

117TH CONGRESS
1ST SESSION

S. 3081

To amend the Internal Revenue Code of 1986 to permit withdrawals from certain retirement plans for repayment of student loan debt, and for other purposes.

IN THE SENATE OF THE UNITED STATES

OCTOBER 27, 2021

Mr. PAUL introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend the Internal Revenue Code of 1986 to permit withdrawals from certain retirement plans for repayment of student loan debt, and for other purposes.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Tax Free Education
5 Act of 2021”.

1 **SEC. 2. WITHDRAWALS FOR HIGHER EDUCATION EX-**
 2 **PENSES.**

3 (a) 401(k) PLANS.—Paragraph (14) of section
 4 401(k) of the Internal Revenue Code of 1986 is amended
 5 by adding at the end the following new subparagraph:

6 “(C) DISTRIBUTIONS FOR QUALIFIED EDU-
 7 CATION EXPENSES.—

8 “(i) IN GENERAL.—A distribution
 9 shall be treated as made upon hardship of
 10 the employee to the extent that the aggre-
 11 gate amount of such distributions during
 12 the taxable year does not exceed the lesser
 13 of—

14 “(I) the amount paid by the tax-
 15 payer for qualified education expenses
 16 for any individual during such taxable
 17 year, or

18 “(II) \$5,250.

19 “(ii) DISTRIBUTION MUST BE OTHER-
 20 WISE DISALLOWED.—Clause (i) shall not
 21 apply to any distribution which is permis-
 22 sible under paragraph (2)(B)(i) (including
 23 distributions which would be treated as
 24 made upon hardship of the employee with-
 25 out regard to this subparagraph).

1 “(iii) NO REQUIREMENT TO DEM-
 2 ONSTRATE HARDSHIP.—Clause (i) shall
 3 apply without regard to any requirement to
 4 demonstrate financial need or hardship, or
 5 to demonstrate that other assets are not
 6 available to pay the qualified education ex-
 7 penses.

8 “(iv) ADDITIONAL TAX UNDER SEC-
 9 TION 72(t) NOT TO APPLY.—No tax shall
 10 be imposed under section 72(t) on any
 11 amount treated as a hardship distribution
 12 by reason of clause (i).

13 “(v) QUALIFIED EDUCATION EX-
 14 PENSES.—For purposes of this subpara-
 15 graph, the term ‘qualified education ex-
 16 penses’ has the meaning given such term
 17 by section 530(b)(2)(A), applied without
 18 regard to subparagraph (B) of section
 19 530(b)(2).”.

20 (b) 403(b) PLANS.—Paragraph (11) of section
 21 403(b) of the Internal Revenue Code of 1986 is amended
 22 by adding at the end the following: “Under rules similar
 23 to the rules of section 401(k)(14)(C), a distribution shall
 24 be treated as made upon hardship of the employee to the
 25 extent that the aggregate amount of such distributions

1 during the taxable year does not exceed the lesser of the
 2 amount paid by the taxpayer for qualified education ex-
 3 penses during such taxable year, or \$5,250.”.

4 (c) 457 PLANS.—Paragraph (1) of section 457(d) of
 5 the Internal Revenue Code of 1986 is amended by adding
 6 at the end the following: “Under rules similar to the rules
 7 of section 401(k)(14)(C) (and without regard to whether
 8 the expenses are unforeseen), a distribution shall be treat-
 9 ed as made by reason of unforeseen emergency to the ex-
 10 tent that the aggregate amount of such distributions dur-
 11 ing the taxable year does not exceed the lesser of the
 12 amount paid by the taxpayer for qualified education ex-
 13 penses during such taxable year, or \$5,250.”.

14 (d) EFFECTIVE DATE.—The amendments made by
 15 this section shall apply to distributions made after Decem-
 16 ber 31, 2021.

17 **SEC. 3. WITHDRAWALS FOR STUDENT LOAN EXPENSES.**

18 (a) IRAS.—Paragraph (7) of section 72(t) of the In-
 19 ternal Revenue Code of 1986 is amended by adding at the
 20 end the following new subparagraph:

21 “(C) STUDENT LOANS.—Such term shall
 22 include amounts paid in repayment of any loan
 23 made to an individual described in subpara-
 24 graph (A) to assist the individual in attending

1 an educational organization described in section
 2 170(b)(1)(A)(ii).”.

