

108TH CONGRESS } <i>1st Session</i>	HOUSE OF REPRESENTATIVES	{ REPORT 108-
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HEALTH SAVINGS ACCOUNT AVAILABILITY ACT

JUNE , 2003.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. THOMAS, from the Committee on Ways and Means, submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 2351]

[Including cost estimate of the Congressional Budget Office]

The Committee on Ways and Means, to whom was referred the bill (H.R. 2351) to amend the Internal Revenue Code of 1986 to allow a deduction to individuals for amounts contributed to health savings accounts and to provide for the disposition of unused health benefits in cafeteria plans and flexible spending arrangements, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Health Savings Account Availability Act".

SEC. 2. HEALTH SAVINGS ACCOUNTS.

(a) IN GENERAL.—Part VII of subchapter B of chapter 1 of the Internal Revenue Code of 1986 (relating to additional itemized deductions for individuals) is amended by redesignating section 223 as section 224 and by inserting after section 222 the following new section:

"SEC. 223. HEALTH SAVINGS ACCOUNTS.

(a) DEDUCTION ALLOWED.—In the case of an individual who is an eligible individual for any month during the taxable year, there shall be allowed as a deduction for the taxable year an amount equal to the aggregate amount paid in cash during such taxable year by such individual to a health savings account of such individual.

“(b) LIMITATIONS.—

“(1) IN GENERAL.—The amount allowable as a deduction under subsection (a) to an individual for the taxable year shall not exceed the sum of the monthly limitations for months during such taxable year that the individual is an eligible individual.

“(2) MONTHLY LIMITATION.—The monthly limitation for any month is 1/12 of—

“(A) \$2,000, in the case of an eligible individual who—
 “(i) has self-only coverage under a minimum deductible plan as of the first day of such month, or

“(ii) is uninsured as of the first day of such month and is not described in subparagraph (B)(ii) with respect to the taxable year which includes such month,

“(B) \$4,000, in the case of an eligible individual who—

“(i) has family coverage under a minimum deductible plan as of the first day of such month, or

“(ii) is uninsured as of the first day of such month and, with respect to the taxable year which includes such month—

“(I) is entitled to a deduction for a dependent under section 151(c) (or would be so entitled but for paragraph (2) or (4) of section 152(e)), or

“(II) files a joint return, and

“(C) zero in any other case.

“(3) ADDITIONAL CONTRIBUTIONS FOR INDIVIDUALS 55 OR OLDER.—

“(A) IN GENERAL.—In the case of an individual who has attained the age of 55 before the close of the taxable year, paragraph (2) shall be applied by increasing the \$2,000 amount in paragraph (2)(A) and the \$4,000 amount in paragraph (2)(B) by the additional contribution amount.

“(B) ADDITIONAL CONTRIBUTION AMOUNT.—For purposes of this section, the additional contribution amount is the amount determined in accordance with the following table:

“For taxable years beginning in:	The additional contribution amount is:
2004	\$500
2005	\$600
2006	\$700
2007	\$800
2008	\$900
2009 and thereafter	\$1,000.

“(4) LIMITATION BASED ON ADJUSTED GROSS INCOME.—

“(A) IN GENERAL.—The dollar amount in paragraph (2)(A) and the dollar amount in paragraph (2)(B) (in each case as increased under paragraph (3)) shall each be reduced (but not below zero) by an amount which bears the same ratio to such dollar amount as—

“(i) the excess of—

“(I) the taxpayer’s adjusted gross income for such taxable year, over

“(II) the applicable dollar amount, bears to

“(ii) \$10,000 (\$20,000 in the case of a joint return for a taxable year beginning after December 31, 2006).

“(B) NO REDUCTION BELOW \$200 UNTIL COMPLETE PHASE-OUT.—No dollar amount shall be reduced below \$200 under subparagraph (A) unless (without regard to this subparagraph) such limitation is reduced to zero.

“(C) ROUNDING.—Any amount determined under this paragraph which is not a multiple of \$10 shall be rounded to the next lowest \$10.

“(D) ADJUSTED GROSS INCOME.—For purposes of this paragraph, adjusted gross income shall be determined—

“(i) without regard to this section or section 911, and

“(ii) after application of sections 86, 135, 137, 219, 221, 222, and 469.

