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(Original Signature of Member)

117TH CONGRESS
1ST SESSION

H. R.

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

IN THE HOUSE OF REPRESENTATIVES

Mr. SUOZZI introduced the following bill; which was referred to the Committee
on _____

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 redesi-
10 gnating 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 than
7 1 year after enactment, the Secretary of the Treasury
8 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.