

110TH CONGRESS
2D SESSION

S. 2743

To amend the Internal Revenue Code of 1986 to provide for the establishment of financial security accounts for the care of family members with disabilities, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 11, 2008

Mr. CASEY (for himself and Mr. HATCH) 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 provide for the establishment of financial security accounts for the care of family members with disabilities, 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 “Financial Security Ac-
5 counts for Individuals with Disabilities Act of 2008”.

6 **SEC. 2. FINANCIAL SECURITY ACCOUNTS FOR INDIVIDUALS**
7 **WITH DISABILITIES.**

8 (a) ESTABLISHMENT.—

1 dividual who is disabled and who is the designated
2 beneficiary of the trust, but only if the written gov-
3 erning instrument creating the trust meets the fol-
4 lowing requirements:

5 “(A) No contribution will be accepted—

6 “(i) except in the case of rollover con-
7 tributions described in subsection (c)(4)
8 and sections 223(c)(5)(A)(ii),
9 408(d)(3)(A)(iii), 529(c)(3)(E), and
10 530(d)(9)—

11 “(I) unless it is in cash, and

12 “(II) if such contribution would
13 result in aggregate contributions for
14 the taxable year and all preceding tax-
15 able years exceeding \$500,000, and

16 “(ii) after the date on which the ac-
17 count holder attains the age of 65.

18 “(B) The trustee is a bank (as defined in
19 section 408(n)), a parent or guardian of the
20 designated beneficiary, a designee of a parent
21 or guardian of the designated beneficiary, the
22 designated beneficiary, or another person, who
23 demonstrates to the satisfaction of the Sec-
24 retary that the manner in which that person

1 will administer the trust will be consistent with
2 the requirements of this section.

3 “(C) No part of the trust assets will be in-
4 vested in life insurance contracts.

5 “(D) The assets of the trust shall not be
6 commingled with other property except in a
7 common trust fund or common investment
8 fund.

9 “(2) QUALIFIED DISABILITY EXPENSES.—The
10 term ‘qualified disability expenses’ means, with re-
11 spect to an individual with a disability, amounts paid
12 or incurred, not compensated for by insurance or
13 otherwise, for—

14 “(A) education, medical and dental care,
15 community based support services, employment
16 training and support, moving, and assistive
17 technology,

18 “(B) after the designated beneficiary has
19 attained the age of 18, housing and transpor-
20 tation, and

21 “(C) funeral and burial services and prop-
22 erty.

23 “(3) INDIVIDUAL WITH A DISABILITY.—An in-
24 dividual is an individual with a disability if such in-
25 dividual is receiving supplemental security income

1 benefits under title XVI of the Social Security Act
2 or an individual otherwise eligible to receive such
3 benefits notwithstanding the income and assets tests
4 required for eligibility for such benefits.

5 “(4) RULES RELATING TO ESTATE AND GIFT
6 TAX.—Rules similar to the rules of paragraphs (2),
7 (4), and (5) of section 529(c) shall apply for pur-
8 poses of this section.

9 “(5) ONLY 1 ACCOUNT PER QUALIFIED BENE-
10 FICIARY.—No individual may have more than 1 fi-
11 nancial security account for an individual with a dis-
12 ability.

13 “(c) TAX TREATMENT OF DISTRIBUTIONS.—

14 “(1) IN GENERAL.—Except as otherwise pro-
15 vided in this subsection, any amount paid or distrib-
16 uted out of a financial security account for an indi-
17 vidual with a disability shall be included in gross in-
18 come by the payee or distributee, as the case may
19 be, for the taxable year in which received in the
20 manner as provided in section 72.

21 “(2) DISTRIBUTIONS FOR BENEFIT OF DES-
22 IGNATED BENEFICIARY.—

23 “(A) IN GENERAL.—No amount shall be
24 includible in gross income under paragraph (1)
25 if the qualified disability expenses of the des-

1 ignated beneficiary during the taxable year are
2 not less than the aggregate distributions during
3 the taxable year.

