

**AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 2351
OFFERED BY MR. THOMAS**

Strike all after the enacting clause and insert the following:

1 SECTION 1. SHORT TITLE.

2 This Act may be cited as the “Health Savings Ac-
3 count Availability Act”.

4 SEC. 2. HEALTH SAVINGS ACCOUNTS.

5 (a) IN GENERAL.—Part VII of subchapter B of chap-
6 ter 1 of the Internal Revenue Code of 1986 (relating to
7 additional itemized deductions for individuals) is amended
8 by redesignating section 223 as section 224 and by insert-
9 ing after section 222 the following new section:

10 “SEC. 223. HEALTH SAVINGS ACCOUNTS.

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

17 “(b) LIMITATIONS.—

18 “(1) IN GENERAL.—The amount allowable as a
19 deduction under subsection (a) to an individual for



1 the taxable year shall not exceed the sum of the
2 monthly limitations for months during such taxable
3 year that the individual is an eligible individual.

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

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

8 “(i) has self-only coverage under a
9 minimum deductible plan as of the first
10 day of such month, or

11 “(ii) is uninsured as of the first day
12 of such month and is not described in sub-
13 paragraph (B)(ii) with respect to the tax-
14 able year which includes such month,

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

17 “(i) has family coverage under a min-
18 imum deductible plan as of the first day of
19 such month, or

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

23 “(I) is entitled to a deduction for
24 a dependent under section 151(c) (or



1 would be so entitled but for paragraph
2 (2) or (4) of section 152(e)), or

3 “(II) files a joint return, and

4 “(C) zero in any other case.

5 “(3) ADDITIONAL CONTRIBUTIONS FOR INDI-
6 VIDUALS 55 OR OLDER.—

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

14 “(B) ADDITIONAL CONTRIBUTION
15 AMOUNT.—For purposes of this section, the ad-
16 ditional contribution amount is the amount de-
17 termined 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.

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

20 “(A) IN GENERAL.—The dollar amount in
21 paragraph (2)(A) and the dollar amount in



1 paragraph (2)(B) (in each case as increased
2 under paragraph (3)) shall each be reduced
3 (but not below zero) by an amount which bears
4 the same ratio to such dollar amount as—

5 “(i) the excess of—

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

9 “(II) the applicable dollar
10 amount, bears to

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

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

19 “(C) ROUNDING.—Any amount determined
20 under this paragraph which is not a multiple of
21 \$10 shall be rounded to the next lowest \$10.

22 “(D) ADJUSTED GROSS INCOME.—For
23 purposes of this paragraph, adjusted gross in-
24 come shall be determined—



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

3 “(ii) after application of sections 86,
4 135, 137, 219, 221, 222, and 469.

5 “(E) APPLICABLE DOLLAR AMOUNT.—For
6 purposes of this paragraph, the term ‘applicable
7 dollar amount’ has the meaning given such
8 term in section 219(g)(3)(B). The rule of sec-
9 tion 219(g)(4) (relating to special rule for mar-
10 ried individuals filing separately and living
11 apart) shall apply for purposes of the preceding
12 sentence.

13 “(5) COORDINATION WITH OTHER CONTRIBU-
14 TIONS.—The limitation which would (but for this
15 paragraph) apply under this subsection to the tax-
16 payer for any taxable year shall be reduced (but not
17 below zero) by the sum of—

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

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



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

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

7 “(1) ELIGIBLE INDIVIDUAL.—

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

14 “(B) CERTAIN COVERAGE DIS-
15 REGARDED.—Subparagraph (A) shall be ap-
16 plied without regard to—

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

19 “(ii) coverage (whether through insur-
20 ance or otherwise) for accidents, disability,
21 dental care, vision care, or long-term care.

22 “(2) MINIMUM DEDUCTIBLE PLAN.—

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



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

4 “(ii) in the case of family coverage,
5 which has an annual deductible which is
6 not less than \$1,000.

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

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

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

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

23 “(ii) ROUNDING.—If any increase under
24 clause (i) is not a multiple of \$50, such increase
25 shall be rounded to the nearest 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) PERMITTED INSURANCE.—The term ‘per-
13 mitted insurance’ has the meaning given such term
14 in section 220(c)(3).

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

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

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

22 “(1) IN GENERAL.—The term ‘health savings
23 account’ means a trust created or organized in the
24 United States as a health savings account exclusively
25 for the purpose of paying the qualified medical ex-



1 penses of the account beneficiary, but only if the
2 written governing instrument creating the trust
3 meets the following requirements:

4 “(A) Except in the case of a rollover con-
5 tribution from an Archer MSA, or a health sav-
6 ings account, which is not includible in gross in-
7 come, no contribution will be accepted—

8 “(i) unless it is in cash and is contrib-
9 uted by—

10 “(I) the account beneficiary,

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

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

15 “(ii) to the extent such contribution,
16 when added to previous contributions to
17 the trust for the calendar year, exceeds the
18 dollar amount in subsection (b)(2)(B) in-
19 creased by the additional contribution
20 amount for taxable years beginning in such
21 calendar year.

