

116TH CONGRESS
2D SESSION

S. 4367

To amend the Internal Revenue Code of 1986 to eliminate limitations on contributions to health savings accounts.

IN THE SENATE OF THE UNITED STATES

JULY 29, 2020

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 eliminate limitations on contributions to health savings accounts.

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 “Health Savings Ac-
5 counts For All Act of 2020”.

6 **SEC. 2. REPEAL OF CONTRIBUTION LIMITATIONS.**

7 (a) IN GENERAL.—Subsection (b) of section 223 of
8 the Internal Revenue Code of 1986 is amended to read
9 as follows:

1 “(b) DENIAL OF DEDUCTION TO DEPENDENTS.—No
 2 deduction shall be allowed under this section to any indi-
 3 vidual with respect to whom a deduction under section 151
 4 is allowable to another taxpayer for a taxable year begin-
 5 ning in the calendar year in which such individual’s tax-
 6 able year begins.”.

7 (b) CONFORMING AMENDMENTS.—

8 (1) Subparagraph (A) of section 223(d)(1) of
 9 the Internal Revenue Code of 1986 is amended—

10 (A) by striking “subsection (f)(5)” and in-
 11 serting “subsection (f)(4)”, and

12 (B) by striking “accepted—” and all that
 13 follows and inserting “accepted unless it is in
 14 cash.”.

15 (2) Subsection (f) of section 223 of such Code
 16 is amended by striking paragraph (3) and by redес-
 17 ignating paragraphs (4) through (8) as paragraphs
 18 (3) through (7), respectively.

19 (3) Subsection (g) of section 223 of such Code
 20 is amended—

21 (A) by striking “subsections (b)(2) and
 22 (c)(2)(A)” both places it appears and inserting
 23 “subsection (c)(2)(A)”, and

24 (B) by amending subparagraph (B) to read
 25 as follows:

1 “(B) the cost-of-living adjustment deter-
 2 mined under section 1(f)(3) for the calendar
 3 year in which such taxable year begins deter-
 4 mined by substituting ‘calendar year 2003’ for
 5 ‘calendar year 2016’ in subparagraph (A)(ii)
 6 thereof.”.

7 (4) Section 26(b)(2) of such Code is amended—

8 (A) by striking “, 223(b)(8)(B)(i)(II),” in
 9 subparagraph (S), and

10 (B) by striking “223(f)(4)” in subpara-
 11 graph (U) and inserting “223(f)(3)”.

12 (5) Paragraph (1) of section 106(d) of such
 13 Code is amended by striking “under an accident or
 14 health plan” and all that follows and inserting
 15 “under an accident or health plan.”.

16 (6) Subparagraph (C) of section 106(e)(4) of
 17 such Code is amended by striking “223(f)(5)” and
 18 inserting “223(f)(4)”.

19 (7) Subparagraph (C) of section 408(d)(9) of
 20 such Code is amended—

21 (A) by striking “LIMITATIONS.—” in the
 22 heading and all that follows through “(ii) ONE-
 23 TIME TRANSFER.—” in clause (ii), and insert-
 24 ing “ONE-TIME TRANSFER.—”,

1 (B) by redesignating subclauses (I) and
 2 (II) as clauses (i) and (ii) and moving such
 3 clauses 2 ems to the left, and

4 (C) by striking “subclause (II)” in clause
 5 (i), as so redesignated, and inserting “clause
 6 (ii)”.

7 (8) Section 4973 of such Code is amended by
 8 striking subsection (g) and by redesignating sub-
 9 section (h) as subsection (g).

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

13 **SEC. 3. FREEDOM FROM MANDATE.**

14 (a) IN GENERAL.—Section 223 of the Internal Rev-
 15 enue Code of 1986, as amended by section 2, is further
 16 amended by striking subsections (c) and (g) and by red-
 17 ignating subsections (d), (e), (f), and (h) as subsections
 18 (c), (d), (e), and (f), respectively.

19 (b) CONFORMING AMENDMENTS.—

20 (1) Subsection (a) of section 223 of the Inter-
 21 nal Revenue Code of 1986 is amended to read as fol-
 22 lows:

23 “(a) DEDUCTION ALLOWED.—In the case of an indi-
 24 vidual, there shall be allowed as a deduction for the tax-
 25 able year an amount equal to the aggregate amount paid

1 in cash during such taxable year by or on behalf of such
 2 individual to a health savings account of such individual.”.

