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IMPACT OF THE 2001 TAX ACT ON RETIREMENT SAVINGS FOR OWNERS AND EMPLOYEES OF SMALL BUSINESSES

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ARTICLE

IMPACT OF THE 2001 TAX ACT ON RETIREMENT SAVINGS FOR OWNERS AND EMPLOYEES OF SMALL BUSINESSES

by
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This Article examines whether the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA) will in fact close the retirement savings gap between employees of small and large businesses as intended by Congress. First, the author outlines how Congress hopes the new EGTRRA retirement savings provisions will help close this gap. Second, the author explains why the new provisions will not achieve Congress's intended effect. Finally, the author concludes that the retirement savings scheme needs to be reformed, because it fails to maximize individual choice in retirement planning, hinders the economic efficiency of small businesses, and misguidedly places paternalistic responsibility on employers to provide retirement income for their employees.

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INTRODUCTION

The Economic Growth and Tax Relief Reconciliation Act of 2001[1] (EGTRRA) contains numerous provisions designed to increase the attractiveness of retirement savings arrangements, which offer substantial income tax advantages.[2] Despite existing programs for tax-favored retirement income security,[3] retirement savings for the employees of small businesses have fallen far behind the accumulations of their large business counterparts.[4] After outlining how Congress hopes the new EGTRRA retirement savings provisions will help close this retirement income security gap, this Article explains why these provisions will not help most employees of small businesses. Further, this Article emphasizes that the

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[1] Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. No. 107-16, 115 Stat. 94 (2001) [hereinafter EGTRRA].

[2] These tax advantages include immediate deductibility of retirement savings contributions (I.R.C. §§ 219, 404 (RIA 2001)), income tax exemption for investment earnings accumulated in qualified retirement savings trusts (I.R.C. §§ 408(e) (RIA 2001), 501(a) (RIA 2002)), and deferral of income recognition for beneficiaries until actual receipt of distributions (I.R.C. §§ 408(d)(1), 402(a) (RIA 2001)).

[3] A number of kinds of formal retirement arrangements now exist, including categories of employer sponsored plans that rely on either substantial employer contributions or employee elective deferrals (money voluntarily diverted from an employee's standard compensation). *See, e.g.*, I.R.C. § 401(k) (RIA 2001). Only a self-funded individual retirement account (IRA) allows a worker to establish and (minimally) fund tax-favored retirement savings without employer intervention. *See* I.R.C. § 408(a).

[4] *See* John D. McKinnon, *Tax Package May Aggravate Problem of Workers' Low Pension-Savings Rates*, WALL ST. J., June 4, 2001, at A24 (stating that 70 million working Americans lack an employer sponsored retirement plan, while much of the drop in pension plans has come in the small business sector).

current scheme for retirement savings needs to be reformed because it fails to maximize individual choice in retirement planning, hinders the economic efficiency of small businesses, and misguidedly places paternalistic responsibility on employers to provide retirement income security for their employees.

I. KEY FEATURES OF EGTRRA: HOW CONGRESS INTENDS TO CLOSE THE RETIREMENT SAVINGS GAP FOR SMALL BUSINESSES

A. *Increased Savings Limits*

EGTRRA increases contribution limits for every kind of tax-favored retirement savings arrangement, including individual retirement accounts,[5] employer-funded plans,[6] and various elective deferral programs that permit employees to divert portions of their pay into plan accounts that can accumulate for years or even decades.[7]

With respect to arrangements that require employer sponsorship,[8] the legislative history for EGTRRA succinctly sets forth the reasons for increased contribution limits:

> The tax benefits provided under qualified plans are a departure from the normally applicable income tax rules. The special tax benefits for qualified plans are generally justified on the ground that they serve an important social policy objective, i.e., the provision of retirement benefits to a broad group of employees. The limits on contributions and benefits, elective deferrals, and compensation that may be taken into account under a qualified plan all serve to limit the tax benefits associated with such plans. The level at which to place such limits involves a balancing of different policy objectives and a judgment as to what limits are most likely to best further policy goals.[9]

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[5] EGTRRA § 601 amends I.R.C. § 219(b) to increase the deduction for IRAs from $2,000 per year in 2001 to $3,000 per year in 2002 and ultimately to $5,000 per year in 2008.

[6] EGTRRA § 611(b) increases the annual addition for employer sponsored defined contribution plans to $40,000. *See* I.R.C. § 415(c) (RIA 2001), which prior to EGTRRA, set the defined contribution annual addition limit at the lesser of 35,000 (after inflation adjustment) or 25% of a participant's compensation.

[7] EGTRRA § 611(d) amends I.R.C. § 402(g) to increase the limit on employee elective deferrals up to $15,000 by 2006, from $10,500 (after adjustment for inflation) in 2001. In 2002 the limit is $11,000.

[8] I.R.C. § 401(a) mandates employer sponsorship for most kinds of tax-favored retirement savings plans via its preliminary language that refers to a "plan of an employer for the exclusive benefit of his employees or their beneficiaries . . . ." This language does not appear in I.R.C. § 408(a) respecting IRAs, which can exist without employer sponsorship.

[9] H.R. REP. No. 107-51, pt. 1, at 53–54 (2001).

The legislative history further stresses the presumed relationship between increased contribution limits and employer incentives to sponsor tax-favored retirement savings arrangements:

> One of the factors that may influence the decision of an employer, particularly a small employer, to adopt a plan is the extent to which the owners of the business, the decision-makers, or other highly compensated employees will benefit under the plan. The Committee believes that increasing the dollar limits on qualified plan contributions and benefits will encourage employers to establish qualified plans for their employees.[10]

If the owners or managers of a small business wish to take advantage of the greatest opportunities to implement tax-favored retirement savings arrangements for themselves, they must sponsor a formal plan that also benefits their employees.[11] Under a complex set of nondiscrimination rules,[12] the additional costs that an employer undertakes to provide retirement savings opportunities for nonproprietary employees can vary greatly, but can possibly exceed the tax benefits conferred upon owners and other proprietary employees.[13] In effect, the retirement savings system offers a "deal" for the owners of a small business by which the owners can pay a certain price to secure personal tax favored retirement savings. Although EGTRRA sweetens the personal benefits for the owner, it does nothing to ameliorate costs the owner must incur on behalf of rank and file employees.[14] To date, the majority of small business owners have politely declined this offer.[15]

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[10] *Id.*

[11] The broadest opportunities for tax-favored retirement savings exist only under employer sponsored plans because of the great contribution disparity between those plans and IRAs. *Cf. supra* notes 5–6.

