Legislative Proposals Affecting the Taxation of Education Savings

As introduced in the 115th Congress, unless otherwise noted.

Provision	Current Law	Proposed Change	Notes/Observations
Increase Workplace Access to 529 Plans			
Employer Tax Credit for Cost of Providing Workplace Access to Direct Payroll Deduction	To encourage small employers to establish retirement plans, a tax credit is provided to defray the cost of starting a retirement plan. In general, employers are eligible for the tax credit if: • They have 100 or fewer employees; • At least one employee eligible to participate in the plan is a non-highly compensated employee; and • In the last three years before the first year of credit eligibility, the employer did not maintain a retirement plan for substantially the same employees. The credit is equal to 50% of qualified startup costs, up to a maximum of $500 per year. Employers may claim the credit for 3 years.	This proposal would expand the tax credit available to small employers for pension plan startup costs to include the cost of establishing or administering a payroll deduction contribution program for 529 plans and ABLE plans. The three-year, $500 limit on the tax credit would be applied separately with respect to such plans and any eligible pension plans of the employer. *529 and ABLE Account Improvement Act of 2017 (H.R. 529), Reps. Jenkins (R-KS), Kind (D-WI), Wittman (R-VA), Lofgren (D-CA), DeFazio (D-OR), Cole(R-OK), and Fitzpatrick (R-PA)*	This proposal is designed to encourage small employers to offer employees the opportunity to contribute to 529 plans through payroll deduction. Legislation reported unanimously by the Senate Finance Committee in 2016 (S. 3471 in the current Congress) would substantially increase the retirement plan start-up credit to up to $5,000.
Employer Seed Money Contributions to Employee 529 Plans as a Tax-Fee Fringe Benefit	Employer contributions to an employee's 529 plan are treated as taxable compensation.	Under this proposal, up to $100 a year (adjusted for inflation) of seed money contributed by an employer to an employee's 529 or ABLE account would be excluded from the employee's gross income. The contribution must be made: • To an account for which the designated beneficiary is the employee or a member of the employee's family; and • In connection with a payroll deduction contribution program established by the employer that is made available to a reasonable classification of employees that does not discriminate in favor of highly compensated employees. *H.R. 529 (Reps. Jenkins, Kind, et al)*	This proposal would allow employers that offer payroll deduction into 529 plans to provide employees a de minimis tax-free amount in order to encourage employees to establish 529 accounts.

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MATCHING EMPLOYER RETIREMENT CONTRIBUTIONS FOR EMPLOYEES MAKING 529 PLAN CONTRIBUTIONS	Generally, employers may make matching contributions to retirement plans for employees who contribute elective deferrals. Employer matching contributions may be subject to annual tests to determine if nondiscrimination requirements are met. An employer may only make matching contributions to a retirement plan when an employee makes contributions to his retirement plan. An employer may not make a matching contribution to a retirement plan based on an employee's contribution to some other tax-favored savings plan (such as a 529 plan).	A 2016 discussion draft released by Sen. Wyden (D-OR), the Retirement Improvements and Savings Enhancements (RISE) Act, includes a proposal to allow employers to make matching contributions to 401(k) retirement plans maintained on behalf of their employees who are making student loan payments. Under this proposal, for purposes of the rules on matching contributions, a plan may elect to treat student loan payments the same as an elective contribution to a 401(k) plan (i.e., the employer could make the 401(k) match even though the employee did not make a 401(k) contribution. CSF has proposed broadening the approach in the RISE Act discussion draft to also allow employers to make matching contributions to 401(k) plans on behalf of employees who make 529 plan or ABLE account contributions. Under this approach, 529 and ABLE account contributions by the employee would generally not be treated as an elective contribution to the retirement plan. However, employer matching contributions to the retirement plan with respect to such employee's 529/ABLE contributions would be tax-favored and would continue to be treated as a matching contribution for all purposes, including for nondiscrimination testing. 529/ABLE contributions taken into account for this purpose could be made to a 529 plan for the employee or a member of the employee's family, but could not exceed the maximum permitted employee 401(k) contribution, minus the employee's actual retirement plan elective contributions for the year.	

