

107TH CONGRESS  
1ST SESSION

# S. 1531

To amend the Internal Revenue Code of 1986 to provide a waiver of the early withdrawal penalty for distributions from qualified retirement plans to individuals called to active duty during the national emergency declared by the President on September 14, 2001, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

OCTOBER 11, 2001

Mr. SMITH of New Hampshire introduced the following bill; which was read twice and referred to the Committee on Finance

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## A BILL

To amend the Internal Revenue Code of 1986 to provide a waiver of the early withdrawal penalty for distributions from qualified retirement plans to individuals called to active duty during the national emergency declared by the President on September 14, 2001, 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 “Military Call-Up Relief  
5 Act”.

1 **SEC. 2. WAIVER OF EARLY WITHDRAWAL PENALTY FOR**  
 2 **DISTRIBUTIONS FROM QUALIFIED RETIRE-**  
 3 **MENT PLANS TO INDIVIDUALS CALLED TO**  
 4 **ACTIVE DUTY DURING THE NATIONAL EMER-**  
 5 **GENCY DECLARED BY THE PRESIDENT ON**  
 6 **SEPTEMBER 14, 2001.**

7 (a) WAIVER FOR CERTAIN DISTRIBUTIONS.—

8 (1) IN GENERAL.—Section 72(t)(2) of the In-  
 9 ternal Revenue Code of 1986 (relating to 10-percent  
 10 additional tax on early distributions from qualified  
 11 retirement plans) is amended by adding at the end  
 12 the following:

13 “(G) DISTRIBUTIONS TO INDIVIDUALS  
 14 PERFORMING NATIONAL EMERGENCY ACTIVE  
 15 DUTY.—Any distribution to an individual who,  
 16 at the time of the distribution, is a member of  
 17 a reserve component called or ordered to active  
 18 duty pursuant to a provision of law referred to  
 19 in section 101(a)(13)(B) of title 10, United  
 20 States Code, during the period of the national  
 21 emergency declared by the President on Sep-  
 22 tember 14, 2001.”.

23 (2) WAIVER OF UNDERPAYMENT PENALTY.—  
 24 Section 6654(e)(3) of such Code (relating to waiver  
 25 in certain cases) is amended by adding at the end  
 26 the following:

1           “(C) CERTAIN EARLY WITHDRAWALS FROM  
 2           RETIREMENT PLANS.—No addition to tax shall  
 3           be imposed under subsection (a) with respect to  
 4           any underpayment to the extent such under-  
 5           payment was created or increased by any dis-  
 6           tribution described in section 72(t)(2)(G).”.

7           (3) EFFECTIVE DATE.—The amendments made  
 8           by this subsection shall apply to distributions made  
 9           to an individual after September 13, 2001.

10          (b) CATCH-UP CONTRIBUTIONS ALLOWED.—

11           (1) INDIVIDUAL RETIREMENT ACCOUNTS.—Sec-  
 12           tion 219(b)(5) of the Internal Revenue Code of 1986  
 13           (relating to deductible amount) is amended by add-  
 14           ing at the end the following:

15           “(D) CATCH-UP CONTRIBUTIONS FOR CER-  
 16           TAIN DISTRIBUTIONS.—In the case of an indi-  
 17           vidual who has received a distribution described  
 18           in section 72(t)(2)(G), the deductible amount  
 19           for any taxable year shall be increased by an  
 20           amount equal to—

21                   “(i) the aggregate amount of such dis-  
 22                   tributions (not attributable to earnings)  
 23                   made with respect to such individual, over

24                   “(ii) the aggregate amount of such  
 25                   distributions (not attributable to earnings)

1           previously taken into account under this  
2           subparagraph or section 414(w).”.

3           (2) ROTH IRAS.—Section 408A(c) of such Code  
4           (relating to treatment of contributions) is amended  
5           by redesignating paragraph (7) as paragraph (8)  
6           and by inserting after paragraph (6) the following:  
7           “(7) CATCH-UP CONTRIBUTIONS FOR CERTAIN  
8           DISTRIBUTIONS.—Any contribution described in sec-  
9           tion 219(b)(5)(D) shall not be taken into account  
10          for purposes of paragraph (2).”.

11          (3) EMPLOYER PLANS.—Section 414 of such  
12          Code (relating to definitions and special rules) is  
13          amended by adding at the end the following:

14          “(w) CATCH-UP CONTRIBUTIONS FOR CERTAIN DIS-  
15          TRIBUTIONS.—

16                 “(1) IN GENERAL.—An applicable employer  
17                 plan shall not be treated as failing to meet any re-  
18                 quirement of this title solely because the plan per-  
19                 mits an applicable participant to make additional  
20                 elective deferrals in any plan year.

21                 “(2) LIMITATION ON AMOUNT OF ADDITIONAL  
22                 DEFERRALS.—

23                         “(A) IN GENERAL.—A plan shall not per-  
24                         mit additional elective deferrals under para-

1 graph (1) for any year in an amount greater  
 2 than the lesser of—

3 “(i) the applicable dollar amount, or

4 “(ii) the excess (if any) of—

5 “(I) the participant’s compensa-  
 6 tion (as defined in section 415(c)(3))  
 7 for the year, over

8 “(II) any other elective deferrals  
 9 of the participant for such year which  
 10 are made without regard to this sub-  
 11 section.

12 “(B) APPLICABLE DOLLAR AMOUNT.—For  
 13 purposes of this paragraph, the applicable dol-  
 14 lar amount with respect to a participant shall  
 15 be an amount equal to—

16 “(i) the aggregate amount of distribu-  
 17 tions described in section 72(t)(2)(G) (not  
 18 attributable to earnings) made with respect  
 19 to such participant, over

20 “(ii) the aggregate amount of such  
 21 distributions (not attributable to earnings)  
 22 previously taken into account under this  
 23 subsection or section 219(b)(5)(B).

24 “(3) TREATMENT OF CONTRIBUTIONS.—Rules  
 25 similar to the rules of paragraphs (3) and (4) of

1 subsection (v) shall apply with respect to contribu-  
2 tions made under this subsection.

3 “(4) DEFINITIONS.—For purposes of this sub-  
4 section, the terms ‘applicable employer plan’ and  
5 ‘elective deferral’ have the same meanings given  
6 such terms in subsection (v)(6).”.

7 (4) CONFORMING AMENDMENT.—Section  
8 414(v)(2)(A)(ii)(II) of such Code (relating to limita-  
9 tion on amount of additional deferrals) is amended  
10 by inserting “(other than deferrals under subsection  
11 (w))” after “deferrals”.

12 (5) EFFECTIVE DATE.—The amendments made  
13 by this subsection shall apply to contributions in  
14 taxable years ending after December 31, 2001.

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