[12] *See generally* Treas. Reg. § 1.401(a)(4)-2 (as amended in 1993) (implementing with vast complexity the qualification rule that contributions or benefits under a plan must not discriminate in favor of highly compensated employees as defined in I.R.C. § 414(q) (RIA 2001)).

[13] Plan sponsorship costs can range from slight, in the case of adoption of an elective deferral plan not involving matching employer contributions, to very great, in the case of a defined benefit pension plan involving both substantial administrative costs *and* much greater costs associated with mandatory funding rules. *See* I.R.C. § 412 (RIA 2001).

[14] An employer can avoid funding costs by avoiding employees, but many small businesses cannot operate efficiently without employees. *See infra* Part II.B. (discussing how some small employers minimize contributory costs for rank and file employees).

[15] In a speech on July 17, 1998, David M. Strauss, Executive Director of Pension Benefit Guaranty Corporation, a federal agency, mentioned that just 20% of small business workers have any retirement plan. David M. Strauss, Remarks Before the San Francisco Actuarial Club (July 17, 1998), http://www.pbgc.gov/news/speeches/SP071798.HTM.

B. Removal of Minor Impediments to Employer Sponsorship of Retirement Plans

EGTRRA continues the idea that small employers will sponsor retirement plans if the system of taxation offers sufficient incentives. EGTRRA provides a handful of minor inducements beyond increased contribution limits. Thus, small employers can now take advantage of a special income tax credit of no more than $500.[16] This figure represents a portion of the employers' qualified startup costs paid or incurred in connection with the establishment of an eligible retirement plan or retirement-related education of employees covered under a retirement plan.

Additionally, EGTRRA prohibits the Internal Revenue Service from imposing user fees for determination letters involving the qualified status of certain retirement plans established by small employers.[17] Under previous legislation, the Internal Revenue Service had authority to charge taxpayers fees that could exceed $1,000 for the privilege of receiving administrative review and approval for newly established or amended retirement arrangements.[18] Prior to this user fee enabling legislation, employers had free access to the determination letter process and only had to pay their advisors to obtain formal plan approval.[19] Free administrative access in the past had no discernable impact on increasing the number of small employers that would sponsor a formal retirement arrangement, so the relative benefit of removing user fees under EGTRRA will likely not cause droves of small employers to rush toward plan sponsorship.[20] At best, EGTRRA has removed a minor irritation to small employers who had already decided to sponsor a qualified retirement plan.

EGTRRA removes other minor irritations that vexed small employers sponsoring retirement plans under the overly-complicated "top-heavy" rules.[21] The legislative history of EGTRRA tersely explains:

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[16] *See* I.R.C. § 45E (added to the Internal Revenue Code by EGTRRA § 619). For purposes of this plan startup cost credit, qualifying employers must have 100 or fewer employees who received at least $5,000 compensation from the employer for the preceding year. *See* I.R.C. § 45E(c)(1) (RIA 2001) (incorporating I.R.C. § 408(p)(2)(C)(i) (RIA 2001)).

[17] *See* EGTRRA, Pub. L. No. 107-16, § 620, 115 Stat. 94, 110–11 (2001) (to be codified as amended in scattered sections of 26 U.S.C.).

[18] *See* S. Prt. No. 107-30, at 94 (2001).

[19] *See supra* note 16 and accompanying text (regarding EGTRRA's new startup cost credit, a minor assistance to defray advisory fees for plan initiation).

[20] User fees constitute only a fraction of total administrative costs involved in the implementation of a retirement plan, and all administrative costs usually constitute only a fraction of total plan costs when the retirement plan requires employer contributions for participants.

[21] I.R.C. § 416 imposes additional plan qualification requirements pertaining to vesting and minimum contributions or benefits when accrued benefits for "key employees" exceed 60% of accrued benefits for all employees. *See* I.R.C. § 416(g)(1)(A) (RIA 2001).

> The top-heavy rules primarily affect the plans of small employers. While the top-heavy rules were intended to provide additional minimum benefits to rank-and-file employees, the Committee is concerned that in some cases the top-heavy rules may act as a deterrent to the establishment of a plan by a small employer. The Committee believes that simplification of the top-heavy rules will help alleviate the additional administrative burdens the rules place on small employers.[22]

Having acknowledged the adverse impact of the top-heavy rules on plan sponsorship, Congress nonetheless offers few technical simplifications[23] of the rules while keeping intact their full effect in exacting substantial costs from small employers who must provide minimum contributions for their employees in order to access optimum tax-favored retirement savings for themselves.[24]

C. *Attention to Individual Retirement Planning Needs*

EGTRRA attempts to make retirement savings more convenient and attractive for plan participants and offers enhanced employer sponsorship incentives. Consequently, employees with accounts in qualified retirement savings arrangements now have substantially expanded opportunities to roll over distributions from one kind of tax-favored plan to another.[25] The authors of EGTRRA regarded "pension portability" as an important means to keep retirement savings intact until participants need distributions in their later years. They stated, "The Committee believes that expanding the rollover options for individuals in employer-sponsored retirement plans and owners of IRAs will provide further incentives for individuals to continue to accumulate funds for retirement."[26]

Aside from portability, plan participants have other retirement planning concerns, including the need to maximize potential tax advantages available under formal arrangements.[27] Not long before EGTRRA, Congress introduced a retirement savings concept known as the Roth IRA.[28] This kind of individual retirement account dispenses with contribution

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[22] H.R. Rep. No. 107-51, pt. 1, at 59 (2001).

[23] Foremost among these simplifications are changes in the "key employee" definition used to determine top-heavy status. *See* EGTRRA, Pub. L. No. 107-16, § 613, 115 Stat. 94, 100–02 (2001) (to be codified as amended in scattered sections of 26 U.S.C.) (amending I.R.C. § 416).

[24] *See supra* notes 11–15 and accompanying text.

[25] *See* EGTRRA §§ 641–43 (amending I.R.C. §§ 402(c), 408(d) (RIA 2001)).

[26] H.R. Rep. No. 107-51, pt. 1, at 83 (2001).

[27] Retirement planning concerns fundamentally involve the question of when to save (in cash surplus years and higher income tax bracket years) and when to retire (when sufficient funds have been accumulated). While some retirement savers can consistently put away moderate amounts over a long period, others need to take advantage of their "best years" by funding heavily for a relatively short period. IRAs have low contribution limits and thus preclude optimal savings for many workers. *See supra* notes 5–6.