“(E) APPLICABLE DOLLAR AMOUNT.—For purposes of this paragraph, the term ‘applicable dollar amount’ has the meaning given such term in section 219(g)(3)(B). The rule of section 219(g)(4) (relating to special rule for married individuals filing separately and living apart) shall apply for purposes of the preceding sentence.

“(5) COORDINATION WITH OTHER CONTRIBUTIONS.—The limitation which would (but for this paragraph) apply under this subsection to the taxpayer for any taxable year shall be reduced (but not below zero) by the sum of—

“(A) the aggregate amount which would (but for section 125(h)(1)(B) and subsections (b) and (d) of section 106) be includible in the taxpayer’s gross income for such taxable year, and

“(B) the aggregate amount paid during such taxable year by such individual to Archer MSAs of such individual.

“(6) SPECIAL RULES FOR MARRIED INDIVIDUALS, DEPENDENTS, AND MEDICARE ELIGIBLE INDIVIDUALS.—Rules similar to the rules of paragraphs (3), (6), and (7) of section 220(b) shall apply for purposes of this section.

“(c) DEFINITIONS.—For purposes of this section—

“(1) ELIGIBLE INDIVIDUAL.—

“(A) IN GENERAL.—The term ‘eligible individual’ means, with respect to any month, any individual unless such individual is covered, as of the first day of such month, under any health plan which is not a minimum deductible plan.

“(B) CERTAIN COVERAGE DISREGARDED.—Subparagraph (A) shall be applied without regard to—

“(i) coverage for any benefit provided by permitted insurance, and

“(ii) coverage (whether through insurance or otherwise) for accidents, disability, dental care, vision care, or long-term care.

“(2) MINIMUM DEDUCTIBLE PLAN.—

“(A) IN GENERAL.—The term ‘minimum deductible plan’ means a health plan—

“(i) in the case of self-only coverage, which has an annual deductible which is not less than \$500, and

“(ii) in the case of family coverage, which has an annual deductible which is not less than twice the dollar amount in clause (i) (as increased under subparagraph (B)).

“(B) COST-OF-LIVING ADJUSTMENT FOR ANNUAL DEDUCTIBLES.—

“(i) IN GENERAL.—In the case of any taxable year beginning in a calendar year after 2004, the \$500 amount in subparagraph (A)(i) shall be increased by an amount equal to—

“(I) such dollar amount, multiplied by

“(II) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which such taxable year begins by substituting ‘calendar year 2003’ for ‘calendar year 1992’ in subparagraph (B) thereof.

“(ii) ROUNDING.—If any increase under clause (i) is not a multiple of \$50, such increase shall be rounded to the nearest multiple of \$50.

“(C) SPECIAL RULES.—

“(i) EXCLUSION OF CERTAIN PLANS.—Such term does not include a health plan if substantially all of its coverage is coverage described in paragraph (1)(B).

“(ii) SAFE HARBOR FOR ABSENCE OF PREVENTIVE CARE DEDUCTIBLE.—A plan shall not fail to be treated as a minimum deductible plan by reason of failing to have a deductible for preventive care.

“(3) PERMITTED INSURANCE.—The term ‘permitted insurance’ has the meaning given such term in section 220(c)(3).

“(4) FAMILY COVERAGE.—The term ‘family coverage’ has the meaning given such term in section 220(c)(5).

“(5) ARCHER MSA.—The term ‘Archer MSA’ has the meaning given such term in section 220(d).

“(d) HEALTH SAVINGS ACCOUNT.—For purposes of this section—

“(1) IN GENERAL.—The term ‘health savings account’ means a trust created or organized in the United States as a health savings account exclusively for the purpose of paying the qualified medical expenses of the account beneficiary, but only if the written governing instrument creating the trust meets the following requirements:

“(A) Except in the case of a rollover contribution from an Archer MSA, or a health savings account, which is not includible in gross income, no contribution will be accepted—

“(i) unless it is in cash and is contributed by—

“(I) the account beneficiary,

“(II) a member of the family of the account beneficiary, or

“(III) an employer of the account beneficiary, and

“(ii) to the extent such contribution, when added to previous contributions to the trust for the calendar year, exceeds the dollar amount in subsection (b)(2)(B) increased by the additional contribution amount for taxable years beginning in such calendar year.

