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(Original Signature of Member)

108TH CONGRESS  
1ST SESSION

# H. R. 2596

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## IN THE HOUSE OF REPRESENTATIVES

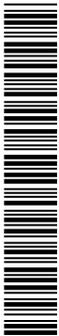
Mr. THOMAS introduced the following bill; which was referred to the  
Committee on \_\_\_\_\_

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### A BILL

To amend the Internal Revenue Code of 1986 to allow a deduction to individuals for amounts contributed to health savings security accounts and health savings accounts, to provide for the disposition of unused health benefits in cafeteria plans and flexible spending arrangements, 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,*



1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Health Savings and  
3 Affordability Act of 2003”.

4 **SEC. 2. HEALTH SAVINGS SECURITY ACCOUNTS AND**  
5 **HEALTH SAVINGS ACCOUNTS.**

6 (a) IN GENERAL.—Part VII of subchapter B of chap-  
7 ter 1 of the Internal Revenue Code of 1986 (relating to  
8 additional itemized deductions for individuals) is amended  
9 by redesignating section 223 as section 225 and by insert-  
10 ing after section 222 the following new sections:

11 **“SEC. 223. HEALTH SAVINGS SECURITY ACCOUNTS.**

12 “(a) DEDUCTION ALLOWED.—In the case of an indi-  
13 vidual who is an eligible individual for any month during  
14 the taxable year, there shall be allowed as a deduction for  
15 the taxable year an amount equal to the aggregate amount  
16 paid in cash during such taxable year by such individual  
17 to a health savings security account of such individual.

18 “(b) LIMITATIONS.—

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

24 “(2) MONTHLY LIMITATION.—The monthly lim-  
25 itation for any month is  $\frac{1}{12}$  of—



1           “(A) \$2,000, in the case of an eligible indi-  
2           vidual who—

3                   “(i) has self-only coverage under a  
4                   minimum deductible plan as of the first  
5                   day of such month, or

6                   “(ii) is uninsured as of the first day  
7                   of such month and is not described in sub-  
8                   paragraph (B)(ii) with respect to the tax-  
9                   able year which includes such month,

10           “(B) \$4,000, in the case of an eligible indi-  
11           vidual who—

12                   “(i) has family coverage under a min-  
13                   imum deductible plan as of the first day of  
14                   such month, or

15                   “(ii) is uninsured as of the first day  
16                   of such month and, with respect to the tax-  
17                   able year which includes such month—

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

22                   “(II) files a joint return, and

23                   “(C) zero in any other case.

24           “(3) ADDITIONAL CONTRIBUTIONS FOR INDI-  
25           VIDUALS 55 OR OLDER.—



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

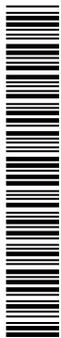
8           “(B)        ADDITIONAL        CONTRIBUTION  
 9           AMOUNT.—For purposes of this section, the ad-  
 10          ditional contribution amount is the amount de-  
 11          termined in accordance with the following table:

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

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

14           “(A) SELF-ONLY COVERAGE.—The dollar  
 15          amount in paragraph (2)(A) (as increased  
 16          under paragraph (3)) shall be reduced (but not  
 17          below zero) by an amount which bears the same  
 18          ratio to such dollar amount as—

19                       “(i) the amount (if any) by which the  
 20                       taxpayer’s adjusted gross income for such



1 taxable year exceeds \$75,000 (\$150,000 in  
2 the case of a joint return), bears to

3 “(ii) \$10,000 (\$20,000 in the case of  
4 a joint return).

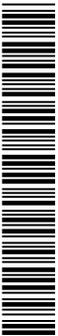
5 “(B) FAMILY COVERAGE.—The dollar  
6 amount in paragraph (2)(B) (as increased  
7 under paragraph (3)) shall be reduced (but not  
8 below zero) by an amount which bears the same  
9 ratio to such dollar amount as—

10 “(i) the amount (if any) by which the  
11 taxpayer’s adjusted gross income for such  
12 taxable year exceeds \$150,000, bears to

13 “(ii) \$20,000.

14 “(C) NO REDUCTION BELOW \$200 UNTIL  
15 COMPLETE PHASE-OUT.—No dollar amount  
16 shall be reduced below \$200 under subpara-  
17 graph (A) or (B) unless (without regard to this  
18 subparagraph) such limitation is reduced to  
19 zero.

20 “(D) ROUNDING.—Any amount deter-  
21 mined under this paragraph which is not a mul-  
22 tiple of \$10 shall be rounded to the next lowest  
23 \$10.



1           “(E) ADJUSTED GROSS INCOME.—For pur-  
2           poses of this paragraph, adjusted gross income  
3           shall be determined—

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

6                   “(ii) after application of sections 86,  
7                   135, 137, 219, 221, 222, and 469.

8           “(5) COORDINATION WITH OTHER CONTRIBU-  
9           TIONS.—The limitation which would (but for this  
10           paragraph) apply under this subsection to the tax-  
11           payer for any taxable year shall be reduced (but not  
12           below zero) by the sum of—

13                   “(A) the aggregate amount paid during  
14                   such taxable year to Archer MSAs of such indi-  
15                   vidual,

16                   “(B) the aggregate amount paid during  
17                   such taxable year to health savings accounts of  
18                   such individual, and

19                   “(C) the aggregate amount paid during  
20                   such taxable year to health savings security ac-  
21                   counts of such individual by persons other than  
22                   such individual.

23           “(6) SPECIAL RULES FOR MARRIED INDIVID-  
24           UALS, DEPENDENTS, AND MEDICARE ELIGIBLE INDI-  
25           VIDUALS.—Rules similar to the rules of paragraphs



1 (3), (6), and (7) of section 220(b) shall apply for  
2 purposes of this section.

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

4 “(1) ELIGIBLE INDIVIDUAL.—

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

11 “(B) CERTAIN COVERAGE DIS-  
12 REGARDED.—Subparagraph (A) shall be ap-  
13 plied without regard to—

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

16 “(ii) coverage (whether through insur-  
17 ance or otherwise) for accidents, disability,  
18 dental care, vision care, or long-term care.

19 “(2) MINIMUM DEDUCTIBLE PLAN.—

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

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



1           “(ii) in the case of family coverage,  
2           which has an annual deductible which is  
3           not less than twice the dollar amount in  
4           clause (i) (as increased under subpara-  
5           graph (B)).

