DEFINITION OF SMALL EMPLOYER.—

4 (1) IN GENERAL.—Section 414 (relating to
5 definitions and special rules) is amended by adding
6 at the end the following new subsection:

7 “(v) SMALL EMPLOYER.—For purposes of this part,
8 the term ‘small employer’ means an employer (including
9 a professional service organization) that, on the 1st day
10 of the plan year, has 100 or fewer employees.”.

11 (2) CONFORMING AMENDMENTS.—

12 (A) Subsections (b) and (c) of section 414
13 are each amended by inserting “subsection (v)
14 and” after “For purposes of”.

15 (B) Paragraph (3) of section 414(n) is
16 amended by striking “and” at the end of sub-
17 paragraph (B), by striking the period at the
18 end of subparagraph (C) and inserting “, and”,
19 and by adding at the end the following new sub-
20 paragraph:

21 “(D) subsection (v).”.

22 (c) DEDUCTION FOR CONTRIBUTIONS OF EM-
23 PLOYER.—Clause (i) of section 404(a)(3)(A) is amended
24 by striking “or” at the end of subclause (I), by striking

1 the period at the end of subclause (II) and inserting “,
2 or”, and by adding at the end the following new subclause:

3 “(III) the amount such employer is al-
4 lowed to contribute to such trust under
5 section 401(o) for such year, but not more
6 than 25 percent of aggregate compensa-
7 tion.”.

8 (d) SINGLE ANNUAL ENTRY DATE.—

9 (1) DEFINITION OF YEAR OF SERVICE.—Sub-
10 paragraph (A) of section 410(a)(3) (relating to gen-
11 eral rule for definition of year of service) is amended
12 by adding at the end the following: “In the case of
13 service for an employer who has in effect a qualified
14 small employer plan under section 401(o), computa-
15 tion of any 12-month period shall be made with ref-
16 erence to the first day of the calendar year in which
17 employment of the employee commenced.”.

18 (2) TIME OF PARTICIPATION.—Paragraph (4)
19 of section 410(a) (relating to time of participation)
20 is amended by adding at the end the following: “In
21 the case of a qualified small employer plan under
22 section 401(o), the preceding sentence shall be ap-
23 plied without regard to subparagraph (B).”.

24 (e) COMPENSATION.—Subparagraph (A) of section
25 404(a)(3) (relating to stock bonus and profit-sharing

1 trusts) is amended by redesignating clause (v) as clause
2 (vi) and by inserting after clause (iv) the following new
3 clause:

4 “(v) COMPENSATION DEFINED.—For
5 purposes of this paragraph, the term ‘com-
6 pensation’ means a participant’s com-
7 pensation (as defined by section
8 415(e)(3))”.

9 (f) EFFECTIVE DATE.—The amendments made by
10 this section shall apply to years beginning after December
11 31, 2000.

12 **SEC. 3. CREDIT FOR EMPLOYER EXPENSES IN ESTAB-**
13 **LISHING QUALIFIED SMALL EMPLOYER RE-**
14 **TIREMENT PLANS.**

15 (a) GENERAL RULE.—Subpart D of part IV of sub-
16 chapter A of chapter 1 is amended by adding at the end
17 the following new section:

18 **“SEC. 45E. EXPENSES IN ESTABLISHING QUALIFIED SMALL**
19 **EMPLOYER RETIREMENT PLANS.**

20 “(a) GENERAL RULE.—For purposes of section 38,
21 the qualified small employer retirement plan credit deter-
22 mined under this section for the taxable year is an amount
23 equal to 50 percent of the qualified retirement plan ex-
24 penses paid or incurred in the taxable year by an eligible
25 small employer.

1 “(b) LIMITATION.—The credit allowed under sub-
2 section (a) shall not exceed—

3 “(1) \$2,000 for the taxable year in which the
4 qualified small employer retirement plan is adopted,
5 and

6 “(2) \$1,000 for each of the 4 years following
7 the year in which such plan was adopted and zero
8 thereafter.

9 “(c) DEFINITIONS.—For purposes of subsection
10 (a)—

11 “(1) QUALIFIED RETIREMENT PLAN EX-
12 PENSE.—The term ‘qualified retirement plan ex-
13 pense’ means an expense—

14 “(A) for establishing, maintaining, and ad-
15 ministering a qualified small employer retire-
16 ment plan, and

17 “(B) for educating employees with respect
18 to such plan.

19 “(2) ELIGIBLE SMALL EMPLOYER.—The term
20 ‘eligible small employer’ means a small employer (as
21 defined in section 414(v)) who establishes a qualified
22 plan on or after January 1, 2000, and on or before
23 December 31, 2002.”.

24 (b) CREDIT MADE PART OF GENERAL BUSINESS
25 CREDIT.—Subsection (b) of section 38 is amended by

1 striking “plus” at the end of paragraph (12), by striking
2 the period at the end of paragraph (13) and inserting “,
3 plus”, and by adding at the end thereof the following new
4 paragraph:

5 “(14) the qualified small employer retirement
6 plan credit determined under section 45E(a).”.