“(B) The trustee is a bank (as defined in section 408(n)), an insurance company (as defined in section 816), or another person who demonstrates to the satisfaction of the Secretary that the manner in which such person will administer the trust will be consistent with the requirements of this section.

“(C) No part of the trust assets will be invested in life insurance contracts.

“(D) The assets of the trust will not be commingled with other property except in a common trust fund or common investment fund.

“(E) The interest of an individual in the balance in his account is non-forfeitable.

“(2) MEMBER OF THE FAMILY.—The term ‘member of the family’ has the meaning given such term in section 2032A(e)(2).

“(3) QUALIFIED MEDICAL EXPENSES.—The term ‘qualified medical expenses’ has the meaning given such term in section 220(d)(2), except that—

“(A) subparagraph (B)(i) thereof shall not apply to—

“(i) insurance which constitutes a minimum deductible plan if no portion of the cost of such insurance is paid by an employer or former employer of the account beneficiary or the spouse of such beneficiary, and

“(ii) any health insurance (other than health insurance substantially all of its coverage is coverage described in subsection (c)(1)(B)) if the account beneficiary has attained age 65, and

“(B) subparagraph (C) thereof shall not apply for purposes of this section.

“(4) ACCOUNT BENEFICIARY.—The term ‘account beneficiary’ means the individual on whose behalf the health savings account was established.

“(5) CERTAIN RULES TO APPLY.—Rules similar to the following rules shall apply for purposes of this section:

“(A) Section 219(d)(2) (relating to no deduction for rollovers).

“(B) Section 219(f)(3) (relating to time when contributions deemed made).

“(C) Except as provided in section 106(d), section 219(f)(5) (relating to employer payments).

“(D) Section 408(g) (relating to community property laws).

“(E) Section 408(h) (relating to custodial accounts).

“(6) CONTRIBUTIONS FROM FLEXIBLE SPENDING ACCOUNTS TREATED AS MADE BY THE EMPLOYER.—Any contribution from a flexible spending account to a health savings account which is not includible in the gross income of the employee by reason of section 125(h) shall be treated as a contribution made by the employer for purposes of this section.

“(e) TAX TREATMENT OF ACCOUNTS.—

“(1) IN GENERAL.—A health savings account is exempt from taxation under this subtitle unless such account has ceased to be a health savings account. Notwithstanding the preceding sentence, any such account is subject to the taxes imposed by section 511 (relating to imposition of tax on unrelated business income of charitable, etc. organizations).

“(2) ACCOUNT TERMINATIONS.—Rules similar to the rules of paragraphs (2) and (4) of section 408(e) shall apply to health savings accounts, and any amount treated as distributed under such similar rules shall be treated as not used to pay qualified medical expenses.

“(f) TAX TREATMENT OF DISTRIBUTIONS.—

“(1) AMOUNTS USED FOR QUALIFIED MEDICAL EXPENSES.—Any amount paid or distributed out of a health savings account which is used exclusively to pay qualified medical expenses of any account beneficiary shall not be includible in gross income.

“(2) INCLUSION OF AMOUNTS NOT USED FOR QUALIFIED MEDICAL EXPENSES.—

“(A) IN GENERAL.—Any amount paid or distributed out of a health savings account which is not used exclusively to pay the qualified medical expenses of the account beneficiary shall be included in the gross income of such beneficiary in the manner provided under section 72.

“(B) SPECIAL RULES FOR APPLYING SECTION 72.—For purposes of applying section 72 to any amount described in subparagraph (A)—

“(i) all health savings accounts shall be treated as 1 contract,

“(ii) all distributions during any taxable year shall be treated as 1 distribution,

“(iii) the value of the contract, income on the contract, and investment in the contract shall be computed as of the close of the calendar year in which the taxable year begins, and

“(iv) such distributions shall be treated as made from contributions from members of the family of the account beneficiary to the extent that such distribution, when added to all previous distributions from the health savings account taken into account under this clause, do not exceed the aggregate contributions from members of such family.

“(3) EXCESS CONTRIBUTIONS RETURNED BEFORE DUE DATE OF RETURN.—

“(A) IN GENERAL.—If any excess contribution is contributed for a taxable year to any health savings account of an individual, paragraph (2) shall not apply to distributions from the health savings accounts of such individual (to the extent such distributions do not exceed the aggregate excess contributions to all such accounts of such individual for such year) if—

“(i) such distribution is made on or before the last day prescribed by law (including extensions of time) for filing the account beneficiary’s return for such taxable year,

“(ii) no deduction is allowed under this section with respect to such contribution,

“(iii) such distribution is accompanied by the amount of net income attributable to such excess contribution, and

“(iv) such distribution satisfies the requirements of subparagraph (B).