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

8           “(i) IN GENERAL.—In the case of any  
9           taxable year beginning in a calendar year  
10          after 2004, the \$500 amount in subpara-  
11          graph (A)(i) shall be increased by an  
12          amount equal to—

13                  “(I) such dollar amount, multi-  
14                  plied by

15                  “(II) the cost-of-living adjust-  
16                  ment determined under section 1(f)(3)  
17                  for the calendar year in which such  
18                  taxable year begins by substituting  
19                  ‘calendar year 2003’ for ‘calendar  
20                  year 1992’ in subparagraph (B) there-  
21                  of.

22           “(ii) ROUNDING.—If any increase  
23           under clause (i) is not a multiple of \$50,  
24           such increase shall be rounded to the near-  
25           est multiple of \$50.



1                   “(C) SPECIAL RULES.—

2                   “ (i) EXCLUSION OF CERTAIN  
3                   PLANS.—Such term does not include a  
4                   health plan if substantially all of its cov-  
5                   erage is coverage described in paragraph  
6                   (1)(B).

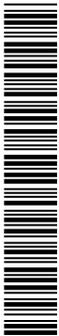
7                   “ (ii) SAFE HARBOR FOR ABSENCE OF  
8                   PREVENTIVE CARE DEDUCTIBLE.—A plan  
9                   shall not fail to be treated as a minimum  
10                  deductible plan by reason of failing to have  
11                  a deductible for preventive care.

12                  “(3) UNINSURED.—An individual shall be treat-  
13                  ed as uninsured if such individual is not covered by  
14                  insurance which constitutes medical care. The pre-  
15                  ceding sentence shall be applied without regard to  
16                  the coverage described in paragraph (1)(B).

17                  “(4) PERMITTED INSURANCE.—The term ‘per-  
18                  mitted insurance’ has the meaning given such term  
19                  in section 220(c)(3).

20                  “(5) FAMILY COVERAGE.—The term ‘family  
21                  coverage’ has the meaning given such term in sec-  
22                  tion 220(c)(5).

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



1           “(7) HEALTH SAVINGS ACCOUNT.—The term  
2           ‘health savings account’ has the meaning given such  
3           term in section 224(d).

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

6           “(1) IN GENERAL.—The term ‘health savings  
7           security account’ means a trust created or organized  
8           in the United States as a health savings security ac-  
9           count exclusively for the purpose of paying the quali-  
10          fied medical expenses of the account beneficiary, but  
11          only if the written governing instrument creating the  
12          trust meets the following requirements:

13                   “(A) Except in the case of a rollover con-  
14                   tribution from an Archer MSA, or a health sav-  
15                   ings security account, which is not includible in  
16                   gross income, no contribution will be accepted—

17                           “(i) unless it is in cash and is contrib-  
18                           uted by—

19                                   “(I) the account beneficiary,

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

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

24                                   “(ii) to the extent such contribution,  
25                                   when added to previous contributions to



1 the trust for the calendar year, exceeds the  
2 highest annual limitation which could  
3 apply to an individual under subsection (b)  
4 for a taxable year beginning in such cal-  
5 endar year.

6 “(B) The trustee is a bank (as defined in  
7 section 408(n)), an insurance company (as de-  
8 fined in section 816), or another person who  
9 demonstrates to the satisfaction of the Sec-  
10 retary that the manner in which such person  
11 will administer the trust will be consistent with  
12 the requirements of this section.

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

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

19 “(E) The interest of an individual in the  
20 balance in his account is nonforfeitable.

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



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

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

6                           “(i) insurance which constitutes a  
7 minimum deductible plan if no portion of  
8 the cost of such insurance is paid by an  
9 employer or former employer of the ac-  
10 count beneficiary or the spouse of such  
11 beneficiary, and

12                           “(ii) any health insurance (other than  
13 health insurance substantially all of its  
14 coverage is coverage described in sub-  
15 section (c)(1)(B)) if the account bene-  
16 ficiary has attained age 65, and

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

19           “(4) ACCOUNT BENEFICIARY.—The term ‘ac-  
20 count beneficiary’ means the individual on whose be-  
21 half the health savings security account was estab-  
22 lished.

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



1           “(A) Section 219(d)(2) (relating to no de-  
2           duction for rollovers).

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

5           “(C) Except as provided in section 106(d),  
6           section 219(f)(5) (relating to employer pay-  
7           ments).

8           “(D) Section 408(g) (relating to commu-  
9           nity property laws).

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

12           “(6) CONTRIBUTIONS FROM FLEXIBLE SPEND-  
13           ING ACCOUNTS TREATED AS MADE BY THE EM-  
14           PLOYER.—Any contribution from a flexible spending  
15           account to a health savings security account which  
16           is not includible in the gross income of the employee  
17           by reason of section 125(h) shall be treated as a  
18           contribution made by the employer for purposes of  
19           this section.

20           “(e) TAX TREATMENT OF ACCOUNTS.—

21           “(1) IN GENERAL.—A health savings security  
22           account is exempt from taxation under this subtitle  
23           unless such account has ceased to be a health sav-  
24           ings security account. Notwithstanding the preceding  
25           sentence, any such account is subject to the taxes



1 imposed by section 511 (relating to imposition of tax  
2 on unrelated business income of charitable, etc. or-  
3 ganizations).

4 “(2) ACCOUNT TERMINATIONS.—Rules similar  
5 to the rules of paragraphs (2) and (4) of section  
6 408(e) shall apply to health savings security ac-  
7 counts, and any amount treated as distributed under  
8 such similar rules shall be treated as not used to pay  
9 qualified medical expenses.

10 “(f) TAX TREATMENT OF DISTRIBUTIONS.—

11 “(1) AMOUNTS USED FOR QUALIFIED MEDICAL  
12 EXPENSES.—Any amount paid or distributed out of  
13 a health savings security account which is used ex-  
14 clusively to pay qualified medical expenses of any ac-  
15 count beneficiary shall not be includible in gross in-  
16 come.

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

19 “(A) IN GENERAL.—Any amount paid or  
20 distributed out of a health savings security ac-  
21 count which is not used exclusively to pay the  
22 qualified medical expenses of the account bene-  
23 ficiary shall be included in the gross income of  
24 such beneficiary in the manner provided under  
25 section 72.



1           “(B) SPECIAL RULES FOR APPLYING SEC-  
2           TION 72.—For purposes of applying section 72  
3           to any amount described in subparagraph (A)—

4                   “(i) all health savings security ac-  
5                   counts shall be treated as 1 contract,

6                   “(ii) all distributions during any tax-  
7                   able year shall be treated as 1 distribution,

8                   “(iii) the value of the contract, income  
9                   on the contract, and investment in the con-  
10                  tract shall be computed as of the close of  
11                  the calendar year in which the taxable year  
12                  begins, and

13                  “(iv) such distributions shall be treat-  
14                  ed as made from contributions from mem-  
15                  bers of the family of the account bene-  
16                  ficiary to the extent that such distribution,  
17                  when added to all previous distributions  
18                  from the health savings security account  
19                  taken into account under this clause, do  
20                  not exceed the aggregate contributions  
21                  from members of such family.