4 “(B) DISTRIBUTIONS IN EXCESS OF EX-
5 PENSES.—If such aggregate distributions ex-
6 ceed such expenses during the taxable year, the
7 amount otherwise includible in gross income
8 under paragraph (1) shall be reduced by the
9 amount which bears the same ratio to the
10 amount which would be includible in gross in-
11 come under paragraph (1) (without regard to
12 this subparagraph) as the qualified disability
13 expenses bear to such aggregate distributions.

14 “(C) DISALLOWANCE OF EXCLUDED
15 AMOUNTS AS DEDUCTION, CREDIT, OR EXCLU-
16 SION.—No deduction, credit, or exclusion shall
17 be allowed to the taxpayer under any other sec-
18 tion of this chapter for any qualified disability
19 expenses to the extent taken into account in de-
20 termining the amount of the exclusion under
21 this paragraph.

22 “(3) ADDITIONAL TAX FOR DISTRIBUTIONS NOT
23 USED FOR BENEFIT OF DESIGNATED BENE-
24 FICIARY.—

1 “(A) IN GENERAL.—The tax imposed by
2 this chapter for any taxable year on any tax-
3 payer who receives a payment or distribution
4 from a financial security account for an indi-
5 vidual with a disability shall be increased by 10
6 percent of the amount thereof which is includ-
7 ible in gross income under paragraph (1).

8 “(B) EXCEPTION.—Subparagraph (A)
9 shall not apply if the payment or distribution is
10 made to a beneficiary (or to the estate of the
11 designated beneficiary) on or after the death of
12 the designated beneficiary.

13 “(C) CONTRIBUTIONS RETURNED BEFORE
14 CERTAIN DATE.—Subparagraph (A) shall not
15 apply to the distribution of any contribution
16 made during a taxable year if—

17 “(i) such distribution is made before
18 the first day of the sixth month of the tax-
19 able year following the taxable year, and

20 “(ii) such distribution is accompanied
21 by the amount of net income attributable
22 to such excess contribution.

23 Any net income described in clause (ii) shall be
24 included in gross income for the taxable year in
25 which such excess contribution was made.

1 “(4) ROLLOVERS.—Paragraph (1) shall not
2 apply to any amount paid or distributed from a fi-
3 nancial security account for an individual with a dis-
4 ability to the extent that the amount received is
5 paid, not later than the 60th day after the date of
6 such payment or distribution, into another financial
7 security account for an individual with a disability
8 for the benefit of the same beneficiary. The pre-
9 ceding sentence shall not apply to any payment or
10 distribution if it applied to any prior payment or dis-
11 tribution during the 12-month period ending on the
12 date of the payment or distribution.

13 “(5) CHANGE IN BENEFICIARY.—Any change in
14 the beneficiary of a financial security account for an
15 individual with a disability shall not be treated as a
16 distribution for purposes of paragraph (1) if the new
17 beneficiary is disabled and is a member of the family
18 (as defined in section 529(e)(2)) of the old bene-
19 ficiary.

20 “(d) TAX TREATMENT OF ACCOUNTS.—Rules similar
21 to the rules of paragraphs (2) and (4) of section 408(e)
22 shall apply to any financial security account for an indi-
23 vidual with a disability.

1 “(e) COMMUNITY PROPERTY LAWS.—This section
2 shall be applied without regard to any community property
3 laws.

4 “(f) CUSTODIAL ACCOUNTS.—For purposes of this
5 section, a custodial account shall be treated as a trust if—

6 “(1) the assets of such account are held by a
7 bank (as defined in section 408(n) or another person
8 who demonstrates, to the satisfaction of the Sec-
9 retary, that the manner in which he will administer
10 the account will be consistent with the requirements
11 of this section, and

12 “(2) the custodial account would, except for the
13 fact that it is not a trust, constitute an account de-
14 scribed in subsection (c)(1).

15 For purposes of this title, in the case of a custodial ac-
16 count treated as a trust by reason of the preceding sen-
17 tence, the custodian of such account shall be treated as
18 the trustee thereof.

19 “(g) REPORTS.—The trustee of a financial security
20 account for an individual with a disability shall make such
21 reports regarding such account to the Secretary and to
22 the beneficiary of the account with respect to contribu-
23 tions, distributions, and such other matters as the Sec-
24 retary may require. The reports required by this sub-
25 section shall be filed at such time and in such manner

1 and furnished to such individuals at such time and in such
2 manner as may be required.