“(B) RULES RELATED TO ORDERING.—

“(i) DISTRIBUTIONS LIMITED TO CONTRIBUTIONS.—Subparagraph (A) shall apply to distributions to a person only to the extent of the contributions of such person to such accounts during such taxable year.

“(ii) CLASSES OF CONTRIBUTORS.—Subparagraph (A) shall apply only to distributions of such contributions which are made in the following order:

“(I) first, to members of the family of the account beneficiary,

“(II) second, to the account beneficiary,

“(III) third, to employers of the account beneficiary with respect to contributions under section 125(h), and

“(IV) fourth, to employers of the account beneficiary with respect to contributions under section 106(d).

“(iii) LAST-IN FIRST-OUT.—If distributions could be made to more than one person under any subclass of clause (ii), subparagraph (A) shall not apply to any such distribution unless such distribution is of the most recent excess contribution which has not been distributed to the contributor.

“(C) TREATMENT OF NET INCOME.—Any net income described in subparagraph (A)(iii) shall be included in the gross income of the person receiving the distribution for the taxable year in which received.

“(D) EXCESS CONTRIBUTION.—For purposes of subparagraph (A), the term ‘excess contribution’ means any contribution (other than a rollover contribution from another health savings account, or from an Archer MSA, which is not includible in gross income) to the extent such contribution results in the aggregate contributions to health savings accounts of the account beneficiary for the taxable year to be in excess of the limitation under subsection (b) (determined without regard to paragraph (5) thereof) which applies to such beneficiary for such year.

“(4) ADDITIONAL TAX ON DISTRIBUTIONS NOT USED FOR QUALIFIED MEDICAL EXPENSES.—

“(A) IN GENERAL.—The tax imposed by this chapter on the account beneficiary for any taxable year in which there is a payment or distribution from a health savings account of such beneficiary which is includible in gross income under paragraph (2) shall be increased by 15 percent of the amount which is so includible.

“(B) EXCEPTION FOR DISABILITY OR DEATH.—Subparagraph (A) shall not apply if the payment or distribution is made after the account beneficiary becomes disabled within the meaning of section 72(m)(7) or dies.

“(C) EXCEPTION FOR DISTRIBUTIONS AFTER MEDICARE ELIGIBILITY.—Subparagraph (A) shall not apply to any payment or distribution after the date on which the account beneficiary attains the age specified in section 1811 of the Social Security Act.

“(5) SPECIAL RULES.—Rules similar to the rules of paragraphs (5), (6), (7), and (8) of section 220(f) shall apply for purposes of this section.

“(g) REPORTS.—The Secretary may require the trustee of a health savings account to make such reports regarding such account to the Secretary and to the account beneficiary with respect to contributions, distributions, and such other matters as the Secretary determines appropriate. The reports required by this subsection shall be filed at such time and in such manner and furnished to such individuals at such time and in such manner as may be required by the Secretary.

“(h) REGULATIONS.—The Secretary may issue regulations to carry out the purposes of this section, including regulations regarding the proper treatment of distributions described in subsection (f)(3) and nondeductible contributions by members of the family of the account beneficiary.”

(b) DEDUCTION ALLOWED WHETHER OR NOT INDIVIDUAL ITEMIZES OTHER DEDUCTIONS.—Subsection (a) of section 62 of such Code is amended by inserting after paragraph (18) the following new paragraph:

“(19) HEALTH SAVINGS ACCOUNTS.—The deduction allowed by section 223.”

(c) ROLLOVERS FROM ARCHER MSAS PERMITTED.—Subparagraph (A) of section 220(f)(5) of such Code (relating to rollover contribution) is amended by inserting “or a health savings account (as defined in section 223(d))” after “paid into an Archer MSA”.