[28] *See* I.R.C. § 408A.

deductions in favor of income exclusions for both contributions and earnings when distributed.[29] Previously, tax savings occurred when money flowed into an IRA, via a potential deduction, and when earnings built up untaxed in the IRA's tax-exempt trust.[30] This meant that IRA owners faced income recognition later when they received distributions of contributions and earnings from their trust accounts.[31] The Roth IRA augmented the old tax benefit scheme by giving IRA contributors a choice in determining when and how to realize tax benefits according to individual retirement planning needs.[32]

EGTRRA will extend this choice to employer-sponsored elective deferral arrangements after December 31, 2005.[33] Thus, a much larger number of retirement savers will be able to take advantage of the tax planning flexibility associated with the Roth IRA concept.[34]

EGTRRA further addresses the retirement planning needs of individuals by allowing persons over age fifty to make "catch-up contributions" not subject to nondiscrimination rules.[35] With this change, participants in elective deferral programs can eventually save as much as $5,000 per year more than the otherwise applicable limits.[36] The legislative history encapsulates the reasons for these additional permitted contributions, as follows:

> Although the Committee believes that individuals should be saving for retirement throughout their working lives, as a practical matter, many individuals simply do not focus on the amount of retirement savings they need until they near retirement. In addition, many individuals may have difficulty saving more in earlier years, e.g., because an employee leaves the workplace to care for a family. Some individuals may have a greater ability to save as they near retirement.
>
> The Committee believes that the pension laws should assist individuals who are nearing retirement to save more for their retirement.[37]

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29 *See* I.R.C. § 408A(c)(1), (d)(1).

30 *See* I.R.C. §§ 219, 408(e) (RIA 2001).

31 *See* I.R.C. § 408(d)(1).

32 Taxpayers now have a choice between putting their annual IRA contribution into a Roth IRA or a "regular" IRA, which involves a potential income tax deduction under I.R.C. § 219, but no double contribution can occur. *See* I.R.C. § 408A (c)(2).

33 *See* EGTRRA, Pub. L. No. 107-16, § 617, 115 Stat. 94, 103–06 (2001) (to be codified as amended in scattered sections of 26 U.S.C.) (adding I.R.C. § 402A (RIA 2001)).

34 Both I.R.C. § 401(k) plans, widely available for sponsorship by all kinds of employers, and I.R.C. § 403(b) tax-sheltered annuity arrangements, available only to certain tax-exempt organizations including public schools, will potentially offer employees the choice to make Roth IRA-type contributions. Employers can design these plans, however, without including this option. *See id.*

35 *See* EGTRRA § 631 (adding subsection (v) to I.R.C. § 414 (RIA 2001)). Catch-up contributions vary from $1,000 in 2002 to $5,000 in 2006 and thereafter.

36 *Id.*

37 H.R. REP. No. 107-51, pt. 1, at 70 (2001).

Because additional contributions to elective deferral programs for participants over age fifty do not enter deferral percentage computations designed to encourage employer matching contributions,[38] the policy to encourage late retirement savings applies uniformly to both highly compensated employees and nonhighly compensated employees eligible for elective deferrals under an employer-sponsored plan.[39] Thus, in a rare concession to personal retirement planning prerogatives, EGTRRA discards, in a limited manner, the overarching policy of the pension taxation scheme. This allows business owners and managers to reap personal retirement savings tax benefits only by providing benefits for rank and file employees.[40] This departure from standard pension taxation rules calls into question the policy itself and casts doubt on the efficacy of pension taxation nondiscrimination rules in promoting maximum retirement savings overall.[41]

II. WHY EGTRRA WILL NOT HAVE A SUBSTANTIAL IMPACT ON RETIREMENT SAVINGS FOR SMALL BUSINESS EMPLOYEES

A. *Some Small Business Owners Will Continue to View Retirement Plan Sponsorship as Prohibitively Costly Despite Enhanced Contribution Limits*

Nothing in EGTRRA repeals the basic retirement plan qualification rule that prevents employers from making contributions that inordinately favor highly compensated participants.[42] The general effect of this rule, manifested through voluminous and complex treasury regulations,[43] frequently requires that a small employer with several employees budget for substantial plan contributions for employees that are not highly compensated but are covered under a voluntarily sponsored retirement plan.[44]

Once a nonhighly compensated employee can participate in a qualified retirement plan, the nondiscrimination rules usually assure that the employee will receive minimum employer contributions.[45] The more nonhighly compensated employees admitted to the plan, the greater the cumulative funding costs of the employer. At some point, these funding

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[38] *See* I.R.C. § 401(k)(3) (RIA 2001) and CONF. REP. No. 107-84, at 237 (2001).

[39] *See* I.R.C. § 414(q) (RIA 2001) (defining highly compensated employee).

[40] *See supra* notes 11–15 and accompanying text.

[41] *See infra* Part III.B.

[42] *See* I.R.C. § 401(a)(4).

[43] *See generally* Treas. Reg. § 1.401(a)(4)-0 (as amended in 1993). This is one of a growing number of pension tax regulation projects large enough to warrant a table of contents.

[44] *See* Treas. Reg. § 1.401(a)(4)-2 (as amended in 1993).

[45] *Id.* Note that a qualified cash or deferred arrangement under I.R.C. § 401(k) need not require employer matching contributions for employee elective deferrals. A plan not requiring employer matching contributions, however, likely would have to limit elective deferrals for highly compensated employees in relation to average elective deferrals for nonhighly compensated employees as a result of the actual deferral percentage rules of I.R.C. § 401(k)(3)(A).

costs will appear to outweigh the personal tax benefits of plan participation available to owners and managers of the employer.[46] In such an event, business owners will shun plan sponsorship even if they personally desire tax-favored retirement accumulations. This occurs especially when the business employs a substantial number of nonhighly compensated employees.[47]

Substantial administrative costs associated with qualification complexities further tip the cost-benefit analysis toward nonsponsorship of a formal retirement savings arrangement in many cases.[48] Many small businesses frequently struggle just to meet direct payroll costs. The owners and managers of these businesses would likely regard a voluntary commitment to substantial retirement plan costs, both for funding and administration, as a serious economic restriction that could jeopardize the very existence of the business under some circumstances.[49]

If the small employer could carefully select which employees would become plan participants, plan contributions might actually offer enhanced economic flexibility. Participation in a retirement plan could serve as an ad hoc reward, or tax-favored form of compensatory bonus, that could promote efficient service. The nondiscrimination rules, however, extend to participation coverage as well as funding.[50] To a great extent, the Internal Revenue Code, not the employer, ultimately determines which employees must participate in a qualified retirement plan.[51]

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[46] Some employers can "pay" for funding costs indirectly by offsetting these costs with reductions in nonretirement portions of their workers' compensation packages, such as healthcare insurance, other fringe benefits, or annual raises. In effect, employees, sometimes including workers not covered under the employer's retirement plan, end up paying for plan funding via involuntary compensatory adjustments.