22           “(3) EXCESS CONTRIBUTIONS RETURNED BE-  
23           FORE DUE DATE OF RETURN.—

24                   “(A) IN GENERAL.—If any excess con-  
25                   tribution is contributed for a taxable year to



1 any health savings security account of an indi-  
 2 vidual, paragraph (2) shall not apply to dis-  
 3 tributions from the health savings security ac-  
 4 counts of such individual (to the extent such  
 5 distributions do not exceed the aggregate excess  
 6 contributions to all such accounts of such indi-  
 7 vidual for such year) if—

8 “(i) such distribution is made on or  
 9 before the last day prescribed by law (in-  
 10 cluding extensions of time) for filing the  
 11 account beneficiary’s return for such tax-  
 12 able year,

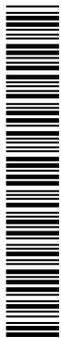
13 “(ii) no deduction is allowed under  
 14 this section with respect to such contribu-  
 15 tion,

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

19 “(iv) such distribution satisfies the re-  
 20 quirements of subparagraph (B).

21 “(B) RULES RELATED TO ORDERING.—

22 “(i) DISTRIBUTIONS LIMITED TO CON-  
 23 TRIBUTIONS.—Subparagraph (A) shall  
 24 apply to distributions to a person only to  
 25 the extent of the contributions of such per-



1 son to such accounts during such taxable  
2 year.

3 “(ii) CLASSES OF CONTRIBUTORS.—  
4 Subparagraph (A) shall apply only to dis-  
5 tributions of such contributions which are  
6 made in the following order:

7 “(I) first, to members of the fam-  
8 ily of the account beneficiary,

9 “(II) second, to the account ben-  
10 eficiary,

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

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

18 “(iii) LAST-IN FIRST-OUT.—If dis-  
19 tributions could be made to more than one  
20 person under any subclause of clause (ii),  
21 subparagraph (A) shall not apply to any  
22 such distribution unless such distribution  
23 is of the most recent excess contribution  
24 which has not been distributed to the con-  
25 tributor.



1           “(C) TREATMENT OF NET INCOME.—Any  
2 net income described in subparagraph (A)(iii)  
3 shall be included in the gross income of the per-  
4 son receiving the distribution for the taxable  
5 year in which received.

6           “(D) EXCESS CONTRIBUTION.—For pur-  
7 poses of subparagraph (A), the term ‘excess  
8 contribution’ means any contribution (other  
9 than a rollover contribution from another health  
10 savings security account, or from an Archer  
11 MSA, which is not includible in gross income)  
12 to the extent such contribution results in the  
13 aggregate contributions to health savings secu-  
14 rity accounts of the account beneficiary for the  
15 taxable year to be in excess of the limitation  
16 under subsection (b) (determined without re-  
17 gard to paragraph (5)(C) thereof) which applies  
18 to such beneficiary for such year.

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

21           “(A) IN GENERAL.—The tax imposed by  
22 this chapter on the account beneficiary for any  
23 taxable year in which there is a payment or dis-  
24 tribution from a health savings security account  
25 of such beneficiary which is includible in gross



1 income under paragraph (2) shall be increased  
2 by 15 percent of the amount which is so includ-  
3 ible.

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

9 “(C) EXCEPTION FOR DISTRIBUTIONS  
10 AFTER MEDICARE ELIGIBILITY.—Subparagraph  
11 (A) shall not apply to any payment or distribu-  
12 tion after the date on which the account bene-  
13 ficiary attains the age specified in section 1811  
14 of the Social Security Act.

15 “(5) ROLLOVER CONTRIBUTION.—

16 “(A) IN GENERAL.—Paragraph (2) shall  
17 not apply to any amount paid or distributed  
18 from a health savings security account to the  
19 account beneficiary to the extent the amount  
20 received is paid into a health savings security  
21 account, or a health savings account, for the  
22 benefit of such beneficiary not later than the  
23 60th day after the day on which the beneficiary  
24 receives the payment or distribution.



1           “(B) LIMITATION.—This paragraph shall  
2           not apply to any amount described in subpara-  
3           graph (A) received by an individual from a  
4           health savings security account if, at any time  
5           during the 1-year period ending on the day of  
6           such receipt, such individual received any other  
7           amount described in subparagraph (A) from a  
8           health savings security account which was not  
9           includible in the individual’s gross income be-  
10          cause of the application of this paragraph.

11          “(6) SPECIAL RULES.—Rules similar to the  
12          rules of paragraphs (6), (7), and (8) of section  
13          220(f) shall apply for purposes of this section.

14          “(g) REPORTS.—The Secretary may require the  
15          trustee of a health savings security account to make such  
16          reports regarding such account to the Secretary and to  
17          the account beneficiary with respect to contributions, dis-  
18          tributions, and such other matters as the Secretary deter-  
19          mines appropriate. The reports required by this subsection  
20          shall be filed at such time and in such manner and fur-  
21          nished to such individuals at such time and in such man-  
22          ner as may be required by the Secretary.

23          “(h) REGULATIONS.—The Secretary may issue regu-  
24          lations to carry out the purposes of this section, including  
25          regulations regarding the proper treatment of distribu-



1 tions described in subsection (f)(3) and nondeductible con-  
2 tributions by members of the family of the account bene-  
3 ficiary.

4 **“SEC. 224. HEALTH SAVINGS ACCOUNTS.**

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

11 “(b) LIMITATIONS.—

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

17 “(2) MONTHLY LIMITATION.—The monthly lim-  
18 itation for any month is the amount equal to  $\frac{1}{12}$  of  
19 the annual deductible (as of the first day of such  
20 month) of the individual’s coverage under the high  
21 deductible health plan.

22 “(3) COORDINATION WITH OTHER CONTRIBU-  
23 TIONS.—The limitation which would (but for this  
24 paragraph) apply under this subsection to the tax-



1 payer for any taxable year shall be reduced (but not  
2 below zero) by the sum of—

3 “(A) the aggregate amount paid during  
4 such taxable year to Archer MSAs of such indi-  
5 vidual,

6 “(B) the aggregate amount paid during  
7 such taxable year to health savings security ac-  
8 counts of such individual, and

9 “(C) the aggregate amount paid during  
10 such taxable year to health savings accounts of  
11 such individual by persons other than such indi-  
12 vidual.

