

116TH CONGRESS
2D SESSION

H. R. 5837

To amend the Internal Revenue Code of 1986 to permit treatment of child care payments as elective deferrals for purposes of employer matching contributions, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 10, 2020

Mrs. WAGNER (for herself and Mr. JEFFRIES) introduced the following bill;
which was referred to the Committee on Ways and Means

A BILL

To amend the Internal Revenue Code of 1986 to permit treatment of child care payments as elective deferrals for purposes of employer matching contributions, 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 “Investing in Your
5 Family’s Future Act”.

1 **SEC. 2. TREATMENT OF CHILD CARE PAYMENTS AS ELEC-**
2 **TIVE DEFERRALS FOR PURPOSES OF MATCH-**
3 **ING CONTRIBUTIONS.**

4 (a) IN GENERAL.—Subparagraph (A) of section
5 401(m)(4) of the Internal Revenue Code of 1986 is
6 amended by striking “and” at the end of clause (i), by
7 striking the period at the end of clause (ii) and inserting
8 “, and”, and by adding at the end the following new
9 clause:

10 “(iii) subject to the requirements of
11 paragraph (13), any employer contribution
12 made to a defined contribution plan on be-
13 half of an employee on account of a quali-
14 fied child care payment.”.

15 (b) QUALIFIED CHILD CARE PAYMENT.—Paragraph
16 (4) of section 401(m) of the Internal Revenue Code of
17 1986 is amended by adding at the end the following new
18 subparagraph:

19 “(D) QUALIFIED CHILD CARE PAYMENT.—
20 The term ‘qualified child care payment’ means
21 any payment by an employee of employment-re-
22 lated expenses (within the meaning of section
23 21(b)(2)), but only to the extent such payments
24 in the aggregate for the year do not exceed an
25 amount equal to

1 “(i) the limitation applicable under
 2 section 402(g) for the year (or, if lesser,
 3 the employee’s compensation (as defined in
 4 section 415(c)(3)) for the year), reduced
 5 by

6 “(ii) the elective deferrals made by the
 7 employee for such year.”.

8 (c) MATCHING CONTRIBUTIONS FOR QUALIFIED
 9 CHILD CARE PAYMENTS.—Subsection (m) of section 401
 10 of the Internal Revenue Code of 1986 is amended by re-
 11 designating paragraph (13) as paragraph (14), and by in-
 12 serting after paragraph (12) the following new paragraph:

13 “(13) MATCHING CONTRIBUTIONS FOR QUALI-
 14 FIED CHILD CARE PAYMENTS.—

15 “(A) IN GENERAL.—For purposes of para-
 16 graph (4)(A)(iii), an employer contribution
 17 made to a defined contribution plan on account
 18 of a qualified child care payment shall be treat-
 19 ed as a matching contribution for purposes of
 20 this title if—

21 “(i) the plan provides matching con-
 22 tributions on account of elective deferrals
 23 at the same rate as contributions on ac-
 24 count of qualified child care payments,

1 “(ii) the plan provides matching con-
2 tributions on account of qualified child
3 care payments only on behalf of employees
4 otherwise eligible to make elective defer-
5 rals, and

6 “(iii) under the plan, all employees el-
7 igible to receive matching contributions on
8 account of elective deferrals are eligible to
9 receive matching contributions on account
10 of qualified child care payments.

11 “(B) TREATMENT FOR PURPOSES OF NON-
12 DISCRIMINATION RULES, ETC.—

13 “(i) NONDISCRIMINATION RULES.—
14 For purposes of subparagraph (A)(iii),
15 subsection (a)(4), and section 410(b),
16 matching contributions described in para-
17 graph (4)(A)(iii) shall not fail to be treated
18 as available to an employee solely because
19 such employee does not have employment-
20 related expenses (within the meaning of
21 section 21(b)(2)).

22 “(ii) CHILD CARE PAYMENTS NOT
23 TREATED AS PLAN CONTRIBUTION.—Ex-
24 cept as provided in clause (iii), a qualified

1 child care payment shall not be treated as
2 a contribution to a plan under this title.