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		Matching contributions based on student loan repayments or 529/ABLE contributions could only be made: • On behalf of employees eligible to make elective contributions; • At the same rate as matching contributions on elective distributions; and • If all employees eligible for retirement plan matches are also eligible for matches on 529/ABLE contributions.	
Employer Matching Contributions Directly to 529 Plans	Employers cannot make tax-favored matching contributions to an employee's 529 plan.	This proposal would exclude up to $1,000 per year (adjusted annually for inflation) from the gross income of an employee for amounts contributed by an employer to a 529 plan held by the employee or the employee's spouse for the employee, the employee's spouse, or the employee's dependents. The exclusion would apply for purposes of income tax and payroll tax. *Boost Saving for College Act (S. 1790); Sens. Burr (R-NC), Casey (D-PA), Murkowski (R-AK), and Merkley (D-OR)* Another proposal would similarly exclude employer contributions to an employee's 529 plan from an individual's gross income, but the exclusion would be limited to the lesser of (i) the compensation includible in the individual's gross income for the year, or (ii) $5,000 ($10,000 for a joint return) for each dependent of the taxpayer who is the designated beneficiary of a 529 plan. This proposal also increases the penalty tax for non-qualified withdrawals from 529 or ABLE accounts to the greater of (i) 10% or (ii) the highest rate of income tax applicable to such person.	As drafted, these proposals would involve substantial revenue costs. It could also create unintended opportunities for abuse that could damage 529 plans because 529 plans do not receive pre-tax contributions, an employee receiving the employer match would avoid income and payroll taxes (and the employer would avoid paying its share of payroll taxes). However, the employee could immediately withdraw the match from the 529 plan for any purpose tax-free. H.R. 3046 would attempt to partially address these concerns through an increase in the penalty tax on account earnings for non-qualified distributions from 529 and ABLE accounts. However, because the penalty tax only applies to taxable distributions from 529 and ABLE accounts (i.e., distributions of

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		Help All Americans Save for College Act of 2017 (H.R. 3046), Reps. Poliquin (R-ME), O'Halleran (D-AZ), Sensenbrenner (R-WI), Davis (R-IL), and Fitzpatrick (R-PA)	earnings), the increased penalty would not appear to significantly deter the potential for tax-free withdrawal of employer contributions for non-qualified purposes.
Exclusion for Employer-Provided Educational Assistance to Include 529 Plan Contributions	The maximum exclusion for employer-provided educational assistance programs is $5,250 per year.	This proposal would expand the tax exclusion for employer-provided educational assistance programs to exclude from the gross income of an employee any qualified dependent 529 contributions made by the employer. A "qualified dependent 529 contribution" is defined as any amount contributed by an employer to a qualified tuition program on behalf of a designated beneficiary who is an employee's child and who, at the time of the contribution, is either (i) 18 year old or younger or (ii) a student who is 23 years old or younger. The proposal would also extend the exclusion to employer payments of principal or interest on any qualified education loan *HELP for Students and Parents Act (H.R. 1656), Reps. Meehan (R-PA); DelBene (D-WA); Ryan (D-OH), Hurd (R-TX), Davis (R-IL), Reichert (R-WA), Peters (D-CA), Poliquin (R-ME), and Fitzpatrick (R-PA)*	This proposal would provide income tax and employment tax relief for employer contributions to a 529 plan. As with other proposals discussed above, this proposal would likely lead to sizeable revenue loss to the government and potential abuse from premature withdrawals.
Remove Barriers to Decision to Make 529 Plan Contributions			
Investment Direction	529 plan investments may only be directed twice per year by a contributor or designated beneficiary. This restriction applies even if investments are simply being rebalanced among a 529 plan's menu of broad-based investment strategies.	This proposal would clarify that allowing a contributor or designated beneficiary to rebalance the investments in a 529 plan among broad-based investment strategies established under the program will not be treated as investment direction, unless the contributor or designated beneficiary directs the specific investments within those broad-based strategies. *H.R. 529 (Reps. Jenkins, Kind, et al)*	CSF has suggested technical changes to the bill language to confirm that the intent is not to limit the provision to periodic rebalancing.