7 (c) CREDIT ALLOWED AGAINST REGULAR AND MIN-
8 IMUM TAX.—

9 (1) IN GENERAL.—Subsection (c) of section 38
10 (relating to limitation based on amount of tax) is
11 amended by redesignating paragraph (3) as para-
12 graph (4) and by inserting after paragraph (2) the
13 following new paragraph:

14 “(3) SPECIAL RULES FOR QUALIFIED SMALL
15 EMPLOYER RETIREMENT PLAN CREDIT.—

16 “(A) IN GENERAL.—In the case of the
17 qualified small employer retirement plan
18 credit—

19 “(i) this section and section 39 shall
20 be applied separately with respect to the
21 credit, and

22 “(ii) in applying paragraph (1) to the
23 credit—

24 “(I) subparagraph (A) thereof
25 shall not apply, and

1 “(II) the limitation under para-
2 graph (1) (as modified by subclause
3 (I)) shall be reduced by the credit al-
4 lowed under subsection (a) for the
5 taxable year (other than the qualified
6 small employer retirement plan cred-
7 it).

8 “(B) QUALIFIED SMALL EMPLOYER RE-
9 TIREMENT PLAN CREDIT.—For purposes of this
10 subsection, the term ‘qualified small employer
11 retirement plan credit’ means the credit allow-
12 able under subsection (a) by reason of section
13 45E(a).”.

14 (2) CONFORMING AMENDMENT.—Subclause (II)
15 of section 38(c)(2)(A)(ii) is amended by inserting
16 “or the qualified small employer retirement plan
17 credit” after “employment credit”.

18 (d) LIMITATION ON CARRYBACK.—Subsection (d) of
19 section 39 is amended by adding at the end thereof the
20 following new paragraph:

21 “(10) NO CARRYBACK OF QUALIFIED SMALL
22 EMPLOYER RETIREMENT PLAN CREDIT BEFORE EF-
23 FECTIVE DATE.—No portion of the unused business
24 credit for any taxable year which is attributable to
25 the credit determined under section 45E may be car-

1 ried back to any taxable year ending before the date
2 of the enactment of section 45E.”.

3 (e) DEDUCTION FOR CERTAIN UNUSED BUSINESS
4 CREDITS.—Subsection (c) of section 196 is amended by
5 striking “and” at the end of paragraph (8), by striking
6 the period at the end of paragraph (9) and inserting “,
7 and”, and by adding after paragraph (9) the following new
8 paragraph:

9 “(10) the qualified small employer retirement
10 plan credit determined under section 45E.”.

11 (f) DENIAL OF DOUBLE BENEFIT.—Section 280C is
12 amended by adding at the end thereof the following new
13 subsection:

14 “(d) CREDIT FOR QUALIFIED SMALL EMPLOYER RE-
15 TIREMENT PLAN EXPENSES.—No deduction shall be al-
16 lowed for that portion of the expenses referred to in sec-
17 tion 45E(c)(1) otherwise allowable as a deduction for the
18 taxable year which is equal to the amount of the credit
19 determined for such taxable year under section 45E(a).”.

20 (g) CLERICAL AMENDMENT.—The table of sections
21 for subpart D of part IV of subchapter (A) of chapter
22 1 is amended by adding at the end the following new item:

“Sec. 45E. Expenses in establishing qualified small employer retirement plans.”.

23 (h) EFFECTIVE DATE.—The amendments made by
24 this section shall apply to taxable years beginning after
25 the date of the enactment of this Act.

1 **SEC. 4. IMPLEMENTATION.**

2 (a) MODEL PLAN.—Not later than 6 months after
3 the date of the enactment of this Act, the Secretary of
4 the Treasury shall issue a model small employer retire-
5 ment plan that meets the requirements of section 401(o)
6 of the Internal Revenue Code of 1986.

7 (b) SIMPLIFIED ANNUAL FILING REQUIREMENT FOR
8 OWNERS AND THEIR SPOUSES.—

9 (1) IN GENERAL.—The Secretary of the Treas-
10 ury shall modify the requirements for filing annual
11 returns with respect to one-participant retirement
12 plans to ensure that such plans with assets of
13 \$500,000 or less as of the close of the plan year
14 need not file a return for that year.

15 (2) ONE-PARTICIPANT RETIREMENT PLAN DE-
16 FINED.—For purposes of this subsection, the term
17 “one-participant retirement plan” means a retire-
18 ment plan that—

19 (A) on the first day of the plan year—

20 (i) covered only the employer (and the
21 employer’s spouse) and the employer
22 owned the entire business (whether or not
23 incorporated), or

24 (ii) covered only one or more partners
25 (and their spouses) in a business partner-

1 ship (including partners in an S or C cor-
2 poration),

3 (B) meets the minimum coverage require-
4 ments of section 410(b) of the Internal Revenue
5 Code of 1986 without being combined with any
6 other plan of the business that covers the em-
7 ployees of the business,

8 (C) does not provide benefits to anyone ex-
9 cept the employer (and the employer's spouse)
10 or the partners (and their spouses),

11 (D) does not cover a business that is a
12 member of an affiliated service group, a con-
13 trolled group of corporations, or a group of
14 businesses under common control, and

15 (E) does not cover a business that leases
16 employees.

17 (3) OTHER DEFINITIONS.—Terms used in para-
18 graph (2) which are also used in section 414 of the
19 Internal Revenue Code of 1986 shall have the re-
20 spective meanings given such terms by such section.

21 (c) SIMPLIFIED ANNUAL FILING REQUIREMENT FOR
22 PLANS WITH FEWER THAN 25 EMPLOYEES.—In the case
23 of a retirement plan which covers less than 25 employees
24 on the 1st day of the plan year and meets the require-
25 ments described in subparagraphs (B), (D), and (E) of

1 subsection (b)(2), the Secretary of the Treasury shall pro-
2 vide for the filing of a simplified annual return that is
3 substantially similar to the annual return required to be
4 filed by a one-participant retirement plan.

○