3 (b) 401(k)s.—Clause (v) of section 401(k)(14)(C), as
 4 added by section 2, is amended—

5 (1) by striking “applied without regard” and
 6 inserting “applied—

7 “(I) without regard”;

8 (2) by striking the period at the end and insert-
 9 ing “, and”; and

10 (3) by adding at the end the following new sub-
 11 clause:

12 “(II) by treating amounts de-
 13 scribed in section 72(t)(7)(C) as
 14 qualified higher education expenses.”.

15 (c) EFFECTIVE DATE.—The amendment made by
 16 this section shall apply to distributions made after Decem-
 17 ber 31, 2021.

18 **SEC. 4. EXCLUSION OF DISTRIBUTIONS FOR EDUCATIONAL**
 19 **EXPENSES.**

20 (a) IN GENERAL.—Section 402 of the Internal Rev-
 21 enue Code of 1986 is amended by adding at the end the
 22 following new subsection:

23 “(m) DISTRIBUTIONS FOR QUALIFIED EDUCATION
 24 EXPENSES.—

1 “(1) IN GENERAL.—Gross income for the tax-
2 able year does not include—

3 “(A) any distribution from a qualified cash
4 or deferred arrangement (as defined in section
5 401(k)(2)), an annuity contract described in
6 section 403(b), or an eligible deferred com-
7 pensation plan described in section 457(b)
8 which is maintained by an eligible employer de-
9 scribed in section 457(e)(1)(A), which is treated
10 as made upon hardship of the employee by rea-
11 son of section 401(k)(14)(C), the last sentence
12 of section 403(b)(11), or the last sentence of
13 section 457(d)(1), or

14 “(B) any distribution from an individual
15 retirement account (as defined in section
16 408(a)) to which section 72(t)(2)(E) applies.

17 “(2) DISTRIBUTIONS MUST OTHERWISE BE IN-
18 CLUDIBLE.—

19 “(A) IN GENERAL.—An amount shall be
20 treated as described in paragraph (1) only to
21 the extent that such amount would be includible
22 in gross income without regard to such para-
23 graph.

24 “(B) APPLICATION OF SECTION 72.—In de-
25 termining whether a distribution would be in-

1 cludible in gross income but for this subsection,
 2 rules similar to the rules of subsection (l)(3)(B)
 3 shall apply (by taking into account all retire-
 4 ment plans in which the taxpayer is a partici-
 5 pant).”.

6 (b) COORDINATION WITH DEDUCTIONS AND CRED-
 7 ITS.—

8 (1) COORDINATION WITH AMERICAN OPPOR-
 9 TUNITY AND LIFETIME LEARNING CREDITS.—

10 (A) IN GENERAL.—Paragraph (2) of sec-
 11 tion 25A(g) of the Internal Revenue Code of
 12 1986 is amended by redesignating subpara-
 13 graph (C) as subparagraph (D), by striking
 14 “and” at the end of subparagraph (B), and by
 15 inserting after subparagraph (B) the following
 16 new subparagraph:

17 “(C) a distribution from a qualified cash
 18 or deferred arrangement (as defined in section
 19 401(k)(2)), an annuity contract described in
 20 section 403(b), an eligible deferred compensa-
 21 tion plan described in section 457(b) which is
 22 maintained by an eligible employer described in
 23 section 457(e)(1)(A), or an individual retire-
 24 ment account (as defined in section 408(a))
 25 which is excluded from gross income of the dis-

1 tributee under section 402(m) (other than any
2 portion of such a distribution which is attrib-
3 utable to the repayment of a loan described in
4 section 72(t)(7)(C)), and”.

5 (B) COORDINATION WITH WAIVER OF PEN-
6 ALTY.—Subparagraph (B) of section 72(t)(7) is
7 amended by inserting “(without regard to sub-
8 paragraph (C) thereof)” before the period.

9 (2) DEDUCTION FOR INTEREST ON EDUCATION
10 LOANS.—The first sentence of paragraph (1) of sec-
11 tion 221(e) of such Code is amended—

12 (A) by striking “or”; and

13 (B) by inserting before the period at the
14 end the following: “, or for any amount paid
15 with a distribution which is excluded from gross
16 income under section 402(m)”.

17 (c) EFFECTIVE DATE.—The amendment made by
18 this section shall apply to distributions made after Decem-
19 ber 31, 2021.