13 “(4) SPECIAL RULES FOR MARRIED INDIVID-  
14 UALS, DEPENDENTS, AND MEDICARE ELIGIBLE INDI-  
15 VIDUALS.—Rules similar to the rules of paragraphs  
16 (3), (6), and (7) of section 220(b) shall apply for  
17 purposes of this section.

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

19 “(1) ELIGIBLE INDIVIDUAL.—

20 “(A) IN GENERAL.—The term ‘eligible in-  
21 dividual’ means, with respect to any month, any  
22 individual if—

23 “(i) such individual is covered under a  
24 high deductible health plan as of the 1st  
25 day of such month, and



1 “(ii) such individual is not, while cov-  
2 ered under a high deductible health plan,  
3 covered under any health plan—

4 “(I) which is not a high deduct-  
5 ible health plan, and

6 “(II) which provides coverage for  
7 any benefit which is covered under the  
8 high deductible health plan.

9 “(B) CERTAIN COVERAGE DIS-  
10 REGARDED.—Subparagraph (A)(ii) shall be ap-  
11 plied without regard to—

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

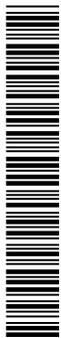
14 “(ii) coverage (whether through insur-  
15 ance or otherwise) for accidents, disability,  
16 dental care, vision care, or long-term care.

17 “(2) HIGH DEDUCTIBLE HEALTH PLAN.—

18 “(A) IN GENERAL.—The term ‘high de-  
19 ductible health plan’ means a health plan—

20 “(i) in the case of self-only coverage,  
21 which has an annual deductible which is  
22 not less than \$1,000 and not more than  
23 \$2,250,

24 “(ii) in the case of family coverage,  
25 which has an annual deductible which is



1 not less than \$2,000 and not more than  
2 \$4,500, and

3 “(iii) the annual out-of-pocket ex-  
4 penses required to be paid under the plan  
5 (other than for premiums) for covered ben-  
6 efits does not exceed—

7 “(I) \$3,000 for self-only cov-  
8 erage, and

9 “(II) \$5,500 for family coverage.

10 “(B) COST-OF-LIVING ADJUSTMENT.—

11 “(i) IN GENERAL.—In the case of any  
12 taxable year beginning in a calendar year  
13 after 1998, each dollar amount in subpara-  
14 graph (A) shall be increased by an amount  
15 equal to—

16 “(I) such dollar amount, multi-  
17 plied by

18 “(II) the cost-of-living adjust-  
19 ment determined under section 1(f)(3)  
20 for the calendar year in which such  
21 taxable year begins by substituting  
22 ‘calendar year 1997’ for ‘calendar  
23 year 1992’ in subparagraph (B) there-  
24 of.



1           “(ii) SPECIAL RULES.—In the case of  
2           the \$1,000 amount in subparagraph (A)(i)  
3           and the \$2,000 amount in subparagraph  
4           (A)(ii), subclause (i)(II) shall be applied by  
5           substituting ‘calendar year 2002’ for ‘cal-  
6           endar year 1997’.

7           “(iii) ROUNDING.—If any increase  
8           under clause (i) or (ii) is not a multiple of  
9           \$50, such increase shall be rounded to the  
10          nearest multiple of \$50.

11          “(C) SPECIAL RULES.—

12           “(i) EXCLUSION OF CERTAIN  
13          PLANS.—Such term does not include a  
14          health plan if substantially all of its cov-  
15          erage is coverage described in paragraph  
16          (1)(B).

17           “(ii) SAFE HARBOR FOR ABSENCE OF  
18          PREVENTIVE CARE DEDUCTIBLE.— A plan  
19          shall not fail to be treated as a high de-  
20          ductible health plan by reason of failing to  
21          have a deductible for preventive care.

22          “(D) TREATMENT OF NETWORK SERV-  
23          ICES.—

24           “(i) IN GENERAL.—In the case of a  
25          health plan which is a preferred provider



1 organization plan and which would (with-  
2 out regard to services provided outside  
3 such organization's network of providers  
4 described in clause (iii)(I)) be a high de-  
5 ductible health plan, such plan shall not  
6 fail to be a high deductible health plan  
7 because—

8 “(I) the annual deductible for  
9 services provided outside such network  
10 exceeds the applicable maximum dol-  
11 lar amount in clause (i) or (ii) of sub-  
12 paragraph (A), or

13 “(II) the annual out-of-pocket ex-  
14 penses required to be paid for services  
15 provided outside such network exceeds  
16 the applicable dollar amount in sub-  
17 paragraph (A)(iii).

18 “(ii) ANNUAL DEDUCTIBLE.—The an-  
19 nual deductible taken into account under  
20 subsection (b)(2) with respect to a plan  
21 which is a high deductible health plan by  
22 reason of clause (i) shall be the annual de-  
23 ductible for services provided within such  
24 network.



1                   “(iii) PREFERRED PROVIDER ORGANI-  
2                   ZATION PLAN DEFINED.—In this subpara-  
3                   graph, the term ‘preferred provider organi-  
4                   zation plan’ means a health plan that—

5                               “(I) has a network of providers  
6                               that have agreed to a contractually  
7                               specified reimbursement for covered  
8                               benefits with the organization offering  
9                               the plan,

10                              “(II) provides for reimbursement  
11                              for all covered benefits regardless of  
12                              whether such benefits are provided  
13                              within such network of providers, and

14                              “(III) is offered by an organiza-  
15                              tion that is not licensed or organized  
16                              under State law as a health mainte-  
17                              nance organization.

18                   “(3) PERMITTED INSURANCE.—The term ‘per-  
19                   mitted insurance’ has the meaning given such term  
20                   in section 220(c)(3).

21                   “(4) FAMILY COVERAGE.—The term ‘family  
22                   coverage’ has the meaning given such term in sec-  
23                   tion 220(c)(5).

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



1           “(6) HEALTH SAVINGS SECURITY ACCOUNT.—  
2           The term ‘health savings security account’ has the  
3           meaning given such term in section 223(d).

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

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

13                   “(A) Except in the case of a rollover con-  
14                   tribution from an Archer MSA, a health savings  
15                   security account, or a health savings account,  
16                   which is not includible in gross income, no con-  
17                   tribution will be accepted—

18                           “(i) unless it is in cash and is contrib-  
19                           uted by—

20                                   “(I) the account beneficiary, or

21                                   “(II) an employer of the account  
22                                   beneficiary, and

23                           “(ii) to the extent such contribution,  
24                           when added to previous contributions to  
25                           the trust for the calendar year, exceeds the



1 highest annual limitation which could  
2 apply to an individual under subsection (b)  
3 for a taxable year beginning in such cal-  
4 endar year.