3 “(h) INFLATION ADJUSTMENT.—

4 “(1) IN GENERAL.—In the case of any taxable
5 year beginning after 2008, the \$500,000 dollar
6 amount under subsection (b)(1)(A)(ii) shall be in-
7 creased by an amount equal to—

8 “(A) such dollar amount, multiplied by

9 “(B) the cost of living adjustment deter-
10 mined under section 1(f)(3) for the calendar
11 year in which the taxable year begins, deter-
12 mined by substituting ‘calendar year 2007’ for
13 ‘calendar year 1992’ in subparagraph (B)
14 thereof.

15 “(2) ROUNDING.—If any amount as adjusted
16 under paragraph (1) is not a multiple of \$1,000,
17 such amount shall be rounded to the next lowest
18 multiple of \$1,000.

19 “(i) REGULATIONS.—The Secretary, in consultation
20 with the Secretary of Health and Human Services, shall
21 prescribe regulations to carry out the purposes of this sec-
22 tion, including regulations—

23 “(1) to ensure that individuals do not have
24 more than 1 financial security account for an indi-
25 vidual with a disability, and

1 “(2) to prevent fraud and abuse with respect to
2 amounts claimed as qualified disability expenses.”.

3 (2) CONFORMING AMENDMENTS.—

4 (A) PENALTY FOR FAILURE TO MEET MIN-
5 IMUM DISTRIBUTION REQUIREMENT.—Sub-
6 section (c) of section 4974 of such Code is
7 amended by striking “or” at the end of para-
8 graph (4), by striking the period at the end of
9 paragraph (5) and inserting “, or”, and by in-
10 sserting after paragraph (5) the following new
11 paragraph:

12 “(6) any financial security account for an indi-
13 vidual with a disability (as defined in section
14 530A(b)).”.

15 (B) TAX ON PROHIBITED TRANS-
16 ACTIONS.—

17 (i) IN GENERAL.—Paragraph (1) of
18 section 4975(e) of such Code (defining
19 plan) is amended by redesignating sub-
20 paragraph (G) as subparagraph (H), by
21 striking “or” at the end of subparagraph
22 (F), and by adding after subparagraph (F)
23 the following:

1 “(G) a financial security account for an in-
2 dividual with a disability described in section
3 530A, or”.

4 (ii) EXEMPTION.—Subsection (d) of
5 section 4975 of such Code (relating to ex-
6 emptions) is amended by striking “or” at
7 the end of paragraph (22), by striking the
8 period at the end of paragraph (23) and
9 inserting “; or”, and by inserting after
10 paragraph (23) the following:

11 “(24) in the case of a financial security account
12 for an individual with a disability, any transaction to
13 provide housing or other services by a family mem-
14 ber to or for the designated beneficiary of the trust
15 to the extent that such transaction does not exceed
16 the fair market value of the housing or service (as
17 the case may be) provided.”.

18 (iii) SPECIAL RULE.—Subsection (c)
19 of section 4975 of such Code (relating to
20 tax on prohibited transactions) is amended
21 by adding at the end the following new
22 paragraph:

23 “(7) SPECIAL RULE FOR FINANCIAL SECURITY
24 ACCOUNT FOR INDIVIDUALS WITH DISABILITIES.—
25 An individual for whose benefit a financial security

1 account for an individual with a disability is estab-
2 lished and any contributor to such account shall be
3 exempt from the tax imposed by this section with re-
4 spect to any transaction concerning such account
5 (which would otherwise be taxable under this sec-
6 tion) if section 530A(d) applies with respect to such
7 transaction.”.

8 (C) ROLLOVERS FROM CERTAIN OTHER
9 TAX FAVORED ACCOUNTS.—

10 (i) QUALIFIED TUITION PROGRAMS.—

11 Paragraph (3) of section 529(e) of such
12 Code is amended by adding at the end the
13 following new subparagraph:

14 “(E) CONTRIBUTIONS TO FINANCIAL SE-
15 CURITY ACCOUNT FOR AN INDIVIDUAL WITH A
16 DISABILITY.—Subparagraph (A) shall not apply
17 to that portion of any distribution which, within
18 60 days of such distribution, is contributed to
19 a financial security account for an individual
20 with a disability for the benefit of the des-
21 ignated beneficiary.”.