20 **SEC. 5. MODIFICATION OF INCLUSION OF EMPLOYER STU-**
21 **DENT LOAN PAYMENTS IN EDUCATIONAL AS-**
22 **SISTANCE PROGRAMS.**

23 (a) IN GENERAL.—Subparagraph (B) of section
24 127(c)(1) of the Internal Revenue Code of 1986 is amend-
25 ed to read as follows:

1 “(B) the payment, by an employer, of
 2 amounts in repayment of any loan made to the
 3 employee to assist the employee in attending an
 4 educational organization described in section
 5 170(b)(1)(A)(ii), and”.

6 (b) DENIAL OF DOUBLE BENEFIT.—Paragraph (1)
 7 of section 221(e) of the Internal Revenue Code of 1986,
 8 as amended by section 4, is further amended by striking
 9 “any indebtedness on a qualified education loan of the tax-
 10 payer” and inserting “amounts in repayment of any loan
 11 described in section 127(c)(1)(B)”.

12 (c) EFFECTIVE DATE.—The amendments made by
 13 this section shall apply to taxable years beginning after
 14 December 31, 2021.

15 **SEC. 6. REPEAL OF CAP ON DEDUCTION FOR INTEREST ON**
 16 **EDUCATION LOANS.**

17 (a) IN GENERAL.—Section 221 of the Internal Rev-
 18 enue Code of 1986 is amended by striking subsections (b)
 19 and (f).

20 (b) CARRYOVER OF EXCESS INTEREST.—Section 221
 21 of the Internal Revenue Code of 1986, as so amended,
 22 is amended by inserting after subsection (a) the following
 23 new subsection:

24 “(b) CARRYOVER.—If the amount of the deduction
 25 allowable under subsection (a) exceeds the taxable income

1 of the taxpayer for the taxable year (determined without
 2 regard to this section), then an amount equal to such ex-
 3 cess shall be treated as interest paid by the taxpayer in
 4 the succeeding taxable year on a qualified education
 5 loan.”.

6 (c) EFFECTIVE DATE.—The amendments made by
 7 this section shall apply to taxable years beginning after
 8 the date of the enactment of this Act.

9 **SEC. 7. EMPLOYER ROTH CONTRIBUTIONS.**

10 (a) IN GENERAL.—Subsection (a) of section 402A of
 11 the Internal Revenue Code of 1986 is amended—

12 (1) by striking “and” at the end of paragraph
 13 (1);

14 (2) by redesignating paragraph (2) as para-
 15 graph (3); and

16 (3) by inserting after paragraph (1) the fol-
 17 lowing new paragraph:

18 “(2) in the case of a qualified cash or deferred
 19 arrangement (as defined in section 401(k)(2)), any
 20 designated Roth employer contribution made pursu-
 21 ant to the arrangement shall be treated for purposes
 22 of this chapter in the same manner as contributions
 23 described in section 401(k)(3)(D)(ii), except that
 24 such contribution shall not be excludable from gross
 25 income, and”.

1 (b) CONFORMING AMENDMENTS.—

2 (1) Paragraph (1) of section 402A(b) of the In-
3 ternal Revenue Code of 1986 is amended—

4 (A) by striking “may elect to make” and
5 inserting “may elect—

6 “(A) to make”;

7 (B) by striking the period at the end and
8 inserting “, and”; and

9 (C) by adding at the end the following new
10 subparagraph:

11 “(B) in the case of a qualified cash or de-
12 ferred arrangement (as defined in section
13 401(k)(2)), to have the employee’s employer
14 make designated Roth employer contributions
15 in lieu of all or a portion of the matching or
16 nonelective contributions the employee is other-
17 wise eligible to receive under the arrange-
18 ment.”.

19 (2) Paragraph (2)(A) of section 402A(b) of
20 such Code is amended by striking “of each em-
21 ployee” and inserting “and designated Roth em-
22 ployer contributions with respect to each employee”.

23 (3) Subparagraph (B) of section 402A(d)(2) of
24 such Code is amended by inserting “, or elected to
25 have made a designated Roth employer contribu-

1 tion,” after “designated Roth contribution” both
 2 places it appears in clauses (i) and (ii).