3 (2) Subsection (c)(1)(A) of section 223 of such
 4 Code, as amended by section 2 and redesignated by
 5 subsection (a), is further amended by striking “sub-
 6 section (f)(4)” and inserting “subsection (e)(4)”.

7 (3) Subparagraph (U) of section 26(b)(2) of
 8 such Code, as amended by section 2, is further
 9 amended by striking “section 223(f)(3)” and insert-
 10 ing “section 223(e)(3)”.

11 (4) Sections 35(g)(3), 220(f)(5)(A),
 12 848(e)(1)(B)(v), 4973(a)(5), and 6051(a)(12) of
 13 such Code are each amended by striking “section
 14 223(d)” each place it appears and inserting “section
 15 223(c)”.

16 (5) Section 106(d)(1) of such Code is amend-
 17 ed—

18 (A) by striking “who is an eligible indi-
 19 vidual (as defined in section 223(c)(1))”, and

20 (B) by striking “section 223(d)” and in-
 21 serting “section 223(c)”.

22 (6) Section 106(e) of such Code is amended—

23 (A) by striking paragraphs (3) and (4) and
 24 by redesignating paragraph (5) as paragraph
 25 (4),

1 (B) by inserting after paragraph (2) the
 2 following new paragraph:

3 “(3) TREATMENT AS ROLLOVER CONTRIBU-
 4 TION.—A qualified HSA distribution shall be treated
 5 as a rollover contribution described in section
 6 223(e)(4).”, and

7 (C) by striking “to any eligible individual
 8 covered under a high deductible health plan of
 9 the employer” in paragraph (4)(B)(ii) (as so re-
 10 designated) and inserting “to any employee
 11 with respect to whom a health savings account
 12 has been established”.

13 (7) Section 408(d)(9)(A) of such Code is
 14 amended by striking “who is an eligible individual
 15 (as defined in section 223(c)) and”.

16 (8) Section 877A(g)(6) of such Code is amend-
 17 ed by striking “223(f)(4)” and inserting
 18 “223(e)(4)”.

19 (9) Section 4975 of such Code is amended—

20 (A) in subsection (c)(6)—

21 (i) by striking “section 223(d)” and
 22 inserting “section 223(c)”, and

23 (ii) by striking “section 223(e)(2)”
 24 and inserting “section 223(d)(2)”, and

1 (B) in subsection (e)(1)(E), by striking
 2 “section 223(d)” and inserting “section
 3 223(c)”.

4 (10) Subsection (b) of section 4980G of such
 5 Code is amended to read as follows:

6 “(b) RULES AND REQUIREMENTS.—

7 “(1) IN GENERAL.—An employer meets the re-
 8 quirements of this subsection for any calendar year
 9 if the employer makes available comparable con-
 10 tributions to the health savings accounts of all com-
 11 parable participating employees for each coverage
 12 period during such calendar year.

13 “(2) COMPARABLE CONTRIBUTIONS.—

14 “(A) IN GENERAL.—For purposes of para-
 15 graph (1), the term ‘comparable contributions’
 16 means contributions—

17 “(i) which are the same amount, or

18 “(ii) if the employees are covered by a
 19 health plan, which are the same percentage
 20 of the annual deductible limit under the
 21 plan covering the employees.

22 “(B) PART-YEAR EMPLOYEES.—In the
 23 case of an employee who is employed by the em-
 24 ployer for only a portion of the calendar year,
 25 a contribution to the health savings account of

1 such employee shall be treated as comparable if
 2 it is an amount which bears the same ratio to
 3 the comparable amount (determined without re-
 4 gard to this subparagraph) as such portion
 5 bears to the entire calendar year.

6 “(3) COMPARABLE PARTICIPATING EMPLOY-
 7 EES.—For purposes of paragraph (1), the term
 8 ‘comparable participating employees’ means all em-
 9 ployees who are covered (if at all) under the same
 10 health plan of the employer and have the same cat-
 11 egory of coverage. For purposes of the preceding
 12 sentence, the categories of coverage are self-only and
 13 family coverage.

14 “(4) PART-TIME EMPLOYEES.—

15 “(A) IN GENERAL.—Paragraph (3) shall
 16 be applied separately with respect to part-time
 17 employees and other employees.

18 “(B) PART-TIME EMPLOYEE.—For pur-
 19 poses of subparagraph (A), the term ‘part-time
 20 employee’ means any employee who is custom-
 21 arily employed for fewer than 30 hours per
 22 week.”.