[47] For example, some small manufacturing businesses employ many rank and file workers but few highly compensated employees. Even supervisory personnel in such businesses often do not earn enough to meet the highly compensated employee definition in I.R.C. § 414(q) (RIA 2001).

[48] Administrative costs vary greatly according to the type of plan adopted. SIMPLE plans under I.R.C. § 408(p) probably have the lowest administrative costs but they also have contribution limits lower than other elective deferral arrangements and require minimum employer contributions. *See* I.R.C. § 408(p)(2)(A)(ii)–(iii) (RIA 2001).

[49] Once an employer makes plan contributions to the trust established under a qualified retirement savings arrangement, the money permanently departs from the employer's control and the employer cannot later borrow or otherwise retrieve the money. *See* I.R.C. § 401(a) (RIA 2001) (requiring maintenance of the trust for the "exclusive benefit" of employees or their beneficiaries) and I.R.C. § 4975 (RIA 2001) (establishing penalty taxes against employers who engage in "prohibited transactions" with a qualified retirement plan).

[50] *See* I.R.C. § 410(b)(1) (RIA 1999).

[51] The employer does have some discretion to designate categories of employees who will not participate in a sponsored plan. For example, an employer relying on the coverage standard of I.R.C. § 410(b)(1)(A) could exclude from participation up to 30% of otherwise coverable employees based on some objective criteria, like job classifications or workplace location.

Even the heralded SIMPLE plan, introduced in 1996 as a tax-favored retirement savings vehicle that would remove the burden of nondiscrimination compliance from small employers,[52] mandates both widespread participation coverage and minimum matching employer contributions. Although a SIMPLE plan minimizes administrative costs, it still commits a sponsoring employer to a substantial funding burden.[53]

Consequently, small employers did not flock to SIMPLE plans. The Congressional need to engage in further legislative tinkering under EGTRRA, just five years after the introduction of SIMPLE plans, is evidence of SIMPLE's ineffectiveness in closing the small employer retirement savings gap. Yet EGTRRA does no more than the SIMPLE legislation to alleviate the concerns of many small employers whose loss of economic flexibility makes retirement plan sponsorship unpalatable despite proprietary tax benefits.[54]

B. *Other Small Business Owners Will Benefit Personally by EGTRRA While Still Minimizing Coverage and Contributions for Rank and File Employees*

Not all small employers develop a cost-benefit analysis that disfavors plan sponsorship. Among those employers that find that tax benefits for highly compensated employees merit adoption of a retirement savings arrangement, many will take advantage of circumstances that automatically allow minimization of costs for nonhighly compensated employees. For example, a small law firm having three highly paid attorneys but only one secretary and a part-time law clerk will not incur significant coverage costs for nonowners.[55] Some businesses or professional practices will involve only a sole owner's efforts without the use of employees, or with the use of only part-time employees, who are excludable from plan participation.[56]

Indeed, the current system for tax-favored retirement savings encourages owners of small businesses to dispense with the hiring of employees whenever possible.[57] Owners wishing to take advantage of expanded retirement savings opportunities for themselves while minimizing coverage costs have a variety of possibilities for relief in addition to using part-time employees. They can take advantage of independent con-

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[52] *See supra* note 48 and I.R.C. § 408(p)(4).

[53] Employers that have more than 100 employees cannot adopt a SIMPLE plan in any event because of the eligible employer definition of I.R.C. § 408(p)(2)(C)(i)(I).

[54] *See supra* notes 11–15 and accompanying text.

[55] The nonlawyers might not participate in a sponsored retirement plan because of the "statutory" participation exclusions set out in I.R.C. § 410(a).

[56] The exclusion for part-time employees (fewer than 1,000 hours worked in a year) results from the one-year-of-service condition permitted by I.R.C. § 410(a)(1)(A)(ii) and the definition of a year of service in I.R.C. § 410(a)(3)(A).

[57] Of course, small employers would also assert that a great many state and federal nontax laws and regulations also compound the disincentives against hiring employees.

tractors,[58] temporary workers,[59] foreign workers,[60] and various technological advances that produce labor savings.[61] Many owners who work in their own businesses set up formal retirement arrangements for themselves, but avoid coverage costs for employees simply by eliminating coverable employees while finding alternative services necessary for the operation of the business. This phenomenon has long contributed to the retirement savings gap that adversely affects small business employees.

One additional significant coverage exclusion mechanism exists for owners of small businesses that employ one or more highly compensated employees in addition to the owner. By excluding some highly compensated employees from plan coverage, the owner can "leverage" a reduction of nonhighly compensated employees from coverage because the plan need only cover rank and file employees to the extent of seventy percent of the percentage of highly compensated employees that participate.[62]

Even if a small business owner must hire full-time employees and include them to some extent in a sponsored retirement plan, the owner might nonetheless significantly reduce plan funding costs for rank and file participants by taking advantage of certain other technical devices that permit the skewing of contributions in favor of highly compensated participants. These technical devices include the use of permitted disparities under a process known as "Social Security integration"[63] and, more

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[58] An employer using the services of an individual independent contractor cannot include that person in a retirement plan sponsored by the employer because of the language of I.R.C. § 401(a), prior to paragraph (1) of that subsection, which specifically limits plan benefits to "employees or their beneficiaries." I.R.C. § 401(a) (RIA 2001).

[59] Temporary employees frequently are deemed employees of the temporary services firm from which they are hired rather than the firm that uses their services. *See* I.R.C. § 414(n) (RIA 2001) (defining "leased employees").

[60] Some employers can set up a foreign subsidiary and take advantage of a nonresident alien participation exclusion available under I.R.C. § 410(b)(3). *See* § 410(b)(3) (RIA 1999).