(d) EXCLUSIONS FOR EMPLOYER CONTRIBUTIONS TO HEALTH SAVINGS ACCOUNTS.—

(1) EXCLUSION FROM INCOME TAX.—Section 106 of such Code (relating to contributions by employer to accident and health plans) is amended by adding at the end the following new subsection:

“(d) CONTRIBUTIONS TO HEALTH SAVINGS ACCOUNTS.—

“(1) IN GENERAL.—In the case of an employee who is an eligible individual, amounts contributed by such employee’s employer to any health savings account of such employee shall be treated as employer-provided coverage for medical expenses under an accident or health plan to the extent such amounts do not exceed the excess of—

“(A) the limitation under section 223(b) (determined without regard to this subsection) which is applicable to such employee for such taxable year, over

“(B) the aggregate amount treated as employer-provided coverage for medical expenses under an accident or health plan under subsection (b).

“(2) SPECIAL RULES.—Rules similar to the rules of paragraphs (2), (3), (4), and (5) of subsection (b) shall apply for purposes of this subsection.

“(3) DEFINITIONS.—For purposes of this subsection, the terms ‘eligible individual’ and ‘health savings account’ have the respective meanings given to such terms by section 223.

“(4) CROSS REFERENCE.—

“**For penalty on failure by employer to make comparable contributions to the health savings accounts of comparable employees, see section 4980G.**”

(2) EXCLUSION FROM EMPLOYMENT TAXES.—

(A) RAILROAD RETIREMENT TAX.—Subsection (e) of section 3231 of such Code is amended by adding at the end the following new paragraph:

“(11) HEALTH SAVINGS ACCOUNT CONTRIBUTIONS.—The term ‘compensation’ shall not include any payment made to or for the benefit of an employee if at the time of such payment it is reasonable to believe that the employee will be able to exclude such payment from income under section 106(d).”

(B) UNEMPLOYMENT TAX.—Subsection (b) of section 3306 of such Code is amended by striking “or” at the end of paragraph (16), by striking the period at the end of paragraph (17) and inserting “; or”, and by inserting after paragraph (17) the following new paragraph:

“(18) any payment made to or for the benefit of an employee if at the time of such payment it is reasonable to believe that the employee will be able to exclude such payment from income under section 106(d).”

(C) WITHHOLDING TAX.—Subsection (a) of section 3401 of such Code is amended by striking “or” at the end of paragraph (20), by striking the period at the end of paragraph (21) and inserting “; or”, and by inserting after paragraph (21) the following new paragraph:

“(22) any payment made to or for the benefit of an employee if at the time of such payment it is reasonable to believe that the employee will be able to exclude such payment from income under section 106(d).”

(3) EMPLOYER CONTRIBUTIONS REQUIRED TO BE SHOWN ON W-2.—Subsection (a) of section 6051 of such Code is amended by striking “and” at the end of para-

graph (10), by striking the period at the end of paragraph (11) and inserting “, and”, and by inserting after paragraph (11) the following new paragraph:

“(12) the amount contributed to any health savings account (as defined in section 223(d)) of such employee or such employee’s spouse.”.

(4) PENALTY FOR FAILURE OF EMPLOYER TO MAKE COMPARABLE HEALTH SAVINGS ACCOUNT CONTRIBUTIONS.—

(A) IN GENERAL.—Chapter 43 of such Code is amended by adding after section 4980F the following new section:

“SEC. 4980G. FAILURE OF EMPLOYER TO MAKE COMPARABLE HEALTH SAVINGS ACCOUNT CONTRIBUTIONS.

“(a) GENERAL RULE.—In the case of an employer who makes a contribution to the health savings account of any employee with respect to coverage under a minimum deductible plan of the employer during a calendar year, there is hereby imposed a tax on the failure of such employer to meet the requirements of subsection (d) for such calendar year.

“(b) AMOUNT OF TAX.—The amount of the tax imposed by subsection (a) on any failure for any calendar year is the amount equal to 35 percent of the aggregate amount contributed by the employer to health savings accounts of employees for taxable years of such employees ending with or within such calendar year.

“(c) WAIVER BY SECRETARY.—In the case of a failure which is due to reasonable cause and not to willful neglect, the Secretary may waive part or all of the tax imposed by subsection (a) to the extent that the payment of such tax would be excessive relative to the failure involved.

“(d) EMPLOYER REQUIRED TO MAKE COMPARABLE HEALTH SAVINGS ACCOUNT CONTRIBUTIONS FOR ALL PARTICIPATING EMPLOYEES.—An employer meets the requirements of this subsection for any calendar year if the employer meets the requirements of section 4980E(d) applied by—

“(1) substituting ‘health savings account’ for ‘Archer MSA’ each place it appears, and

“(2) not taking into account any contribution made under section 125.