5 “(B) The trustee is a bank (as defined in  
6 section 408(n)), an insurance company (as de-  
7 fined in section 816), or another person who  
8 demonstrates to the satisfaction of the Sec-  
9 retary that the manner in which such person  
10 will administer the trust will be consistent with  
11 the requirements of this section.

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

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

18 “(E) The interest of an individual in the  
19 balance in his account is nonforfeitable.

20 “(2) QUALIFIED MEDICAL EXPENSES.—The  
21 term ‘qualified medical expenses’ has the meaning  
22 given such term in section 220(d)(2).

23 “(3) ACCOUNT BENEFICIARY.—The term ‘ac-  
24 count beneficiary’ means the individual on whose be-  
25 half the health savings account was established.



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

4           “(A) Section 219(d)(2) (relating to no de-  
5 duction for rollovers).

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

8           “(C) Except as provided in section 106(d),  
9 section 219(f)(5) (relating to employer pay-  
10 ments).

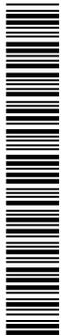
11           “(D) Section 408(g) (relating to commu-  
12 nity property laws).

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

15           “(6) CONTRIBUTIONS FROM FLEXIBLE SPEND-  
16 ING ACCOUNTS TREATED AS MADE BY THE EM-  
17 PLOYER.—Any contribution from a flexible spending  
18 account to a health savings account which is not in-  
19 cludible in the gross income of the employee by rea-  
20 son of section 125(h) shall be treated as a contribu-  
21 tion made by the employer for purposes of this sec-  
22 tion.

23           “(e) TAX TREATMENT OF ACCOUNTS.—

24           “(1) IN GENERAL.—A health savings account is  
25 exempt from taxation under this subtitle unless such



1 account has ceased to be a health savings account.  
2 Notwithstanding the preceding sentence, any such  
3 account is subject to the taxes imposed by section  
4 511 (relating to imposition of tax on unrelated busi-  
5 ness income of charitable, etc. organizations).

6 “(2) ACCOUNT TERMINATIONS.—Rules similar  
7 to the rules of paragraphs (2) and (4) of section  
8 408(e) shall apply to health savings accounts, and  
9 any amount treated as distributed under such rules  
10 shall be treated as not used to pay qualified medical  
11 expenses.

12 “(f) TAX TREATMENT OF DISTRIBUTIONS.—

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

18 “(2) INCLUSION OF AMOUNTS NOT USED FOR  
19 QUALIFIED MEDICAL EXPENSES.—Any amount paid  
20 or distributed out of a health savings account which  
21 is not used exclusively to pay the qualified medical  
22 expenses of the account beneficiary shall be included  
23 in the gross income of such beneficiary.

24 “(3) EXCESS CONTRIBUTIONS RETURNED BE-  
25 FORE DUE DATE OF RETURN.—



1           “(A) IN GENERAL.—If any excess con-  
2           tribution is contributed for a taxable year to  
3           any health savings account of an individual,  
4           paragraph (2) shall not apply to distributions  
5           from the health savings accounts of such indi-  
6           vidual (to the extent such distributions do not  
7           exceed the aggregate excess contributions to all  
8           such accounts of such individual for such year)  
9           if—

10           “(i) such distribution is made on or  
11           before the last day prescribed by law (in-  
12           cluding extensions of time) for filing the  
13           account beneficiary’s return for such tax-  
14           able year,

15           “(ii) no deduction is allowed under  
16           this section with respect to such contribu-  
17           tion,

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

21           “(iv) such distribution satisfies the re-  
22           quirements of subparagraph (B).

23           “(B) RULES RELATED TO ORDERING.—

24           “(i) DISTRIBUTIONS LIMITED TO CON-  
25           TRIBUTIONS.—Subparagraph (A) shall



1 apply to distributions to a person only to  
2 the extent of the contributions of such per-  
3 son to such accounts during such taxable  
4 year.

5 “(ii) CLASSES OF CONTRIBUTORS.—  
6 Subparagraph (A) shall apply only to dis-  
7 tributions of such contributions which are  
8 made in the following order:

9 “(I) first, to the account bene-  
10 ficiary,

11 “(II) second, to employers of the  
12 account beneficiary with respect to  
13 contributions under section 125(h),  
14 and

15 “(III) third, to employers of the  
16 account beneficiary with respect to  
17 contributions under section 106(d).

18 “(iii) LAST-IN FIRST-OUT.—If dis-  
19 tributions could be made to more than one  
20 person under any subclause of clause (ii),  
21 subparagraph (A) shall not apply to any  
22 such distribution unless such distribution  
23 is of the most recent excess contribution  
24 which has not been distributed to the con-  
25 tributor.



1           “(C) TREATMENT OF NET INCOME.—Any  
2 net income described in subparagraph (A)(iii)  
3 shall be included in the gross income of the per-  
4 son receiving the distribution for the taxable  
5 year in which received.

6           “(D) EXCESS CONTRIBUTION.—For pur-  
7 poses of subparagraph (A), the term ‘excess  
8 contribution’ means any contribution (other  
9 than a rollover contribution from another health  
10 savings account, from a health savings security  
11 account, or from an Archer MSA, which is not  
12 includible in gross income) to the extent such  
13 contribution results in the aggregate contribu-  
14 tions to health savings accounts of the account  
15 beneficiary for the taxable year to be in excess  
16 of the limitation under subsection (b) (deter-  
17 mined without regard to paragraph (3)(C)  
18 thereof) which applies to such beneficiary for  
19 such year.

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

22           “(A) IN GENERAL.—The tax imposed by  
23 this chapter on the account beneficiary for any  
24 taxable year in which there is a payment or dis-  
25 tribution from a health savings account of such



1 beneficiary which is includible in gross income  
2 under paragraph (2) shall be increased by 15  
3 percent of the amount which is so includible.

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

9 “(C) EXCEPTION FOR DISTRIBUTIONS  
10 AFTER MEDICARE ELIGIBILITY.—Subparagraph  
11 (A) shall not apply to any payment or distribu-  
12 tion after the date on which the account bene-  
13 ficiary attains the age specified in section 1811  
14 of the Social Security Act.