[61] Employment costs frequently cause manufacturers to consider using robotics or other advanced equipment, and nearly all employers seem to have an interest in replacing clerical employees with computer software whenever possible.

[62] *See* I.R.C. § 410(b)(1)(B) (RIA 2001). For example, if a small employer has four highly compensated employees, including the owner of the business, and forty coverable rank and file employees, the owner could participate in the plan while excluding from plan coverage the other three highly compensated employees. This would make the proportion of highly compensated employees benefiting under the plan equal to 25%. Under I.R.C. § 410(b)(1)(B), the employer would then have to cover only seven nonhighly compensated employees in the plan (70% times 25% of 40 nonhighly compensated employees). The employer might reward the three highly compensated employees not participating in the plan in some other manner, as with bonuses, stock options, nonqualified deferred compensation, or other additional fringe benefits.

[63] *See generally* I.R.C. § 401(l) (RIA 2001). Social Security integration allows an employer to make additional contributions respecting the compensation of any employee that exceeds the Social Security wage base, at which point contributions to

importantly, the use of age-weighted allocations that can greatly favor older plan participants.[64]

All the above-mentioned means to reduce coverage or funding costs for rank and file employees do not inure equally to the advantage of every small business owner.[65] Many small business owners still fall within the category of owners previously mentioned who determine that the balance between plan costs and personal retirement savings tax benefits disfavors plan sponsorship.[66] Yet for other business owners, personal and business circumstances permit implementation of a plan not subject to the coverage costs that might otherwise result from the aggregate workforce that actually serves the business. The current schizophrenic system for tax-favored retirement savings simultaneously encourages employers capable of avoiding coverage costs to adopt plans while discouraging other employers whose circumstances do not permit coverage avoidance. Either way, the common workers who serve small businesses frequently end up without adequate opportunities to implement tax-favored retirement savings for themselves.[67]

C. *Many Small Business Owners Will Ignore Retirement Plan Sponsorship in Favor of Investing in Their Businesses*

Some small business owners would like to sponsor a tax-favored retirement plan but do not because they perceive that coverage costs would be too great. Other owners sponsor a plan, then have their advisors manipulate technical features of the tax laws in order to retain the bulk of plan benefits for themselves. Yet another group of small business owners have no interest whatsoever in starting a qualified retirement plan because their business itself serves as a better tax-favored retirement arrangement than any qualified plan they could adopt. These owners prefer to direct most of the money they earn, above amounts needed to maintain their standard of living, back into the business that produces their earnings.[68]

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fund the Social Security retirement system cease. *See also* I.R.C. 401(l)(5)(A)(ii), I.R.C. § 3101(a) (2001), and I.R.C. § 3121(a) (RIA 2001).

[64] Treas. Reg. § 1.401(a)(4)-8 (as amended in 1993) permits "cross testing" of plan allocations, the general effect of which permits larger allocations for older employees who are often highly compensated. For a brief explanation and example of age-weighted allocations, see JOHN H. LANGBEIN & BRUCE A. WOLK, PENSION EMPLOYEE BENEFIT LAW 316–17 (3d. ed. 2000).

[65] For example, if the owner of a small business is relatively young, the age-weighting allocation mechanism mentioned in the preceding note will not help reduce funding costs if the owner desires an ample contribution allocation.

[66] *See supra* Part II.A.

[67] "Adequate" equates with funding possibilities available only through employer sponsored retirement plans. *See supra* note 8.

[68] Especially respecting fledgling small businesses, lack of access to outside capital frequently necessitates owner reinvestment at every available opportunity, leaving no money to spare for funding formal retirement savings arrangements.

Business owners often learn that continued business investment will produce a much better overall economic return than if the same dollars were shunted into pension trusts to support standard portfolio investments in businesses owned by others.[69] As reinvestments cause a business to grow, owners' future income security correspondingly increases. This form of "do-it-yourself" pension does not require greater administrative complexities than business operations normally demand, the owner bears no pressure to include rank and file employees in the investment, and unlike the passive investments of retirement portfolios, the owner of a growing business has direct control over asset accumulations without addressing the technical restraints associated with qualified retirement plans.[70]

In addition to the nontax advantages enjoyed by owners who reinvestment in their businesses rather than fund qualified retirement plans,[71] business reinvestment has its own set of tax advantages that rival or exceed those afforded by formal retirement arrangements. For example, reinvested dollars frequently produce lucrative tax deductions or credits,[72] value built up in a business remains untaxed until the business is sold,[73] and the gain upon disposition of a business often gets taxed at low capital gains rates.[74] A small business owner who can realize value growth as a result of continuous business reinvestment does not need a qualified retirement plan to secure a generous, tax-favored retirement. Such an owner will find plan adoption incentives offered by EGTRRA irrelevant. As a result, the owner's rank and file employees will lack access to the benefits available under an employer-sponsored plan.[75]

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[69] A relatively small number of employee stock ownership plans (ESOPs) permit substantial qualified retirement plan investments in securities of the employer sponsoring the plan. However, ESOPs involve both additional qualification complexities and significant dilution of the owner's business equity. *See generally* I.R.C. § 409 (RIA 2001).

[70] The owner's reinvestment is not monetarily limited as it is for retirement plan contributions under I.R.C. § 415(c). *See* § 415(c) (RIA 2001). Some owners might also note that reinvestments in a growing business offer more interesting ongoing rewards than simply accumulating quarterly pension account statements.

[71] Owners who can continuously benefit from business reinvestment do not constitute a limitless group. Some business owners toil in competitive low growth industries and find that additional investments in their businesses will not yield a significant return and might only produce losses. Such owners might well desire to put a substantial portion of current earnings into a retirement trust.

[72] *See generally* I.R.C. § 162 (RIA 1999) (respecting ordinary and necessary business expense deductions) and I.R.C. § 41 (RIA 1999) (respecting tax credits for increasing research expenditures).

[73] Under I.R.C. § 1001(a)–(c), a taxpayer does not report gain from the disposition of property until the taxpayer "realizes" the gain by selling, exchanging, or otherwise transforming the property into equivalent value. § 1001(a)–(c) (RIA 2001).

[74] *See* I.R.C. § 1(h) (RIA 2001) and I.R.C. § 1202 (RIA 2001).