22 (ii) EDUCATION SAVINGS AC-
23 COUNTS.—Subsection (d) of section 530 of

24 such Code is amended by adding at the
25 end the following new paragraph:

1 “(9) CONTRIBUTIONS TO FINANCIAL SECURITY
2 ACCOUNT FOR AN INDIVIDUAL WITH A DIS-
3 ABILITY.—Paragraph (1) shall not apply to any
4 amount paid or distributed from a Coverdell edu-
5 cation savings account to the extent that the amount
6 received is paid, not later than the 60th day after
7 the date of such payment or distribution, into a fi-
8 nancial security account for an individual with a dis-
9 ability for the benefit of the same beneficiary.”.

10 (iii) HEALTH SAVINGS ACCOUNTS.—

11 Subparagraph (A) of section 223(f)(5) is
12 amended—

13 (I) by inserting “(i)” before “into
14 a health savings account”, and

15 (II) by inserting “or (ii) into a fi-
16 nancial security account for an indi-
17 vidual with a disability for the benefit
18 of such beneficiary” before “not later
19 than the 60th day”.

20 (iv) CERTAIN IRAS.—Subparagraph
21 (A) of section 408(d)(3) is amended by
22 striking “or” at the end of clause (i), by
23 striking the period at the end of clause (ii)
24 and inserting “; or”, and by inserting after
25 clause (ii) the following new clause:

1 “(iii) the entire amount received (in-
2 cluding money and other property) is paid
3 into a financial security account for an in-
4 dividual with a disability for the benefit of
5 the child or grandchild of such individual
6 not later than the 60th day after the day
7 on which the payment or distribution is re-
8 ceived.”.

9 (D) REPORTS.—Paragraph (2) of section
10 6693(a) of such Code is amended by striking
11 “and” at the end of subparagraph (D), by
12 striking the period at the end of subparagraph
13 (E) and inserting “and”, and by inserting after
14 subparagraph (E) the following new subpara-
15 graph:

16 “(F) section 530A(g) (relating to financial
17 security accounts for individuals with disabili-
18 ties).”.

19 (E) EXCLUSION FROM INCOME.—Sub-
20 section (b) of section 1612 of the Social Secu-
21 rity Act (42 U.S.C. 1382a) is amended by
22 striking “or” at the end of paragraph (22), by
23 striking the period at the end of paragraph (23)
24 and inserting “; or”, and by inserting after
25 paragraph (23) the following:

1 “(24) any contribution to a financial security
2 account for an individual with a disability.”.

3 (F) CLERICAL AMENDMENT.—The table of
4 parts for subchapter F of chapter 1 of such
5 Code is amended by inserting after the item re-
6 lating to part VIII the following new item:

 “PART IX. SAVINGS FOR INDIVIDUALS WITH DISABILITIES.”.

7 (b) DEDUCTION FOR CONTRIBUTIONS TO FINANCIAL
8 SECURITY ACCOUNTS FOR INDIVIDUALS WITH DISABIL-
9 ITIES.—

10 (1) IN GENERAL.—Part VII of subchapter B of
11 chapter 1 of the Internal Revenue Code of 1986 is
12 amended by redesignating section 224 as section
13 225 and inserting after section 223 the following
14 new section:

15 **“SEC. 224. CONTRIBUTIONS TO FINANCIAL SECURITY AC-**
16 **COUNTS FOR INDIVIDUALS WITH DISABIL-**
17 **ITIES.**

18 “(a) ALLOWANCE OF DEDUCTION.—In the case of an
19 individual, there shall be allowed as a deduction an
20 amount equal to the amount paid in cash for the taxable
21 year by or on behalf of such individual to a financial secu-
22 rity account for an individual with a disability (as defined
23 in section 530A(b)(1)) for the benefit of such individual’s
24 child, grandchild, brother, or sister.