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PENALTY-FREE WITHDRAWALS FOR GIFTS TO CHARITY	Amounts distributed from a 529 plan must be used to pay for qualified higher education expenses, such as tuition, fees, books, and room and board, in order for any earnings to be withdrawn tax-free. If a distribution from a 529 plan is used for any other purpose, the earnings portion will generally be includable in income and also subject to an additional 10% penalty tax.	This proposal would permit up to $1,000 of 529 plan distributions to be used (within 90 days) for charitable contributions without being subject to the additional tax for distributions that are not used for qualified higher education expenses. *H.R. 529 (Reps. Jenkins, Kind, et al)*	Distributed earnings would still be included in income (only the 10% additional tax is eliminated), but many individuals might get to take an itemized charitable deduction for that amount.
TAX TREATMENT OF 529 PLAN WITHDRAWALS TO PAY STUDENT LOANS	In order for any earnings to be withdrawn tax-free, amounts distributed from a 529 plan must be used to pay for qualified higher education expenses. The earnings portion of any distribution used for any other purpose will generally be includable in income and also subject to an additional 10% penalty tax.	This proposal would allow distributions from 529 plans to be used (within 90 days) for payments of principal or interest on certain education loans without being subject to the additional 10% penalty tax on distributions that are not used for qualified higher education expenses. The education loan payments must be made on behalf of the designated beneficiary or a family member of the beneficiary. *H.R. 529 (Reps. Jenkins, Kind, et al); Student Debt Repayment Fairness Act (H.R. 283), Rep. Elise Stefanik (R-NY)* Another proposal would modify the definition of "qualified higher education expenses" to include 529 plan distributions used to make payments of interest or principal on a qualified education loan with respect to a designated beneficiary. However, under the proposal, the definition of qualified higher education expenses would no longer include computers or related equipment, software, or Internet access. *Student Loan Borrowers' Bill of Rights Act of 2017 (H.R. 3630), Rep. Frederica Wilson (D-FL)*	

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PENALTY-FREE WITHDRAWALS TRANSFERRED TO IRAS	Amounts distributed from a 529 plan must generally be used to pay for qualified education expenses in order for any earnings to be withdrawn tax-free. If a distribution from a 529 plan is used for any other purpose, the earnings portion will generally be includable in income and also subject to an additional 10% penalty tax.	This proposal would not apply the 10% additional penalty tax to 529 plan distributions that are not used for qualified higher education expenses to the extent that amounts are contributed to an IRA of the 529 plan account owner (or an IRA of the designated beneficiary) with respect to the same calendar year in which the distribution from the 529 plan was received. These 529 plan distributions would be penalty-free (but not tax-free). *529 and ABLE Account Improvement Act of 2016 (H.R. 5193), introduced in the 114th Congress, Rep. Lynn Jenkins (R-KS)*	Earlier versions of legislation introduced by Reps. Jenkins and Kind (e.g., H.R. 4333, introduced in 2014) would have allowed certain 529 distributions to be rolled over penalty-free and tax-free) within 60 days to a Roth IRA of the 529 account owner (or the 529 account's designated beneficiary). Those proposals were comparable to the bill described in the row immediately below, with the rollover contribution not counted toward the annual Roth IRA contribution limits, and not subject to the income limits generally applicable to Roth IRA contributions. Revenue loss concerns caused Rep. Jenkins to modify the provision in the 2016 bill (described to the left) to provide only penalty tax relief. However, under Rep. Jenkins' 2016 bill distributions could be tax for those individuals who are eligible to make deductible IRA contributions by allowing traditional IRA contributions for those individuals who are eligible. The penalty-free approach in Rep. Jenkins' 2016 bill was not included in the 2017 H.R. 529 because Rep. Kind was concerned about the absence of a maximum dollar amount.

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Rollovers From 529 Plans to Roth IRAs	Tax-free rollovers from a 529 plan to an IRA are not permitted.	This proposal would permit distributions from a 529 plan to be rolled over tax-free (within 60 days) into a Roth IRA of the owner or the designated beneficiary of a 529 plan that has been maintained by the owner for at least 10 years prior to the date of distribution. The maximum amount of "any distribution" that could be rolled over under this provision would appear to be equal to the lesser of (1) the annual IRA contribution permitted for the year for the "account owner" (without regard to the age and income limits), reduced by actual traditional (but not Roth) IRA contributions for the year, or (2) the total 529 plan contributions (plus attributable earnings) made more than five years before the distribution date. The portion rolled over into a Roth IRA would be treated as a qualified rollover under Code section 408A(e). It appears that the rollover contribution would not appear to count toward the annual Roth IRA contribution and income limit. The rollover would also not be subject to the income limits generally applicable to new Roth IRA contributions. *S. 1790, Sens Burr, Casey, and Murkowski*	This proposal includes no limit on the number of years that an IRA rollover could be utilized by a taxpayer, potentially creating the incentive to make 529 contributions as a retirement planning strategy without any intent of using the funds for education. Revenue costs could be significant if revenue estimators assume higher income individuals who are not otherwise eligible to make Roth contributions will simply make larger 529 contributions as part of their retirement or estate planning strategy. Those concerns would be substantially dealt with under the approach proposed in in H.R. 5193 (described above).
Rollovers to ABLE Accounts	Tax-free rollovers from one 529 plan to another 529 plan are allowed if the rollover is for the benefit of the same designated beneficiary or a family member of the beneficiary. Rollovers are generally subject to a once-every-12-month limitation. Prior to the passage of the December 2017 tax bill (H.R. 1), tax-free rollovers from a 529 plan to an ABLE account were not permitted.	This proposal would permit tax-free rollovers of funds between 529 and ABLE accounts for the benefit of the same beneficiary (or a family member). Such amounts would count toward the annual ABLE account contribution limit. Rollovers between 529 and ABLE accounts would not be subject to the once-every-12-months limit. *H.R. 529 (Reps. Jenkins, Kind, et al); ABLE Financial Planning Act (S. 816 and H.R. 1897), Sens. Casey (D-PA), Burr (R-NC), and (D-MD), and others; Rep. Cathy McMorris Rodgers (R-WA) and others*	The proposal described to the left was enacted as part of H.R. 1, except that the provision is effective for distributions after December 22, 2017, and sunsets after 2025.