“(e) CONTROLLED GROUPS.—For purposes of this section, all persons treated as a single employer under subsection (b), (c), (m), or (o) of section 414 shall be treated as 1 employer.

“(f) DEFINITIONS.—Terms used in this section which are also used in section 223 have the respective meanings given such terms in section 223.”.

(B) CLERICAL AMENDMENT.—The table of sections for chapter 43 of such Code is amended by adding after the item relating to section 4980F the following new item:

“Sec. 4980G. Failure of employer to make comparable health savings account contributions.”.

(e) TAX ON EXCESS CONTRIBUTIONS.—Section 4973 of such Code (relating to tax on excess contributions to certain tax-favored accounts and annuities) is amended—

(1) by striking “or” at the end of paragraph (3) of subsection (a),

(2) by inserting “or” at the end of paragraph (4) of subsection (a),

(3) by inserting after paragraph (4) of subsection (a) the following new paragraph:

“(5) a health savings account (within the meaning of section 223(d)),” and

(4) by adding at the end the following new subsection:

“(g) EXCESS CONTRIBUTIONS TO HEALTH SAVINGS ACCOUNTS.—For purposes of this section, in the case of health savings accounts (within the meaning of section 223(d)), the term ‘excess contributions’ means the sum of—

“(1) the aggregate amount contributed for the taxable year to the accounts (other than a rollover contribution from another health savings account, or from an Archer MSA, which is not includible in gross income) which is in excess of the limitation under section 223(b) (determined without regard to paragraph (5) thereof), and

“(2) the amount determined under this subsection for the preceding taxable year, reduced by the sum of—

“(A) the distributions out of the accounts which were included in gross income under section 223(f)(2), and

“(B) the excess (if any) of—

“(i) the sum of limitations described in paragraph (1), over

“(ii) the amount contributed to the accounts for the taxable year.

For purposes of this subsection, any contribution which is distributed out of the health savings account in a distribution to which section 223(f)(3) applies shall be treated as an amount not contributed.”.

(f) TAX ON PROHIBITED TRANSACTIONS.—

(1) Section 4975 of such Code (relating to tax on prohibited transactions) is amended by adding at the end of subsection (c) the following new paragraph:

“(6) SPECIAL RULE FOR HEALTH SAVINGS ACCOUNTS.—An individual for whose benefit a health savings account (within the meaning of section 223(d)) is established shall be exempt from the tax imposed by this section with respect to any transaction concerning such account (which would otherwise be taxable under this section) if, with respect to such transaction, the account ceases to be a health savings account by reason of the application of section 223(e)(2) to such account.”

(2) Paragraph (1) of section 4975(e) of such Code is amended by redesignating subparagraphs (E) and (F) as subparagraphs (F) and (G), respectively, and by inserting after subparagraph (D) the following new subparagraph:

“(E) a health savings account described in section 223(d).”

(g) FAILURE TO PROVIDE REPORTS ON HEALTH SAVINGS ACCOUNTS.—Paragraph (2) of section 6693(a) of such Code (relating to reports) is amended by redesignating subparagraphs (C) and (D) as subparagraphs (D) and (E), respectively, and by inserting after subparagraph (B) the following new subparagraph:

“(C) section 223(g) (relating to health savings accounts).”

(h) EXCEPTION FROM CAPITALIZATION OF POLICY ACQUISITION EXPENSES.—Subparagraph (B) of section 848(e)(1) of such Code (defining specified insurance contract) is amended by striking “and” at the end of clause (iii), by striking the period at the end of clause (iv) and inserting “, and”, and by adding at the end the following new clause:

“(v) any contract which is a health savings account (as defined in section 223(d)).”

(i) HEALTH SAVINGS ACCOUNTS MAY BE OFFERED UNDER CAFETERIA PLANS.—Paragraph (2) of section 125(d) (relating to cafeteria plan defined) is amended by adding at the end the following new subparagraph:

“(D) EXCEPTION FOR HEALTH SAVINGS ACCOUNTS.—Subparagraph (A) shall not apply to a plan to the extent of amounts which a covered employee may elect to have the employer pay as contributions to a health savings account established on behalf of the employee.”