15 “(5) ROLLOVER CONTRIBUTION.—

16 “(A) IN GENERAL.—Paragraph (2) shall  
17 not apply to any amount paid or distributed  
18 from a health savings account to the account  
19 beneficiary to the extent the amount received is  
20 paid into a health savings account for the ben-  
21 efit of such beneficiary not later than the 60th  
22 day after the day on which the beneficiary re-  
23 ceives the payment or distribution.

24 “(B) LIMITATION.—This paragraph shall  
25 not apply to any amount described in subpara-



1 graph (A) received by an individual from a  
2 health savings account if, at any time during  
3 the 1-year period ending on the day of such re-  
4 ceipt, such individual received any other amount  
5 described in subparagraph (A) from a health  
6 savings account which was not includible in the  
7 individual's gross income because of the appli-  
8 cation of this paragraph.

9 “(6) SPECIAL RULES.—Rules similar to the  
10 rules of paragraphs (6), (7), and (8) of section  
11 220(f) shall apply for purposes of this section.

12 “(g) REPORTS.—The Secretary may require the  
13 trustee of a health savings account to make such reports  
14 regarding such account to the Secretary and to the ac-  
15 count beneficiary with respect to contributions, distribu-  
16 tions, and such other matters as the Secretary determines  
17 appropriate. The reports required by this subsection shall  
18 be filed at such time and in such manner and furnished  
19 to such individuals at such time and in such manner as  
20 may be required by the Secretary.”.

21 (b) DEDUCTION ALLOWED WHETHER OR NOT INDI-  
22 VIDUAL ITEMIZES OTHER DEDUCTIONS.—Subsection (a)  
23 of section 62 of such Code is amended by inserting after  
24 paragraph (18) the following new paragraphs:



1           “(19) HEALTH SAVINGS SECURITY AC-  
2           COUNTS.—The deduction allowed by section 223.

3           “(20) HEALTH SAVINGS ACCOUNTS.—The de-  
4           duction allowed by section 224.”.

5           (c) COORDINATION WITH ARCHER MSAs.—

6           (1) ROLLOVERS FROM ARCHER MSAs PER-  
7           MITTED.—Subparagraph (A) of section 220(f)(5) of  
8           such Code (relating to rollover contribution) is  
9           amended by inserting “, a health savings security  
10          account (as defined in section 223(d)), or a health  
11          savings account (as defined in section 224(d)),”  
12          after “paid into an Archer MSA”.

13          (2) REDUCTION IN ARCHER MSA LIMITATION  
14          FOR CONTRIBUTIONS TO HEALTH SAVINGS SECURITY  
15          ACCOUNTS AND HEALTH SAVINGS ACCOUNTS.—Sub-  
16          section (b) of section 220 of such Code (relating to  
17          limitations) is amended by adding at the end the fol-  
18          lowing new paragraph:

19          “(8) COORDINATION WITH HEALTH SAVINGS  
20          SECURITY ACCOUNTS AND HEALTH SAVINGS AC-  
21          COUNTS.—The limitation which would (but for this  
22          paragraph) apply under this subsection to the tax-  
23          payer for any taxable year shall be reduced (but not  
24          below zero) by the sum of—



1           “(A) the aggregate amount paid during  
2           such taxable year to health savings security ac-  
3           counts of such individual, and

4           “(B) the aggregate amount paid during  
5           such taxable year to health savings accounts of  
6           such individual.”.

7           (d) EXCLUSIONS FOR EMPLOYER CONTRIBUTIONS TO  
8 HEALTH SAVINGS SECURITY ACCOUNTS AND HEALTH  
9 SAVINGS ACCOUNTS.—

10           (1) EXCLUSION FROM INCOME TAX.—Section  
11           106 of such Code (relating to contributions by em-  
12           ployer to accident and health plans) is amended by  
13           adding at the end the following new subsections:

14           “(d) CONTRIBUTIONS TO HEALTH SAVINGS SECUR-  
15 RITY ACCOUNTS.—

16           “(1) IN GENERAL.—In the case of an employee  
17           who is an eligible individual, amounts contributed by  
18           such employee’s employer to any health savings se-  
19           curity account of such employee shall be treated as  
20           employer-provided coverage for medical expenses  
21           under an accident or health plan to the extent such  
22           amounts do not exceed the limitation under section  
23           223(b) (determined without regard to this sub-  
24           section) which is applicable to such employee for  
25           such taxable year.



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

5           “(3) DEFINITIONS.—For purposes of this sub-  
6 section, the terms ‘eligible individual’ and ‘health  
7 savings security account’ have the respective mean-  
8 ings given to such terms by section 223.

9           “(4) CROSS REFERENCE.—

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

10          “(e) CONTRIBUTIONS TO HEALTH SAVINGS AC-  
11 COUNTS.—

12           “(1) IN GENERAL.—In the case of an employee  
13 who is an eligible individual, amounts contributed by  
14 such employee’s employer to any health savings ac-  
15 count of such employee shall be treated as employer-  
16 provided coverage for medical expenses under an ac-  
17 cident or health plan to the extent such amounts do  
18 not exceed the limitation under section 224(b) (de-  
19 termined without regard to this subsection) which is  
20 applicable to such employee for such taxable year.

21           “(2) SPECIAL RULES.—Rules similar to the  
22 rules of paragraphs (2), (3), (4), and (5) of sub-



1 section (b) shall apply for purposes of this sub-  
2 section.

3 “(3) DEFINITIONS.—For purposes of this sub-  
4 section, the terms ‘eligible individual’ and ‘health  
5 savings account’ have the respective meanings given  
6 to such terms by section 224.

7 “(4) CROSS REFERENCE.—

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

8 (2) EXCLUSION FROM EMPLOYMENT TAXES.—

9 (A) RAILROAD RETIREMENT TAX.—Sub-  
10 section (e) of section 3231 of such Code is  
11 amended by adding at the end the following  
12 new paragraph:

13 “(11) HEALTH SAVINGS SECURITY ACCOUNT  
14 AND HEALTH SAVINGS ACCOUNT CONTRIBUTIONS.—  
15 The term ‘compensation’ shall not include any pay-  
16 ment made to or for the benefit of an employee if  
17 at the time of such payment it is reasonable to be-  
18 lieve that the employee will be able to exclude such  
19 payment from income under subsection (d) or (e) of  
20 section 106.”.