25 “(b) LIMITATIONS.—

1 “(1) IN GENERAL.—The amount allowable as a
2 deduction under subsection (a) for any taxable year
3 shall not exceed \$2,000.

4 “(2) COST-OF-LIVING ADJUSTMENT.—

5 “(A) IN GENERAL.—In the case of any
6 taxable year beginning after 2008, the \$2,000
7 amount under subparagraph (A) shall be in-
8 creased by an amount equal to—

9 “(i) such dollar amount, multiplied by

10 “(ii) the cost-of-living adjustment de-
11 termined under section 1(f)(3) for the cal-
12 endar year in which the taxable year be-
13 gins, determined by substituting ‘calendar
14 year 2007’ for ‘calendar year 1992’ in sub-
15 paragraph (B) thereof.

16 “(B) ROUNDING.—If any amount after ad-
17 justment under the preceding sentence is not a
18 multiple of \$200, such amount shall be rounded
19 to the next lowest multiple of \$200.

20 “(3) REDUCTION BASED ON ADJUSTED GROSS
21 INCOME.—The dollar limitation under paragraph (1)
22 for such taxable year shall be reduced (but not below
23 zero) by the amount determined under section
24 219(g)(2).”.

1 (2) CLERICAL AMENDMENT.—The table of sec-
2 tions for part VII of subchapter B of chapter 1 of
3 such Code is amended by redesignating the item re-
4 lating to section 224 as relating to section 225 and
5 by inserting after the item relating to section 223
6 the following new item:

“Sec. 224. Contributions to financial security accounts for individuals with dis-
 abilities.”.

7 (c) ANNUAL REPORTS.—

8 (1) IN GENERAL.—The Secretary of the Treas-
9 ury, in consultation with the Secretary of Health
10 and Human Services, shall report annually to Con-
11 gress on the usage of financial security accounts for
12 individuals with disabilities under section 530A of
13 the Internal Revenue Code of 1986.

14 (2) CONTENTS OF REPORT.—Any report under
15 paragraph (1) shall include—

16 (A) the number of people with a financial
17 security account for an individual with a dis-
18 ability,

19 (B) the total amount of contributions to
20 such accounts and the number of individuals
21 claiming the deduction allowed under section
22 224 of the Internal Revenue Code of 1986, as
23 added by subsection(b), and the total amount of
24 such deductions,

1 (C) the total amount and nature of dis-
 2 tributions from such accounts, and

3 (D) issues relating to the abuse of such ac-
 4 counts, if any.

5 (d) EFFECTIVE DATE.—The amendments made by
 6 this section shall apply to taxable years beginning after
 7 December 31, 2007.

8 **SEC. 3. TREATMENT OF FINANCIAL SECURITY ACCOUNTS**
 9 **FOR INDIVIDUALS WITH DISABILITIES**
 10 **UNDER CERTAIN FEDERAL PROGRAMS.**

11 (a) TREATMENT AS A MEDICAID EXCEPTED
 12 TRUST.—Paragraph (4) of section 1917(d) of the Social
 13 Security Act (42 U.S.C. 1396p(d)(4)) is amended by add-
 14 ing at the end the following new subparagraph:

15 “(D) A trust which is a financial security ac-
 16 count for an individual with a disability described in
 17 section 530A(b)(1) of the Internal Revenue Code of
 18 1986.”.

19 (b) ACCOUNT FUNDS DISREGARDED FOR PURPOSES
 20 OF CERTAIN OTHER MEANS-TESTED FEDERAL PRO-
 21 GRAMS.—Notwithstanding any other provision of Federal
 22 law that requires consideration of 1 or more financial cir-
 23 cumstances of an individual, for the purpose of deter-
 24 mining eligibility to receive, or the amount of, any assist-
 25 ance or benefit authorized by such provision to be provided

1 to or for the benefit of such individual, any amount (in-
2 cluding earnings thereon) in any financial security account
3 for an individual with a disability of such individual, and
4 any distribution for qualified disability expenses (as de-
5 fined in section 530A(b)(2)) shall be disregarded for such
6 purpose with respect to any period during which such indi-
7 vidual maintains, makes contributions to, or receives dis-
8 tributions from such financial security account.

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