

117TH CONGRESS  
1ST SESSION

# H. R. 4672

To amend the Internal Revenue Code to allow employers to contribute to  
ABLE accounts in lieu of retirement plan contributions.

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IN THE HOUSE OF REPRESENTATIVES

JULY 22, 2021

Mr. SUOZZI (for himself and Mr. WENSTRUP) 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 to allow employers  
to contribute to ABLE accounts in lieu of retirement  
plan contributions.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “ABLE Employment  
5 Flexibility Act”.

1 **SEC. 2. PROTECTING WORKING ABLE INDIVIDUALS FROM**  
2 **LOSING BENEFITS BECAUSE OF RETIREMENT**  
3 **PLAN RULES.**

4 (a) IN GENERAL.—Section 414 of the Internal Rev-  
5 enue Code of 1986 is amended by adding at the end the  
6 following new subsection:

7 “(aa) ABLE ACCOUNT CONTRIBUTIONS.—

8 “(1) IN GENERAL.—An applicable employer  
9 plan (as defined in subsection (v)(6)(A)) that is a  
10 defined contribution plan shall not be treated as fail-  
11 ing to meet any requirement of this title solely be-  
12 cause the plan provides that an eligible ABLE indi-  
13 vidual may elect for a plan year that employer con-  
14 tributions that would otherwise be made under the  
15 terms of the plan for such plan year shall (in lieu  
16 of contribution to the plan) be contributed by the  
17 employer to a qualified ABLE program described in  
18 section 529A on behalf of such eligible ABLE indi-  
19 vidual.

20 “(2) NO DEDUCTION FOR AMOUNTS CONTRIB-  
21 UTED TO ABLE ACCOUNT.—Except as provided in  
22 paragraph (4), amounts contributed pursuant to the  
23 election under paragraph (1) to a qualified ABLE  
24 program shall not be treated as a contribution to an  
25 applicable employer plan.

1           “(3) UNIVERSAL AVAILABILITY.—Paragraph  
2           (1) shall not apply unless the plan provides the elec-  
3           tion described therein is available to all eligible  
4           ABLE individuals who are eligible to participate in  
5           the plan.

6           “(4) APPLICATION OF NONDISCRIMINATION  
7           RULES.—Under rules prescribed by the Secretary,  
8           for purposes of applying sections 401(a)(4),  
9           401(k)(3), 401(k)(12), 401(k)(13), 401(m)(2),  
10          403(b)(12), 408(k)(3), 408(p)(2)(iii), 408(p)(2)(B),  
11          410, and 416, contributions made to a qualified  
12          ABLE program pursuant to the election made de-  
13          scribed in paragraph (1) shall be treated as if such  
14          contributions were made to the plan.

15          “(5) CASH OR DEFERRED ARRANGEMENT.—A  
16          plan shall not fail to include a qualified cash or de-  
17          ferred arrangement described in section 401(k)(1)  
18          solely because such plan provides for the election de-  
19          scribed in paragraph (1).

20          “(6) ELIGIBLE ABLE INDIVIDUAL.—For pur-  
21          poses of this subsection, the term ‘eligible ABLE in-  
22          dividual’ means an employee who, as of the first day  
23          of a plan year, is an eligible individual within the  
24          meaning of section 529A(e)(1) for the taxable year  
25          containing such first day of the plan year.

1           “(7) TREATMENT OF PERMISSIVE WITH-  
2           DRAWALS.—An eligible ABLE individual may direct  
3           that amounts eligible for withdrawal from an eligible  
4           contribution arrangement pursuant to section  
5           414(w) be contributed to a qualified ABLE program  
6           described in section 529A on behalf of such eligible  
7           ABLE individual.”.

8           (b) TREATMENT AS BENEFICIARY CONTRIBUTION.—  
9           Section 529A(b)(7) of such Code is amended by redesignig-  
10          nating subparagraph (B) as subparagraph (C) and insert-  
11          ing as subparagraph (B):

12                   “(B) EMPLOYER CONTRIBUTIONS.—Con-  
13                   tributions made to a qualified ABLE program  
14                   by an employer on behalf of a designated bene-  
15                   ficiary described in this paragraph pursuant to  
16                   paragraph (1) or (6) of section 414(a)(a) shall  
17                   be treated as made by the designated bene-  
18                   ficiary for purposes of paragraph (2)(B)(ii).”.

19           (c) CLARIFICATION OF AVAILABILITY OF EMPLOYER  
20          CONTRIBUTIONS.—Section 529A(e) of such Code is  
21          amended by adding the following paragraph (7) at the end  
22          thereof:

23                   “(7) EMPLOYER CONTRIBUTIONS.—An em-  
24                   ployer of an eligible individual may contribute to any  
25                   qualified ABLE program for which the eligible indi-

1       vidual is the designated beneficiary, including  
2       through a contribution matching a contribution  
3       made by such eligible individual to the qualified  
4       ABLE program.”.

5       (d) DEDUCTION FOR CONTRIBUTIONS REMITTED BY  
6 EMPLOYER A QUALIFIED ABLE PROGRAM.—No later  
7 than 1 year after enactment, the Secretary of the Treas-  
8 ury shall—

9           (1) amend Treasury Regulations under section  
10       162 of such Code to confirm that contributions  
11       made by an employer to a qualified ABLE program  
12       described in section 529A of such Code on behalf of  
13       a eligible ABLE individual described in section  
14       414(aa)(5) of such Code who provides personal serv-  
15       ices to such employer shall be considered a reason-  
16       able allowance for salaries or other compensation for  
17       personal service if such contribution for a year, tak-  
18       ing into account all other contributions to such  
19       qualified ABLE program does not exceed the max-  
20       imum contribution described in section  
21       529A(b)(2)(B) of such Code; and

22           (2) update the publications issued for employers  
23       to encourage employers offering a retirement plan  
24       with automatic enrollment to notify employees that  
25       elect not to contribute to the plan and that may be

1 eligible to contribute to a qualified ABLE program  
2 to notify such employee of the possibility of a con-  
3 tribution under section 529A(b)(2)(B)(ii) of such  
4 Code.

5 (e) EFFECTIVE DATE.—

6 (1) IN GENERAL.—Except as provided in para-  
7 graph (2), the amendments made by this section  
8 shall be effective for plan and taxable years begin-  
9 ning after enactment.

10 (2) CLARIFICATIONS.—Subsections (c) and  
11 (d)(1) shall be effective for plan and taxable years  
12 beginning before, on, and after enactment.

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