3 “(iii) MATCHING CONTRIBUTION
4 RULES.—Solely for purposes of meeting
5 the requirements of paragraph (11)(B) or
6 (12) of this subsection, or paragraph
7 (11)(B)(i)(II), (12)(B), or (13)(D) of sub-
8 section (k), a plan may treat a qualified
9 child care payment as an elective deferral
10 or an elective contribution, whichever is
11 applicable.”.

12 (d) SIMPLE RETIREMENT ACCOUNTS.—Paragraph
13 (2) of section 408(p) of the Internal Revenue Code of
14 1986 is amended by adding at the end the following new
15 subparagraph:

16 “(F) MATCHING CONTRIBUTIONS FOR
17 QUALIFIED CHILD CARE PAYMENTS.—

18 “(i) IN GENERAL.—Subject to the
19 rules of clause (iii), an arrangement shall
20 not fail to be treated as meeting the re-
21 quirements of subparagraph (A)(iii) solely
22 because under the arrangement, solely for
23 purposes of such subparagraph, qualified
24 child care payments are treated as
25 amounts elected by the employee under

1 subparagraph (A)(i)(I) to the extent such
2 payments do not exceed—

3 “(I) the applicable dollar amount
4 under subparagraph (E) (after appli-
5 cation of section 414(v)) for the year
6 (or, if lesser, the employee’s com-
7 pensation (as defined in section
8 415(c)(3)) for the year), reduced by

9 “(II) any other amounts elected
10 by the employee under subparagraph
11 (A)(i)(I) for the year.

12 “(ii) QUALIFIED CHILD CARE PAY-
13 MENT.—For purposes of this subpara-
14 graph, the term ‘qualified child care pay-
15 ment’ means any payment by an employee
16 of employment-related expenses (within the
17 meaning of section 21(b)(2)).

18 “(iii) APPLICABLE RULES.—Clause (i)
19 shall apply to an arrangement only if,
20 under the arrangement—

21 “(I) matching contributions on
22 account of qualified child care pay-
23 ments are provided only on behalf of
24 employees otherwise eligible to elect

1 contributions under subparagraph
2 (A)(i)(I), and
3 “(II) all employees otherwise eli-
4 gible to participate in the arrange-
5 ment are eligible to receive matching
6 contributions on account of qualified
7 child care payments.”.

8 (e) 403(b) PLANS.—Subparagraph (A) of section
9 403(b)(12) of the Internal Revenue Code of 1986 is
10 amended by adding at the end the following: “The fact
11 that the employer offers matching contributions on ac-
12 count of qualified child care payments as described in sec-
13 tion 401(m)(13) shall not be taken into account in deter-
14 mining whether the arrangement satisfies the require-
15 ments of clause (ii) (and any regulation thereunder).”.

16 (f) 457(b) PLANS.—Subsection (b) of section 457 of
17 the Internal Revenue Code of 1986 is amended by adding
18 at the end the following: “A plan which is established and
19 maintained by an employer which is described in sub-
20 section (e)(1)(A) shall not be treated as failing to meet
21 the requirements of this subsection solely because the
22 plan, or another plan maintained by the employer which
23 meets the requirements of section 401(a), provides for
24 matching contributions on account of qualified child care
25 payments as described in section 401(m)(13).”.

1 (g) REGULATORY AUTHORITY.—The Secretary shall
2 prescribe regulations for purposes of implementing the
3 amendments made by this section, including regulations—

4 (1) permitting a plan to make matching con-
5 tributions for qualified child care payments, as de-
6 fined in sections 401(m)(4)(D) and 408(p)(2)(F) of
7 the Internal Revenue Code of 1986, as added by this
8 section, at a different frequency than matching con-
9 tributions are otherwise made under the plan, pro-
10 vided that the frequency is not less than annually;

11 (2) permitting employers to establish reasonable
12 procedures to claim matching contributions for such
13 qualified child care payments under the plan, includ-
14 ing an annual deadline (not earlier than 3 months
15 after the close of each plan year) by which a claim
16 must be made; and

17 (3) promulgating model amendments which
18 plans may adopt to implement matching contribu-
19 tions on such qualified child care payments for pur-
20 poses of sections 401(m), 408(p), 403(b), and
21 457(b) of the Internal Revenue Code of 1986.

22 (h) EFFECTIVE DATE.—The amendments made by
23 this section shall apply to contributions made for years
24 beginning after December 31, 2020.

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