[75] In rare instances, a small employer will sponsor a qualified retirement plan even without benefiting personally under the plan to an extent that would justify

III. HOW A RESTRUCTURING OF THE RETIREMENT SAVINGS TAXATION SCHEME COULD MAXIMIZE RETIREMENT PLANNING POSSIBILITIES FOR BOTH OWNERS AND EMPLOYEES OF SMALL BUSINESSES

A. *Expansion of IRA Retirement Savings Opportunities*

EGTRRA will increase the contribution limit for individual retirement accounts (IRAs) from $3,000 in 2002 to $5,000 in 2008.[76] In addition, EGTRRA will allow IRA catch-up contributions for individuals who have passed their fiftieth birthday, expanding the potential IRA contribution range from $3,500 in 2002 to $6,000 in 2008.[77] In contrast, the contribution range, including catch-up amounts, for elective deferral programs sponsored by employers starts at $12,000 in 2002 and ends at $20,000 in 2006.[78] Employers sponsoring defined contribution plans involving direct employer contributions can fund individual accounts maintained under these plans with as much as $40,000 per year.[79]

These disparities in contribution limits inevitably create huge differences in potential retirement savings over the careers of particular workers. Because the higher limits apply only to retirement plans sponsored by employers, nonproprietary employees whose employers refuse to adopt a plan can achieve tax-favored retirement savings only by funding an IRA subject to the lower range of contribution limits.[80] As a result of the contribution disparities heightened by EGTRRA, in 2002 a six-figure professional employee hired by a small employer that refuses to sponsor a retirement plan can contribute only $3,000 to an IRA, while a self-employed worker earning half as much with or without coverable employees can establish a formal plan that allows a personal contribution of $40,000.[81]

By further contrast, if the same self-employed worker happened to have several coverable employees whose potential plan funding costs discouraged plan sponsorship, he or she would, like the professional

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sponsorship costs. For instance, the employer might sponsor a plan simply to improve employee morale at a time when organizers are trying to implement a union.

[76] *See* EGTRRA, Pub. L. No. 107-16, § 601, 115 Stat. 94, 94–95 (2001) (to be codified as amended in scattered sections of 26 U.S.C.) (amending I.R.C. § 219(b)).

[77] *Id.*

[78] *See supra* notes 7 and 35.

[79] *See supra* note 6.

[80] The phrase "nonproprietary employees" excludes a sole proprietor of a business, even if the proprietor has no common law employees and thus has the status of a single worker. Nonetheless, such a proprietor assumes the status of an employer eligible to sponsor a non-IRA plan benefiting the proprietor by virtue of I.R.C. § 401(c)(4).

[81] *See supra* note 6. EGTRRA § 632(a) amends I.R.C. § 415(c) to remove the percentage limitation pertaining to a participant's compensation, meaning that such a self-employed worker could contribute and defer income recognition on a full $40,000 as long as the worker's annual earned income came to at least $40,000. *See also* I.R.C. § 401(c)(1)(B)(2) (RIA 2001).

employee, have no better personal retirement savings opportunity than a $3,000 IRA contribution. Effectively, the self-employed worker's reward under the current retirement savings tax system for providing employment for several other workers manifests as a loss of 92.5% of the personal retirement contribution potentially available even if the self-employed person hired no coverable employees. Similarly, the employed professional's consequence for working for a small rather than large employer consists minimally of losing the likely opportunity of making an elective deferral under an employer sponsored § 401(k) plan four times larger than an IRA contribution.[82]

The current system for tax-favored retirement savings also creates distortions for rank and file workers. Some employers that sponsor a qualified retirement plan will offset coverage costs by diverting money away from direct compensation like raises, bonuses, and overtime payments. The employees covered under the plan thus receive a mandated form of deferred compensation in lieu of immediate performance-based compensatory enhancements. Younger participants, in particular, often view retirement savings as a concern subordinate to more pressing present financial needs.[83] In effect, the nondiscrimination rules can force an employer to require certain employees to forego their personal financial priorities because the employer must fulfill coverage and funding requirements. Many employees would rather see more money in their paychecks and less in their retirement accounts, but the employer often paternalistically funds retirement benefits nonetheless.[84]

Some rank and file workers desire to accumulate substantial retirement savings even though their compensation levels might suggest otherwise. Many lower-paid workers live in two income families. Sometimes one spouse can afford to devote a large portion of his or her compensation to a retirement savings arrangement while the other spouse's compensation covers living expenses. If neither spouse's employer sponsors a retirement plan, they can do no better than fund two IRAs. Compared to contribution opportunities associated with employer sponsored plans, IRA contributions will not let employees realize maximum savings opportunities in coordination with various family financial conditions, expected and unexpected.[85] Yet the current system disfavors many who would save

[82] *See* text accompanying note 78.

[83] In particular, younger employees just starting a family incur housing, childcare, and similar expenses that often take budgetary precedence.

[84] Consider the plight of an employee who watches the employer put deferred compensation away on his or her behalf while experiencing current financial difficulties but having prospective financial security in the form of a substantial inheritance expectation.

[85] Aside from an inheritance expectation as mentioned *supra* note 84, other possibilities for salutary economic impact include winning a lawsuit, having children that eventually achieve economic independence, getting a late-in-life promotion, winning a lottery, and marrying into money later in life.

much for later, as well as many forced to save for later when they would otherwise spend now.

Permitting all workers—business owners, professionals, and rank and file employees alike—to establish and fully fund IRAs under expanded contribution limits now available only for employer sponsored plans would remedy these inconsistencies.[86] If EGTRRA does indeed continue a legislative trend toward accommodation of individual retirement planning needs,[87] the trend should lead to total democratization of retirement planning opportunities, abolition of all technical disparities in contribution limits, and transfer of the prerogative to implement maximum tax-favored retirement savings from employers to individual workers.[88]

B. Ancillary Effects of Full-Scale Contributory IRAs

Giving every worker the opportunity to self-fund a maximum retirement benefit would remove an artificial incentive-expense link that allows small employers to maximize their personal retirement savings if they also confer benefits upon certain rank and file employees. Although small business owners would no longer have to sponsor a plan to make maximum contributions for themselves, their employees would have an equal opportunity for maximum self-funding under an expanded IRA scheme. The potential loss of forced employer contributions ostensibly would work to the detriment of rank and file employees, but the overall effects of full-scale contributory IRAs would outweigh this perceived detriment for some important reasons.[89]

Not only would all workers gain maximum flexibility in deciding on the amounts and timing of their retirement contributions, but the money now mandatorily directed by some employers into sponsored plan

[86] The catch-up feature emphasized under EGTRRA would merit both retention and possible expansion under an expanded IRA scheme, which would promote maximum personal retirement planning flexibility. *See supra* notes 35 and 77.