(j) CONFORMING AMENDMENTS.—

(1) The table of sections for part VII of subchapter B of chapter 1 of such Code is amended by striking the last item and inserting the following:

“Sec. 223. Health savings accounts.

“Sec. 224. Cross reference.”

(2)(A) Sections 86(b)(2)(A), 135(c)(4)(A), 137(b)(3)(A), 219(g)(3)(A)(ii), and 221(b)(2)(C)(i) are each amended by inserting “223,” after “222.”

(B) Section 222(b)(2)(C)(i) is amended by inserting “223,” before “911”.

(C) Section 469(i)(3)(F)(iii) is amended by striking “and 222” and inserting “222, and 223”.

(k) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2003.

SEC. 3. DISPOSITION OF UNUSED HEALTH BENEFITS IN CAFETERIA PLANS AND FLEXIBLE SPENDING ARRANGEMENTS.

(a) IN GENERAL.—Section 125 of the Internal Revenue Code of 1986 (relating to cafeteria plans) is amended by redesignating subsections (h) and (i) as subsections (i) and (j), respectively, and by inserting after subsection (g) the following:

“(h) CONTRIBUTIONS OF CERTAIN UNUSED HEALTH BENEFITS.—

“(1) IN GENERAL.—For purposes of this title, a plan or other arrangement shall not fail to be treated as a cafeteria plan solely because qualified benefits under such plan include a health flexible spending arrangement under which not more than \$500 of unused health benefits may be—

“(A) carried forward to the succeeding plan year of such health flexible spending arrangement,

“(B) to the extent permitted by section 223, contributed on behalf of the employee to a health savings account (as defined in section 223(d)) maintained for the benefit of such employee, or

“(C) contributed to a qualified retirement plan (as defined in section 4974(c)), or an eligible deferred compensation plan (as defined in section 457(b)) of an eligible employer described in section 457(e)(1)(A), but only to the extent such amount would not be allowed as a deduction under section 223 if made directly by the employee to a health savings account of the em-

ployee (determined without regard to any other contributions made by the employee).

“(2) SPECIAL RULES FOR TREATMENT OF CONTRIBUTIONS TO RETIREMENT PLANS.—For purposes of this title, contributions under paragraph (1)(C)—

“(A) shall be treated as elective deferrals (as defined in section 402(g)(3)) in the case of contributions to a qualified cash or deferred arrangement (as defined in section 401(k)) or to an annuity contract described in section 403(b),

“(B) shall be treated as employer contributions in the case of a plan (other than a plan described in subparagraph (A)) which is described in section 401(a) which includes a trust exempt from tax under section 501(a),

“(C) shall be treated as deferred compensation in the case of contributions to an eligible deferred compensation plan (as defined in section 457(b)), and

“(D) shall be treated in the manner designated for purposes of section 408 or 408A in the case of contributions to an individual retirement plan.

“(3) HEALTH FLEXIBLE SPENDING ARRANGEMENT.—For purposes of this subsection, the term ‘health flexible spending arrangement’ means a flexible spending arrangement (as defined in section 106(c)) that is a qualified benefit and only permits reimbursement for expenses for medical care (as defined in section 213(d)(1) (without regard to subparagraphs (C) and (D) thereof).

“(4) UNUSED HEALTH BENEFITS.—For purposes of this subsection, with respect to an employee, the term ‘unused health benefits’ means the excess of—

“(A) the maximum amount of reimbursement allowable to the employee during a plan year under a health flexible spending arrangement, taking into account any election by the employee, over

“(B) the actual amount of reimbursement during such year under such arrangement.”

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to taxable years beginning after December 31, 2003.

SEC. 4. EXCEPTION TO INFORMATION REPORTING REQUIREMENTS RELATED TO CERTAIN HEALTH ARRANGEMENTS.

(a) IN GENERAL.—Section 6041 (relating to information at source) is amended by adding at the end the following new subsection:

“(f) SECTION DOES NOT APPLY TO CERTAIN HEALTH ARRANGEMENTS.—This section shall not apply to any payment for medical care (as defined in section 213(d)) made under—

“(1) a flexible spending arrangement (as defined in section 106(c)(2)), or

“(2) a health reimbursement arrangement which is treated as employer-provided coverage under an accident or health plan for purposes of section 106.”

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to payments made after December 31, 2002.