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Saver's Credit	The Saver's Credit provides a credit to certain low- and middle-income taxpayers in connection with saving for retirement. The Saver's Credit may be taken for contributions to a traditional or Roth IRA, a 401(k), SIMPLE IRA, SARSEP, 403(b), 501(c)(18), or governmental 457(b) plan. The Saver's Credit is also available for voluntary after-tax contributions to qualified retirement and 403(b) plans. The December 2017 tax bill (H.R. 1) extended the Saver's Credit to qualifying ABLE account contributions.	This proposal would extend the existing retirement plan Saver's Credit to 529 contributions. *S. 1790 (Burr, Casey, and Murkowski). Also, the Savings Enhancement for Education in College Act (H.R. 529), introduced in the 113th Congress in 2013, Reps. Jenkins and Kind (D-WI)*	
529 Accounts for the Unborn	An unborn child may not be the designated beneficiary of a 529 account. The parent of an unborn child may instead open a 529 account in the parent's name before the child is born, and then name the child as the account's designated beneficiary after the child is born. There are no adverse tax consequences for changing the designated beneficiary of a 529 account to another family member.	This proposal would allow an unborn child to be treated as an account owner or designated beneficiary for purposes of a 529 plan. "Unborn child" is defined as a member of the species homo sapiens, at any stage of development, who is carried in the womb. *Investing for Tomorrow Act (H.R. 4794), Rep. Kristi Noem (R-SD) et al*	At one point in the process leading up to the passage of the 2017 tax bill (H.R. 1), the Senate proposed an amendment that would have allowed an unborn child to qualify as a designated beneficiary with respect to 529 contributions. This amendment was later dropped in part due to Byrd Rule concerns.
Expand Qualified Education Distributions			
Apprenticeship Programs	Pursuant to the National Apprenticeship Act, the Department of Labor works in conjunction with State Apprenticeship Agencies to administer a registered apprenticeship program nationally. After completing a registered apprenticeship program, participants earn a certificate of completion, which is an industry-issued credential of occupational proficiency.	The following proposals would allow tax-free distributions from 529 plans to be used to pay for expenses associated with participation in federally registered apprenticeship programs. One proposal would expand the definition of qualified higher education expenses to include books, supplies, and equipment required to enroll in or attend a registered apprenticeship program; child care and transportation in connection with such enrollment or attendance; and costs associated with obtaining an	