3 (c) DESIGNATED ROTH EMPLOYER CONTRIBU-
 4 TION.—Subsection (c) of section 402A of the Internal
 5 Revenue Code of 1986 is amended—

6 (1) by inserting “AND DESIGNATED ROTH EM-
 7 PLOYER CONTRIBUTIONS” after “DESIGNATED
 8 ROTH CONTRIBUTIONS” in the heading, and

9 (2) by adding at the end the following new
 10 paragraph:

11 “(5) DESIGNATED ROTH EMPLOYER CONTRIBU-
 12 TION.—

13 “(A) IN GENERAL.—The term ‘designated
 14 Roth employer contribution’ means any con-
 15 tribution described in subparagraph (B) made
 16 under a qualified cash or deferred arrangement
 17 (as defined in section 401(k)(2)) which—

18 “(i) is excludable from gross income
 19 of an employee without regard to this sec-
 20 tion, and

21 “(ii) the employee designates (at such
 22 time and in such manner as the Secretary
 23 may prescribe) as not being so excludable.

1 “(B) CONTRIBUTIONS DESCRIBED.—The
2 contributions described in this subparagraph
3 are—

4 “(i) matching contributions (as de-
5 fined in section 401(m)(4)(A)) which meet
6 the requirements of subparagraphs (B)
7 and (C) of section 401(k)(2), and

8 “(ii) qualified nonelective contribu-
9 tions (within the meaning of section
10 401(m)(4)(C)).

11 “(C) DESIGNATION LIMITS.—The amount
12 of matching contributions and qualified nonelec-
13 tive contributions which an employee may des-
14 ignate under subparagraph (A) shall not exceed
15 the excess (if any) of—

16 “(i) the maximum amount of such
17 contributions excludable from gross income
18 of the employee for the taxable year (with-
19 out regard to this section), over

20 “(ii) the aggregate amount of such
21 contributions with respect to the employee
22 for the taxable year which the employee
23 does not designate under subparagraph
24 (A).”.

1 (d) EFFECTIVE DATE.—The amendments made by
 2 this section shall apply to contributions made in taxable
 3 years beginning after December 31, 2021.

4 **SEC. 8. MAXIMUM CONTRIBUTIONS.**

5 (a) ELECTIVE DEFERRALS.—

6 (1) IN GENERAL.—Subparagraph (B) of section
 7 402(g)(1) of the Internal Revenue Code of 1986 is
 8 amended by striking “\$15,000” and inserting
 9 “\$25,000”.

10 (2) COST-OF-LIVING ADJUSTMENT.—Paragraph
 11 (4) of section 402(g) of such Code is amended—

12 (A) by striking “\$15,000” and inserting
 13 “\$25,000”;

14 (B) by striking “December 31, 2006” and
 15 inserting “December 31, 2022”; and

16 (C) by striking “July 1, 2005” and insert-
 17 ing “July 1, 2021”.

18 (3) CONFORMING AMENDMENT.—Clause (ii) of
 19 section 402(g)(7)(A) of such Code is amended by
 20 striking “\$15,000” and inserting “\$25,000”.

21 (b) 457 PLANS.—

22 (1) IN GENERAL.—Subparagraph (A) of section
 23 457(e)(15) of the Internal Revenue Code of 1986 is
 24 amended by striking “\$15,000” and inserting
 25 “\$25,000”.

1 (2) COST-OF-LIVING ADJUSTMENT.—Subpara-
 2 graph (B) of section 457(e)(15) of such Code is
 3 amended—

4 (A) by striking “\$15,000” and inserting
 5 “\$25,000”;

6 (B) by striking “December 31, 2006” and
 7 inserting “December 31, 2022”; and

8 (C) by striking “July 1, 2005” and insert-
 9 ing “July 1, 2021”.

10 (c) EMPLOYED INDIVIDUAL 401(k)S.—Subsection (k)
 11 of section 401 of the Internal Revenue Code of 1986 is
 12 amended by adding at the end the following new para-
 13 graph:

14 “(16) EMPLOYED INDIVIDUAL ARRANGE-
 15 MENT.—

16 “(A) IN GENERAL.—A cash or deferred ar-
 17 rangement shall not be treated as failing to
 18 meet any requirement of this subsection solely
 19 because, under the arrangement, an employee
 20 may elect to make additional elective deferrals
 21 which are not subject to, and are not taken into
 22 account under, paragraph (3) to a separate ac-
 23 count from other contributions made on behalf
 24 of the employee under the arrangement, if—

1 “(i) all employees eligible to partici-
 2 pate in the arrangement are eligible to
 3 make such election,

4 “(ii) the aggregate of all elective de-
 5 ferrals made by the employee under the ar-
 6 rangement does not exceed the limitation
 7 of section 402(g), and

8 “(iii) no matching or nonelective con-
 9 tributions may be made to such account or
 10 with respect to elective deferrals contrib-
 11 uted to such account.