[87] *See supra* Part I.C.

[88] One might observe that democratization of retirement planning opportunities began for most workers when I.R.C. § 401(k) first permitted private employers to set up plans funded primarily at the option of covered employees who could decide to forego take-home pay in favor of elective deferrals. Thus, each year, covered employees in § 401(k) plans "vote" whether and to what extent, up to statutory and plan limits, they will effect tax-favored retirement savings. What these workers cannot vote on, however, is whether their employer will even sponsor such a plan and, if the employer does sponsor a § 401(k) plan, which employees will participate in view of available coverage exclusions. *See* I.R.C. § 410(a) and (b) (RIA 1999). *See also supra* notes 56 and 62 and accompanying text.

[89] Whatever one's view of the perceived detriment of losing employer contributions made on behalf of rank and file employees, forcing employers to pay such exaction has not helped the 70 million working Americans who lack an employer sponsored plan. *See supra* note 4. Their best opportunity for retirement savings still rests upon individual prerogative, and the retirement savings taxation rules should enhance, not limit, their choices.

accounts would permit more efficient economic allocations that could help businesses grow, expand employment, and reward quality service.[90] Unlike large businesses that can afford to offer comprehensive compensation packages to large numbers of highly qualified employees, small businesses have much difficulty attracting and keeping a knowledgeable and skilled workforce. Frequently, the success or failure of a small business will depend upon the retention and motivation of just one, two, or three well-qualified employees. The business owner must have maximum flexibility in structuring compensatory incentives for these key employees.[91] Diversion of business revenues into artificial payroll costs, like those associated with the current retirement savings taxation scheme, detracts from the owner's much-needed ability to structure ad hoc compensatory rewards.[92]

The current system disadvantages small employers in yet another way. Large employers can afford to hire in-house employee benefits specialists to manage the inordinate complexity that increasingly burdens employers sponsoring qualified retirement savings arrangements.[93] Small employers must, if they are to avoid the substantial tax and penalty costs resulting from disqualification of a retirement plan, hire outside consultants at high hourly rates as well as allocate substantial employee time for record keeping and similar tasks associated with plan sponsorship.[94] These costs would disappear if every worker were free to fund fully a personal IRA as though under a comprehensive elective deferral plan that required no employer sponsorship or interference.[95]

Beyond assisting small employers toward efficient and successful management of their businesses, complete individualization of retirement contributions would ultimately encourage financial dispositions

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[90] The nondiscrimination rules of I.R.C. § 401(a)(4) do not create "free" money for workers. Rather, these rules usually force employers to make inefficient reallocations of available financial resources within a business. *See supra* note 46.

[91] For high technology enterprises, incentive stock options no longer work as well as they did prior to the "dot-com crash" of 2000–2001.

[92] "Artificial" here pertains to compensation costs not directly dictated by labor market circumstances affecting small businesses. Such artificial costs include forced retirement plan funding for employers who maintain plans qualified under I.R.C. § 401(a).

[93] Although the qualified plans of small employers usually produce less paperwork as a result of having fewer participants than the plans of large employers, the qualification features of complex provisions like I.R.C. § 401(a) apply equally to similar plans regardless of how many employees participate in the plan. That is, the qualification rules themselves do not distinguish plans by size, and a small employer can face the same scope of regulatory difficulty as does a large employer administering a particular kind of qualified retirement plan.

[94] Retirement plan consultants come from the ranks of attorneys, accountants, actuaries, insurance specialists, and financial advisors. Often, an employer will seek advice respecting retirement plan administration from multiple sources.

[95] In effect, all workers would belong to one collective "§ 401(k) plan" sponsored by Congress rather than by thousands of individual employers.

that better reflect a free economy. Workers who wish to save a little for retirement would, as now, have the freedom to do so without employer intervention.[96] Workers who want to accelerate their retirement savings, perhaps in the later years of their careers, would encounter no employer consent barrier preventing them from attaining their goals.[97] Likewise, workers who wish to make regular retirement contributions at the highest permissible rate would not have to rely on their employer's willingness to sponsor a plan.[98] Removing current strictures against IRA contributions would maximize voluntary personal savings and promote individual economic decision making.[99]

C. *Technical Devices to Increase Retirement Savings for Rank and File Employees*

Even if expanding IRA contribution limits would remove employer incentives to fund retirement savings for nonhighly compensated employees, these employees might nonetheless benefit from various forms of technical encouragement to save on their own.[100] For example, the Social Security Administration could, by law, establish an IRA for every worker at the time when each employee obtains a Social Security number. As a form of special refundable tax credit, the Internal Revenue Service could fund each newly established IRA with a fifty or one hundred dollar transfer.[101] The employee could identify the IRA trustee on the Social Security number application form, or in default of the employee's identification, the employer could substitute a blanket designation.[102] Every new American worker would thus have at least a pre-established vehicle for retire-

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[96] *See supra* note 6 (setting out the IRA contribution limits).

[97] Optimally, workers of a certain age could contribute up to the full $40,000 annual addition limit set by I.R.C. § 415(c).

[98] Fundamental pension taxation policy must address why employees who wish to maximize retirement savings should be in thrall to their employers in order to do so. Even if an employee desiring maximum retirement savings is lucky enough to have an employer who sponsors an appropriate plan, under the current system that employee can place his or her retirement plans in jeopardy by exercising the simple freedom to change jobs.

[99] Not every worker could or would take advantage of an optimal possibility to defer compensation in order to build a comfortable retirement, but allowing for individual choice in the matter would increase savings rates, capital formation, and economic stability as collective benefits achieved through personal frugality.

[100] The ideas that follow by no means exhaustively state potential legislatively-created retirement savings inducements. Once pension taxation policy analysts free themselves from the illusion that employers will somehow voluntarily close the retirement savings gap affecting workers in small businesses, they can focus on an array of savings inducement mechanisms limited only by their imaginations.

[101] Compare the refundable earned income credit. *See* generally I.R.C. § 32.