21 (B) UNEMPLOYMENT TAX.—Subsection (b)  
22 of section 3306 of such Code is amended by  
23 striking “or” at the end of paragraph (16), by



1 striking the period at the end of paragraph (17)  
2 and inserting “; or”, and by inserting after  
3 paragraph (17) the following new paragraph:

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

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

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

20 (3) EMPLOYER CONTRIBUTIONS REQUIRED TO  
21 BE SHOWN ON W-2.—Subsection (a) of section 6051  
22 of such Code is amended by striking “and” at the  
23 end of paragraph (10), by striking the period at the  
24 end of paragraph (11) and inserting a comma, and



1 by inserting after paragraph (11) the following new  
2 paragraphs:

3 “(12) the amount contributed to any health  
4 savings security account (as defined in section  
5 223(d)) of such employee or such employee’s spouse,  
6 and

7 “(13) the amount contributed to any health  
8 savings account (as defined in section 224(d)) of  
9 such employee or such employee’s spouse.”.

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

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

16 **“SEC. 4980G. FAILURE OF EMPLOYER TO MAKE COM-**  
17 **PARABLE HEALTH SAVINGS ACCOUNT CON-**  
18 **TRIBUTIONS.**

19 “(a) GENERAL RULE.—In the case of an employer  
20 who makes a contribution to the health savings security  
21 account or the health savings account of any employee  
22 during a calendar year, there is hereby imposed a tax on  
23 the failure of such employer to meet the requirements of  
24 subsection (b) for such calendar year.



1       “(b) RULES AND REQUIREMENTS.—Rules and re-  
2       quirements similar to the rules and requirements of sec-  
3       tion 4980E shall apply for purposes of this section.

4       “(c) REGULATIONS.—The Secretary shall issue regu-  
5       lations to carry out the purposes of this section, including  
6       regulations providing special rules for employers who  
7       make contributions to more than one of the following types  
8       of accounts during the calendar year:

9               “(1) An Archer MSA.

10              “(2) A health savings security account.

11              “(3) A health savings account.”.

12              (B) CLERICAL AMENDMENT.—The table of  
13       sections for chapter 43 of such Code is amend-  
14       ed by adding after the item relating to section  
15       4980F the following new item:

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

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

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

21              (2) by inserting after paragraph (4) of sub-  
22       section (a) the following new paragraphs:

23              “(5) a health savings security account (within  
24       the meaning of section 223(d)), or



1 “(6) a health savings account (within the mean-  
2 ing of section 224(d))”, and

3 (4) by adding at the end the following new sub-  
4 sections:

5 “(g) **EXCESS CONTRIBUTIONS TO HEALTH SAVINGS**  
6 **SECURITY ACCOUNTS.**—For purposes of this section, in  
7 the case of health savings security accounts (within the  
8 meaning of section 223(d)), the term ‘excess contribu-  
9 tions’ means the sum of—

10 “(1) the aggregate amount contributed for the  
11 taxable year to the accounts (other than a rollover  
12 contribution from another health savings security ac-  
13 count, or from an Archer MSA, which is not includ-  
14 ible in gross income) which is in excess of the limita-  
15 tion under section 223(b) (determined without re-  
16 gard to paragraph (5)(C) thereof), and

17 “(2) the amount determined under this sub-  
18 section for the preceding taxable year, reduced by  
19 the sum of—

20 “(A) the distributions out of the accounts  
21 which were included in gross income under sec-  
22 tion 223(f)(2), and

23 “(B) the excess (if any) of—

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



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

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

7           “(h) EXCESS CONTRIBUTIONS TO HEALTH SAVINGS  
8 ACCOUNTS.—For purposes of this section, in the case of  
9 health savings accounts (within the meaning of section  
10 224(d)), the term ‘excess contributions’ means the sum  
11 of—

12           “(1) the aggregate amount contributed for the  
13 taxable year to the accounts (other than a rollover  
14 contribution from another health savings account, a  
15 health savings security account, or from an Archer  
16 MSA, which is not includible in gross income) which  
17 is in excess of the limitation under section 224(b)  
18 (determined without regard to paragraph (3)(C)  
19 thereof), and

20           “(2) the amount determined under this sub-  
21 section for the preceding taxable year, reduced by  
22 the sum of—

23           “(A) the distributions out of the accounts  
24 which were included in gross income under sec-  
25 tion 224(f)(2), and



1 “(B) the excess (if any) of—

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

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

6 For purposes of this subsection, any contribution which  
7 is distributed out of the health savings account in a dis-  
8 tribution to which section 224(f)(3) applies shall be treat-  
9 ed as an amount not contributed.”.

10 (f) TAX ON PROHIBITED TRANSACTIONS.—

11 (1) Section 4975 of such Code (relating to tax  
12 on prohibited transactions) is amended by adding at  
13 the end of subsection (c) the following new para-  
14 graphs:

15 “(6) SPECIAL RULE FOR HEALTH SAVINGS SE-  
16 CURITY ACCOUNTS.—An individual for whose benefit  
17 a health savings security account (within the mean-  
18 ing of section 223(d)) is established shall be exempt  
19 from the tax imposed by this section with respect to  
20 any transaction concerning such account (which  
21 would otherwise be taxable under this section) if,  
22 with respect to such transaction, the account ceases  
23 to be a health savings security account by reason of  
24 the application of section 223(e)(2) to such account.



1           “(7) SPECIAL RULE FOR HEALTH SAVINGS AC-  
2           COUNTS.—An individual for whose benefit a health  
3           savings account (within the meaning of section  
4           224(d)) is established shall be exempt from the tax  
5           imposed by this section with respect to any trans-  
6           action concerning such account (which would other-  
7           wise be taxable under this section) if, with respect  
8           to such transaction, the account ceases to be a  
9           health savings account by reason of the application  
10          of section 224(e)(2) to such account.”.

11           (2) Paragraph (1) of section 4975(e) of such  
12          Code is amended by redesignating subparagraphs  
13          (E) and (F) as subparagraphs (G) and (H), respec-  
14          tively, and by inserting after subparagraph (D) the  
15          following new subparagraphs:

16                   “(E) a health savings security account de-  
17                   scribed in section 223(d),

18                   “(F) a health savings account described in  
19                   section 224(d),”.

20           (g) FAILURE TO PROVIDE REPORTS ON HEALTH  
21          SAVINGS ACCOUNTS.—Paragraph (2) of section 6693(a)  
22          of such Code (relating to reports) is amended by redesi-  
23          gnating subparagraphs (C) and (D) as subparagraphs (E)  
24          and (F), respectively, and by inserting after subparagraph  
25          (B) the following new subparagraphs:



1                   “(C) section 223(g) (relating to health sav-  
2                   ings security accounts),

3                   “(D) section 224(g) (relating to health  
4                   savings accounts),”.