23 (11) Section 4980G(d) of such Code is amended
 24 by striking “section 4980E” and inserting “this sec-
 25 tion”.

1 (12) Section 6693(a)(2)(C) of such Code is
 2 amended by striking “section 223(h)” and inserting
 3 “section 223(f)”.

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

7 **SEC. 4. ALLOWANCE OF DISTRIBUTIONS FOR PRESCRIP-**
 8 **TION AND OVER-THE-COUNTER MEDICINES**
 9 **AND DRUGS.**

10 (a) HSAs.—Paragraph (2)(A) of section 223(c) of
 11 the Internal Revenue Code of 1986, as redesignated by
 12 section 3, is amended by adding at the end the following:
 13 “The term ‘qualified medical expenses’ shall include an
 14 amount paid for any prescription or over-the-counter med-
 15 icine or drug.”.

16 (b) ARCHER MSAs.—Section 220(d)(2)(A) of the In-
 17 ternal Revenue Code of 1986 is amended—

18 (1) by striking “section 223(d)(2)(D)” and in-
 19 serting “section 223(c)(2)(B)”, and

20 (2) by adding at the end the following: “The
 21 term ‘qualified medical expenses’ shall include an
 22 amount paid for any prescription or over-the-counter
 23 medicine or drug.”.

24 (c) HEALTH FLEXIBLE SPENDING ARRANGEMENTS
 25 AND HEALTH REIMBURSEMENT ARRANGEMENTS.—Sub-

1 section (f) of section 106 of the Internal Revenue Code
2 of 1986 is amended to read as follows:

3 “(f) REIMBURSEMENTS FOR ALL MEDICINES,
4 DRUGS, AND MENSTRUAL CARE PRODUCTS.—For pur-
5 poses of this section and section 105—

6 “(1) reimbursement for expenses incurred for
7 any prescription or over-the-counter medicine or
8 drug shall be treated as a reimbursement for med-
9 ical expenses, and

10 “(2) expenses incurred for menstrual care prod-
11 ucts (as defined in section 223(c)(2)(B)) shall be
12 treated as incurred for medical care.”.

13 (d) EFFECTIVE DATES.—

14 (1) DISTRIBUTIONS FROM SAVINGS AC-
15 COUNTS.—The amendments made by subsections (a)
16 and (b) shall apply to amounts paid in taxable years
17 beginning after the date of the enactment of this
18 Act.

19 (2) REIMBURSEMENTS.—The amendment made
20 by subsection (c) shall apply to expenses incurred in
21 plan years beginning after the date of the enactment
22 of this Act.

1 **SEC. 5. PURCHASE OF HEALTH INSURANCE FROM HSA.**

2 (a) IN GENERAL.—Paragraph (2) of section 223(c)
3 of the Internal Revenue Code of 1986, as redesignated by
4 section 3, is amended—

5 (1) by striking subparagraphs (B) and (C), and
6 (2) by redesignating subparagraph (D) as sub-
7 paragraph (B).

8 (b) CONFORMING AMENDMENT.—Paragraph (2) of
9 section 223(c) of the Internal Revenue Code of 1986, as
10 amended by the preceding sections of this Act, is further
11 amended by striking “and any dependent (as defined in
12 section 152, determined without regard to subsections
13 (b)(1), (b)(2), and (d)(1)(B) thereof) of such individual”
14 and inserting “any dependent (as defined in section 152,
15 determined without regard to subsections (b)(1), (b)(2),
16 and (d)(1)(B) thereof) of such individual, and any child
17 (as defined in section 152(f)(1)) of such individual who
18 has not attained the age of 27 before the end of such indi-
19 vidual’s taxable year”.

20 (c) EFFECTIVE DATE.—The amendments made by
21 this section shall apply with respect to insurance pur-
22 chased after the date of the enactment of this Act in tax-
23 able years beginning after such date.