12 “(B) DISTRIBUTION, ETC. RULES TO
 13 APPLY.—The rules of this subsection, other
 14 than paragraph (3), shall apply to any account
 15 established under subparagraph (A).

16 “(C) ELECTIVE DEFERRAL.—For purposes
 17 of this paragraph, the term ‘elective deferral’
 18 means any employer contribution under a quali-
 19 fied cash or deferred arrangement to the extent
 20 not includible in gross income for the taxable
 21 year under section 402(e)(3) (determined with-
 22 out regard to section 402(g)).”.

23 (d) EFFECTIVE DATE.—The amendments made by
 24 this section shall apply to contributions made in taxable
 25 years beginning after December 31, 2021.

1 **SEC. 9. DEDUCTION FOR QUALIFIED EDUCATION EX-**
2 **PENSES.**

3 (a) IN GENERAL.—Part VII of subchapter B of chap-
4 ter 1 of the Internal Revenue Code of 1986 is amended—

5 (1) by redesignating section 224 as section 225;

6 and

7 (2) by inserting after section 223 the following
8 new section:

9 **“SEC. 224. QUALIFIED EDUCATION EXPENSES.**

10 “(a) DEDUCTION ALLOWED.—In the case of an indi-
11 vidual, there shall be allowed as a deduction for the tax-
12 able year an amount equal to the qualified education ex-
13 penses paid or incurred during such taxable year for the
14 taxpayer or any other individual.

15 “(b) QUALIFIED EDUCATION EXPENSES.—For pur-
16 poses of this section, the term ‘qualified education ex-
17 penses’ means—

18 “(1) qualified education expenses as defined in
19 section 530(b)(2)(A), applied without regard to sub-
20 paragraph (B) of section 530(b)(2), and

21 “(2) amounts paid in repayment of any loan
22 made to an individual to assist the individual in at-
23 tending an educational organization described in sec-
24 tion 170(b)(1)(A)(ii).

1 “(c) DENIAL OF DOUBLE BENEFIT.—For purposes
 2 of subsection (a), the qualified education expenses with re-
 3 spect to any taxpayer shall be reduced by—

4 “(1) the amount of any distribution from a
 5 qualified cash or deferred arrangement (as defined
 6 in section 401(k)(2)), an annuity contract described
 7 in section 403(b), an eligible deferred compensation
 8 plan described in section 457(b) which is maintained
 9 by an eligible employer described in section
 10 457(e)(1)(A), or an individual retirement account
 11 (as defined in section 408(a)) which is excluded from
 12 gross income of the taxpayer under section 402(m)
 13 (other than any portion of such a distribution which
 14 is attributable to the repayment of a loan described
 15 in section 72(t)(7)(C)), and

16 “(2) the amount of any such expenses taken
 17 into account in determining any credit or any other
 18 deduction under any other provision of this chapter.

19 “(d) CARRYFORWARD OF UNUSED AMOUNT.—If any
 20 portion of the deduction allowed by subsection (a) for the
 21 taxable year is disallowed by reason of any limitation (in-
 22 cluding the amount of income of the taxpayer), such por-
 23 tion shall be treated as a deduction allowable under sub-
 24 section (a) in the succeeding taxable year.”.

1 (b) DEDUCTION ALLOWED ABOVE THE LINE.—Sub-
 2 section (a) of section 62 of the Internal Revenue Code of
 3 1986 is amended by inserting after paragraph 21 the fol-
 4 lowing new paragraph:

5 “(22) QUALIFIED EDUCATION EXPENSES.—The
 6 deduction allowed by section 224.”.

7 (c) CLERICAL AMENDMENT.—The table of sections
 8 for part VII of subchapter B of chapter 1 of the Internal
 9 Revenue Code of 1986 is amended by striking the item
 10 relating to section 224 and by inserting after the item re-
 11 lating to section 223 the following new items:

“Sec. 224. Qualified education expenses.

“Sec. 225. Cross reference.”.

12 (d) EFFECTIVE DATE.—The amendments made by
 13 this section shall apply to taxable years beginning after
 14 December 31, 2021.

○