5           (h) EXCEPTION FROM CAPITALIZATION OF POLICY  
6 ACQUISITION EXPENSES.—Subparagraph (B) of section  
7 848(e)(1) of such Code (defining specified insurance con-  
8 tract) is amended by striking “and” at the end of clause  
9 (iii), by striking the period at the end of clause (iv) and  
10 inserting a comma, and by adding at the end the following  
11 new clauses:

12                   “(v) any contract which is a health  
13                   savings security account (as defined in sec-  
14                   tion 223(d)), and”.

15                   “(vi) any contract which is a health  
16                   savings account (as defined in section  
17                   224(d)).”.

18           (i) HEALTH SAVINGS SECURITY ACCOUNTS AND  
19 HEALTH SAVINGS ACCOUNTS MAY BE OFFERED UNDER  
20 CAFETERIA PLANS.—Paragraph (2) of section 125(d) (re-  
21 lating to cafeteria plan defined) is amended by adding at  
22 the end the following new subparagraph:

23                   “(D) EXCEPTION FOR HEALTH SAVINGS  
24                   ACCOUNTS.—Subparagraph (A) shall not apply  
25                   to a plan to the extent of amounts which a cov-





1 subsection (a) shall furnish to each individual whose name  
2 is required to be set forth in such return a written state-  
3 ment showing—

4 “(1) the name and address of the person re-  
5 quired to make such return and the phone number  
6 of the information contact for such person, and

7 “(2) the information required to be shown on  
8 the return with respect to such individual.

9 The written statement required under the preceding sen-  
10 tence shall be furnished on or before January 31 of the  
11 year following the calendar year for which the return  
12 under subsection (a) is required to be made.”.

13 (k) CONFORMING AMENDMENTS.—

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

“Sec. 223. Health savings security accounts.

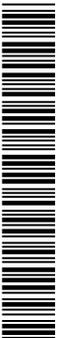
“Sec. 224. Health savings accounts.

“Sec. 225. Cross reference.”.

17 (2)(A) Sections 86(b)(2)(A), 135(c)(4)(A),  
18 137(b)(3)(A), 219(g)(3)(A)(ii), and 221(b)(2)(C)(i)  
19 are each amended by inserting “223,” after “222,”.

20 (B) Section 222(b)(2)(C)(i) is amended by in-  
21 serting “223,” before “911”.

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



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

4 **SEC. 3. DISPOSITION OF UNUSED HEALTH BENEFITS IN**  
5 **CAFETERIA PLANS AND FLEXIBLE SPENDING**  
6 **ARRANGEMENTS.**

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

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

14 “(1) IN GENERAL.—For purposes of this title,  
15 a plan or other arrangement shall not fail to be  
16 treated as a cafeteria plan solely because qualified  
17 benefits under such plan include a health flexible  
18 spending arrangement under which not more than  
19 \$500 of unused health benefits may be—

20 “(A) carried forward to the succeeding  
21 plan year of such health flexible spending ar-  
22 rangement,

23 “(B) to the extent permitted by sections  
24 223 and 224, contributed on behalf of the em-  
25 ployee to a health savings security account (as



1 defined in section 223(d)), or a health savings  
2 account (as defined in section 224(d)), main-  
3 tained for the benefit of such employee, or

4 “(C) contributed to a qualified retirement  
5 plan (as defined in section 4974(e)), or an eligi-  
6 ble deferred compensation plan (as defined in  
7 section 457(b)) of an eligible employer de-  
8 scribed in section 457(e)(1)(A), but only to the  
9 extent such amount would not be allowed as a  
10 deduction under—

11 “(i) section 223 if made directly by  
12 the employee to a health savings security  
13 account of the employee (determined with-  
14 out regard to any other contributions made  
15 by the employee), and

16 “(ii) section 224 if made directly by  
17 the employee to a health savings account  
18 of the employee (determined without re-  
19 gard to any other contributions made by  
20 the employee).

21 “(2) SPECIAL RULES FOR TREATMENT OF CON-  
22 TRIBUTIONS TO RETIREMENT PLANS.—For purposes  
23 of this title, contributions under paragraph (1)(C)—

24 “(A) shall be treated as elective deferrals  
25 (as defined in section 402(g)(3)) in the case of



1 contributions to a qualified cash or deferred ar-  
2 rangement (as defined in section 401(k)) or to  
3 an annuity contract described in section 403(b),

4 “(B) shall be treated as employer contribu-  
5 tions to which the employee has a nonforfeitable  
6 right in the case of a plan (other than a plan  
7 described in subparagraph (A)) which is de-  
8 scribed in section 401(a) which includes a trust  
9 exempt from tax under section 501(a),

10 “(C) shall be treated as deferred com-  
11 pensation in the case of contributions to an eli-  
12 gible deferred compensation plan (as defined in  
13 section 457(b)), and

14 “(D) shall be treated in the manner des-  
15 ignated for purposes of section 408 or 408A in  
16 the case of contributions to an individual retire-  
17 ment plan.

18 “(3) HEALTH FLEXIBLE SPENDING ARRANGE-  
19 MENT.—For purposes of this subsection, the term  
20 ‘health flexible spending arrangement’ means a flexi-  
21 ble spending arrangement (as defined in section  
22 106(c)) that is a qualified benefit and only permits  
23 reimbursement for expenses for medical care (as de-  
24 fined in section 213(d)(1) (without regard to sub-  
25 paragraphs (C) and (D) thereof).



1           “(4) UNUSED HEALTH BENEFITS.—For pur-  
2           poses of this subsection, with respect to an em-  
3           ployee, the term ‘unused health benefits’ means the  
4           excess of—

5                   “(A) the maximum amount of reimburse-  
6                   ment allowable to the employee during a plan  
7                   year under a health flexible spending arrange-  
8                   ment, taking into account any election by the  
9                   employee, over

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

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

15   **SEC. 4. EXCEPTION TO INFORMATION REPORTING RE-**  
16                   **QUIREMENTS RELATED TO CERTAIN HEALTH**  
17                   **ARRANGEMENTS.**

18           (a) IN GENERAL.—Section 6041 (relating to infor-  
19           mation at source) is amended by adding at the end the  
20           following new subsection:

21                   “(f) SECTION DOES NOT APPLY TO CERTAIN  
22                   HEALTH ARRANGEMENTS.—This section shall not apply  
23                   to any payment for medical care (as defined in section  
24                   213(d)) made under—



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

3           “(2) a health reimbursement arrangement  
4           which is treated as employer-provided coverage  
5           under an accident or health plan for purposes of sec-  
6           tion 106.”.

7           (b) EFFECTIVE DATE.—The amendment made by  
8           this section shall apply to payments made after December  
9           31, 2002.