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		industry certification. *529 OPTIONS Act (H.R. 3395), Reps. Meehan (R-PA), Norcross (D-NJ), and 62 others* A Senate proposal would expand the qualified higher education definition to include books, supplies, and equipment, but not child care, transportation, or industry certification costs. *S. 2222, Sens. Daines (R-MT), Booker (D-NJ), Murkowski (R-AK), and Warren (D-MA)* A third proposal would expand the definition of qualified higher education expenses to generally include expenses such as tuition, fees, books, supplies, and equipment; special needs services; and computer technology and equipment, including Internet access and related services, if used primarily by the designated beneficiary during the years the beneficiary is enrolled in or attending certain career-training programs. *S. 1822, Sens. Klobuchar (D-MN), Baldwin (D-WI), Duckworth (D-WI), Feinstein (D-CA), Heitkamp (D-ND), and Manchin (D-WV)*	
529 DISTRIBUTIONS FOR K-12 AND PRE-K EDUCATION EXPENSES	Prior to the passage of the 2017 tax bill (H.R. 1), qualified higher education expenses under 529 plans did not include expenses associated with elementary or secondary education. Qualified education expenses for Coverdell Education Savings Account (ESA) distributions, however, include the following	These proposals would expand the definition of qualified education expenses under 529 plans to include certain elementary and secondary education expenses. These expenses would include tuition, fees, academic tutoring, special need services, books, and supplies; room and board, uniforms, and transportation; and computer technology and equipment, including Internet access (subject to	H.R. 1 amended the law so that annual aggregate distributions made from a 529 plan to pay for up to $10,000 of tuition expenses in connection with enrollment at a public, private, or religious elementary or secondary school are treated as qualified higher education expenses. H.R. 1, however,

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	expenses associated with elementary and secondary education: • Tuition, fees, tutoring, special needs services in the case of a special needs beneficiary, books, supplies, and other equipment; • Room and board, uniforms, transportation, and supplementary items and services (including extended day programs); and • Purchase of any computer technology or equipment or Internet access and related services (subject to certain limitations). •	certain limitations). *Empowering Parents to Invest in Choice Act of 2017 (H.R. 675), Reps. McHenry (R-NC) and Harris (R-MD); Enhancing Educational Opportunities for All Students Act (H.R. 716), Rep. Messer (R-IN)* H.R. 716 would also treat expenses for enrollment or attendance in pre-kindergarten as qualified education expenses.	did not address other K-12 expenses or pre-kindergarten expenses.
HOME-SCHOOLING	Distributions from a 529 plan that are used to pay for qualified higher education expenses are tax-free and penalty-free. Since the passage of the 2017 tax bill (H.R. 1), "qualified higher education expenses" also include expenses for tuition in connection with enrollment or attendance at an elementary or secondary public, private, or religious school, up to $10,000 annually. However, the term does not include expenses incurred in connection with homeschooling.	These proposals would treat certain expenses associated with homeschooling as qualified higher education expenses under a 529 plan. These expenses would include expenses for curriculum and curricular materials, books or other instructional materials, online educational materials, tuition for tutoring or educational classes outside of the home (but only if the tutor or instructor is not related to the student), dual enrollment in an institution of higher learning, and educational therapies for students with disabilities. The annual $10,000 limit that applies with respect to tuition for elementary or secondary public, private, or religious schools would also apply to homeschool expenses. *H.R. 4736, Reps. Smith (R-MO), King (R-IA), Handel (R-GA) and 13 others; Enhancing Educational Opportunities for Home School Students Act (H.R. 4862), Rep. Luke Messer (R-IN)*	At one point in the process leading up to the passage of H.R. 1, Sen. Ted Cruz (R-TX) proposed an amendment that would have allowed 529 accounts to pay for the same homeschool expenses, in addition to tuition expenses for attendance or enrollment at an elementary or secondary school. The amendment as it related to homeschool expenses was eventually dropped due to Byrd Rule concerns.

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ENHANCE INDIVIDUAL INCENTIVES			
DEDUCTION FOR 529 PLAN CONTRIBUTIONS	Under current law, contributions to a 529 plan are not tax-deductible.	This proposal would provide an ordinary income tax deduction of up to $5,000 annually would be allowed for the sum of an individual's 529 plan and ABLE account contributions. *H.R. 3046, Reps. Poliquin, et al*	
AMERICAN OPPORTUNITY TAX CREDIT FOR 529 PLAN CONTRIBUTIONS	The American Opportunity Tax Credit (AOTC) is a tax credit for qualified education expenses paid for an eligible student for the first four years of higher education, up to $2,500 annually per student and subject to certain limitations. The credit is taken after students have already incurred education expenses.	This proposal would allow individuals to claim up to $250 of the AOTC annually, subject to phase out based on income, for contributions to a 529 plan. The amount of the AOTC credit being claimed based on 529 plan contributions would be taken into account for purposes of the AOTC before any tuition and fees. *Save for Success Act (H.R. 2378), Reps. Lujan (D-NM), Dingell (D-MI), Lujan Grisham (D-NM), Jayapal (D-WA), Holmes Norton (D-DC), Welch (D-VT), Kilmer (D-WA)*	

RANDY HARDOCK, BARBARA PATE, COURTNEY ZINTER, AND ELIZABETH RADEMACHER