[102] I.R.C. § 408(a)(2) requires that an IRA trustee be a bank or other institutional fiduciary.

ment savings, as well as indirect encouragement to make the modest seed money grow.[103]

Congress could also require that the Internal Revenue Service or IRA trustees send a formal notice to each new IRA holder explaining the importance of retirement savings and how tax-favored contributions can augment retirement income security.[104] The notice could contain examples showing how even modest (but regular) contributions can produce a substantial nest egg if the saver takes advantage of the compounded investment returns possible with early funding. Additionally, the notice might provide basic information about investment selections that balance growth and risk over time. Finally, the notice could explain Social Security retirement benefits and why many workers desire supplemental retirement income from personal savings.[105]

After automatically establishing IRAs and providing basic information about retirement savings, reformed retirement savings legislation could go one step further and mandate or contingently require automatic diversions of certain compensatory enhancements to the IRAs of employees.[106] In order to preserve individual freedom of choice, employees could be allowed to recover automatic diversions within a specified grace period.[107] Nevertheless, forcing employees to act affirmatively to release diverted funds would tend to increase savings rates if for no other reason than the inertia of inaction.[108] Reform legislation could define the diverted amount as a designated percentage of any raise, bonus, or overtime pay exceeding an annual cost-of-living increase.[109] In the case of

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[103] Because Americans usually acquire a Social Security number while still in their teens, their education about investment choices would begin correspondingly early in their lives.

[104] Legislatively mandated notices respecting retirement planning options and information already exist. *See, e.g.*, I.R.C. § 402(f) (RIA 2001) (requiring a plan administrator to issue to recipients a written explanation of retirement plan distributions eligible for rollover treatment).

[105] The notice could also refer to various retirement planning considerations like part-time work, spousal joint benefits, and provision for disabled family members.

[106] The legislation could exempt those already having some minimal level of retirement savings (*e.g.*, $100,000–$250,000).

[107] For example, an employee could elect beforehand, on a quarter-by-quarter or year-by-year basis, to forego automatic payroll diversions to an IRA.

[108] Presumably, enabling legislation would exempt timely withdrawals from the early withdrawal penalty tax of I.R.C. § 72(t) if the employee choice mechanism operates subsequent to uniform payroll diversions rather than beforehand as suggested in the preceding note. The pre- and post-mechanisms would respectively place the election's administrative burden on either the employer (less desirable for small businesses) or the IRA trustee (with potential fee adjustments to address the burden).

[109] Perhaps the Treasury Department could ease the payroll burden of employers via approved software that would let the IRA diversions "tag along" with FICA that withholding employers must effectuate in any event. *See* Federal Insurance Contributions Act, I.R.C. § 3101 (1994).

very low income workers, the diverted amounts could come from a portion of a worker's earned income credit.[110]

Through such means, all workers would come to view retirement savings as a salutary and normative activity that permits all earners to take control over their own futures. By contrast, the present retirement savings system lets employees believe falsely, in the majority of instances, that their retirement security rests for the most part in the benevolent hands of their employers.

IV. CONCLUSION

American workers qualify for a basic level of retirement income security as a result of compulsory Social Security contributions.[111] Workers who desire a more affluent retirement have a variety of options and possibilities, including saving small amounts over a long period of time, saving larger amounts over a shorter time, working part-time after retirement, delaying the date of retirement, cashing out a substantial home equity, taking advantage of an inheritance or other windfall, or combining pensions with a spouse. The current retirement savings rules create tax-favored income set asides that serve as a reliable means to permit enhanced retirement security.[112] Unfortunately, these rules only permit individual workers to maximize their retirement savings opportunities in the context of employer sponsored plans.

From the point of view of the owner of a small business, plan sponsorship often seems undesirable, either because the business itself serves as the owner's best retirement plan or because coverage costs associated with a formal arrangement are burdensome.[113] Small business owners who would like to save for retirement via qualified plans often view the current law as a kind of "shakedown" that predicates their personal retirement savings upon payment of substantial coverage and administrative costs.[114]

To date, this complex and quasi-compulsory retirement funding system has benefited only a minority of workers in small businesses.[115] EGTRRA sweetens incentives for employer sponsorship of retirement plans but does nothing to eliminate reliance on employer sponsorship as the

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[110] *See supra* note 101. EGTRRA has taken a step toward emphasizing the employee side of the retirement savings problem by creating a new tax credit of up to $1,000 for elective deferrals and IRA contributions after 2001 and before 2007 by individuals with incomes below certain limits. *See* EGTRRA, Pub. L. No. 107-16, § 618, 115 Stat. 94, 106–08 (2001) (to be codified as amended in scattered sections of 26 U.S.C.) (adding new I.R.C. § 25B).

[111] *See* § 3101.

[112] *See supra* note 2.

[113] *See supra* Part II.A and C.

[114] To the dismay of many small business owners who happen to have a significant number of coverable employees, some employers can avoid or minimize the "shakedown" as discussed *supra* Part II.B.

[115] *See supra* note 4.

sole means to realize optimum retirement savings opportunities.[116] Consequently, even with EGTRRA, the disparity between IRA contributions and funding possibilities for employer sponsored plans will remain too great to give all workers—owners, managers, and rank and file employees alike—uniform access to optimum retirement income security.[117]

Abandonment of the link between employer sponsorship and full funding would democratize retirement savings and elevate individual choice as a key policy goal of the voluntary pension system. Access to full retirement savings for both owners and employees should not depend on technical circumstances designed to parrot the mandatory employer contributions of the involuntary Social Security retirement system. Every worker should have the freedom to choose optimum personal retirement savings according to individual desires and circumstances.[118] We need fundamental retirement savings reform beyond EGTRRA.

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[116] *See supra* note 8.

[117] Uniform access via expanded IRA contributions would imply lifting deductibility restrictions on IRA contributions contained in I.R.C. § 219(g), which phases out deductions depending on an individual's income level and status as a participant in an employer sponsored retirement plan. Legislation could avoid multiple tax benefits for workers already covered by an employer sponsored plan by offsetting the actual employer contributions set aside for an employee for a year against an expanded IRA deduction limit (up to $40,000 annually (*see* I.R.C. § 415(c))). Currently, if an employer puts $100 into a qualified retirement plan on behalf of employee earning above the parsimonious adjusted gross income limits of I.R.C. § 219(g)(3)(B), the employee gets no deduction for an IRA contribution. Under reform legislation, the employee might get a deduction of as much as $40,000 minus $100.

[118] If revenue loss became an impediment against expanded IRA contributions, Congress could adjust the uniform defined contribution limit of I.R.C. § 415(c) to a lower amount that would permit universal participation without an inordinate revenue displacement. The defined contribution limit of I.R.C. § 415(c), and thus the reformed limit for IRA contributions, could drop from $40,000 per year to such lower amount as would find political support.