1 **SEC. 6. SPECIAL RULE FOR CERTAIN MEDICAL EXPENSES**
 2 **INCURRED BEFORE ESTABLISHMENT OF AC-**
 3 **COUNT.**

4 (a) IN GENERAL.—Paragraph (2) of section 223(c)
 5 of the Internal Revenue Code of 1986, as amended and
 6 redesignated by the preceding sections of this Act, is fur-
 7 ther amended by adding at the end the following new sub-
 8 paragraph:

9 “(C) CERTAIN MEDICAL EXPENSES IN-
 10 CURRED BEFORE ESTABLISHMENT OF ACCOUNT
 11 TREATED AS QUALIFIED.—An expense shall not
 12 fail to be treated as a qualified medical expense
 13 solely because such expense was incurred before
 14 the establishment of the health savings account
 15 if such expense was incurred—

16 “(i) during either—

17 “(I) the taxable year in which the
 18 health savings account was estab-
 19 lished, or

20 “(II) the preceding taxable year,
 21 in the case of a health savings ac-
 22 count established after the taxable
 23 year in which such expense was in-
 24 curred but before the time prescribed
 25 by law for filing the return for such

1 taxable year (not including extensions
2 thereof), and

3 “(ii) for medical care which (but for
4 the fact that it was incurred before the es-
5 tablishment of the account) otherwise
6 meets the requirements of the preceding
7 subparagraphs.”.

8 (b) EFFECTIVE DATE.—The amendment made by
9 this section shall apply to taxable years beginning after
10 the date of the enactment of this Act.

11 **SEC. 7. ADMINISTRATIVE ERROR CORRECTION BEFORE**
12 **DUE DATE OF RETURN.**

13 (a) IN GENERAL.—Paragraph (3) of section 223(e)
14 of the Internal Revenue Code of 1986, as amended and
15 redesignated by the preceding sections of this Act, is
16 amended by adding at the end the following new subpara-
17 graph:

18 “(D) EXCEPTION FOR ADMINISTRATIVE
19 ERRORS CORRECTED BEFORE DUE DATE OF RE-
20 TURN.—Subparagraph (A) shall not apply if
21 any payment or distribution is made to correct
22 an administrative, clerical, or payroll contribu-
23 tion error and if—

24 “(i) such distribution is received by
25 the individual on or before the last day

1 prescribed by law (including extensions of
 2 time) for filing such individual's return for
 3 such taxable year, and

4 “(ii) such distribution is accompanied
 5 by the amount of net income attributable
 6 to such contribution.

7 Any net income described in clause (ii) shall be
 8 included in the gross income of the individual
 9 for the taxable year in which it is received.”.

10 (b) EFFECTIVE DATE.—The amendment made by
 11 this section shall take effect on the date of the enactment
 12 of this Act.

13 **SEC. 8. ALLOWING HSA ROLLOVER TO CHILD OR PARENT**
 14 **OF ACCOUNT HOLDER.**

15 (a) IN GENERAL.—Paragraph (7)(A) of section
 16 223(e) of the Internal Revenue Code of 1986, as redesign-
 17 nated by the preceding sections of this Act, is amended—

18 (1) by inserting “, child, parent, or grand-
 19 parent” after “surviving spouse”,

20 (2) by inserting “, child, parent, or grand-
 21 parent, as the case may be,” after “the spouse”,

22 (3) by inserting “, CHILD, PARENT, OR GRAND-
 23 PARENT” after “SPOUSE” in the heading thereof,
 24 and

1 (4) by adding at the end the following: “In the
 2 case of a child who acquires such beneficiary’s inter-
 3 est and with respect to whom a deduction under sec-
 4 tion 151 is allowable to another taxpayer for a tax-
 5 able year beginning in the calendar year in which
 6 such individual’s taxable year begins, such health
 7 savings account shall be treated as a health savings
 8 account of such child.”.

9 (b) EFFECTIVE DATE.—The amendments made by
 10 this section shall apply to taxable years beginning after
 11 the date of the enactment of this Act.

12 **SEC. 9. EQUIVALENT BANKRUPTCY PROTECTIONS FOR**
 13 **HEALTH SAVINGS ACCOUNTS AS RETIRE-**
 14 **MENT FUNDS.**

15 (a) IN GENERAL.—Section 522 of title 11, United
 16 States Code, is amended by adding at the end the fol-
 17 lowing new subsection:

18 “(r) TREATMENT OF HEALTH SAVINGS AC-
 19 COUNTS.—For purposes of this section, any health savings
 20 account (as described in section 223 of the Internal Rev-
 21 enue Code of 1986) shall be treated in the same manner
 22 as an individual retirement account described in section
 23 408 of such Code.”.

24 (b) EFFECTIVE DATE.—The amendment made by
 25 this section shall apply to cases commencing under title

1 11, United States Code, after the date of the enactment
2 of this Act.

○