22 “(B) The trustee is a bank (as defined in
23 section 408(n)), an insurance company (as de-
24 fined in section 816), or another person who
25 demonstrates to the satisfaction of the Sec-



1 retary that the manner in which such person
2 will administer the trust will be consistent with
3 the requirements of this section.

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

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

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

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

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

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

20 “(i) insurance which constitutes a
21 minimum deductible plan if no portion of
22 the cost of such insurance is paid by an
23 employer or former employer of the ac-
24 count beneficiary or the spouse of such
25 beneficiary, and



1 “(ii) any health insurance (other than
2 health insurance substantially all of its
3 coverage is coverage described in sub-
4 section (c)(1)(B)) if the account bene-
5 ficiary has attained age 65, and

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

8 “(4) ACCOUNT BENEFICIARY.—The term ‘ac-
9 count beneficiary’ means the individual on whose be-
10 half the health savings account was established.

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

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

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

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

21 “(D) Section 408(g) (relating to commu-
22 nity property laws).

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



1 “(6) CONTRIBUTIONS FROM FLEXIBLE SPEND-
2 ING ACCOUNTS TREATED AS MADE BY THE EM-
3 PLOYER.—Any contribution from a flexible spending
4 account to a health savings account which is not in-
5 cludible in the gross income of the employee by rea-
6 son of section 125(h) shall be treated as a contribu-
7 tion made by the employer for purposes of this sec-
8 tion.

9 “(e) TAX TREATMENT OF ACCOUNTS.—

10 “(1) IN GENERAL.—A health savings account is
11 exempt from taxation under this subtitle unless such
12 account has ceased to be a health savings account.
13 Notwithstanding the preceding sentence, any such
14 account is subject to the taxes imposed by section
15 511 (relating to imposition of tax on unrelated busi-
16 ness income of charitable, etc. organizations).

17 “(2) ACCOUNT TERMINATIONS.—Rules similar
18 to the rules of paragraphs (2) and (4) of section
19 408(e) shall apply to health savings accounts, and
20 any amount treated as distributed under such simi-
21 lar rules shall be treated as not used to pay qualified
22 medical expenses.

23 “(f) TAX TREATMENT OF DISTRIBUTIONS.—

24 “(1) AMOUNTS USED FOR QUALIFIED MEDICAL
25 EXPENSES.—Any amount paid or distributed out of



1 a health savings account which is used exclusively to
2 pay qualified medical expenses of any account bene-
3 ficiary shall not be includible in gross income.

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

6 “(A) IN GENERAL.—Any amount paid or
7 distributed out of a health savings account
8 which is not used exclusively to pay the quali-
9 fied medical expenses of the account beneficiary
10 shall be included in the gross income of such
11 beneficiary in the manner provided under sec-
12 tion 72.

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

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

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

20 “(iii) the value of the contract, income
21 on the contract, and investment in the con-
22 tract shall be computed as of the close of
23 the calendar year in which the taxable year
24 begins, and



1 “(iv) such distributions shall be treat-
2 ed as made from contributions from mem-
3 bers of the family of the account bene-
4 ficiary to the extent that such distribution,
5 when added to all previous distributions
6 from the health savings account taken into
7 account under this clause, do not exceed
8 the aggregate contributions from members
9 of such family.

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

12 “(A) IN GENERAL.—If any excess con-
13 tribution is contributed for a taxable year to
14 any health savings account of an individual,
15 paragraph (2) shall not apply to distributions
16 from the health savings accounts of such indi-
17 vidual (to the extent such distributions do not
18 exceed the aggregate excess contributions to all
19 such accounts of such individual for such year)
20 if—

21 “(i) such distribution is made on or
22 before the last day prescribed by law (in-
23 cluding extensions of time) for filing the
24 account beneficiary’s return for such tax-
25 able year,



1 “(ii) no deduction is allowed under
2 this section with respect to such contribu-
3 tion,

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

7 “(iv) such distribution satisfies the re-
8 quirements of subparagraph (B).

9 “(B) RULES RELATED TO ORDERING.—

10 “(i) DISTRIBUTIONS LIMITED TO CON-
11 TRIBUTIONS.—Subparagraph (A) shall
12 apply to distributions to a person only to
13 the extent of the contributions of such per-
14 son to such accounts during such taxable
15 year.

16 “(ii) CLASSES OF CONTRIBUTORS.—
17 Subparagraph (A) shall apply only to dis-
18 tributions of such contributions which are
19 made in the following order:

20 “(I) first, to members of the fam-
21 ily of the account beneficiary,

22 “(II) second, to the account ben-
23 eficiary,

24 “(III) third, to employers of the
25 account beneficiary with respect to



1 contributions under section 125(h),
2 and

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

6 “(iii) LAST-IN FIRST-OUT.—If dis-
7 tributions could be made to more than one
8 person under any subclause of clause (ii),
9 subparagraph (A) shall not apply to any
10 such distribution unless such distribution
11 is of the most recent excess contribution
12 which has not been distributed to the con-
13 tributor.

14 “(C) TREATMENT OF NET INCOME.—Any
15 net income described in subparagraph (A)(iii)
16 shall be included in the gross income of the per-
17 son receiving the distribution for the taxable
18 year in which received.

19 “(D) EXCESS CONTRIBUTION.—For pur-
20 poses of subparagraph (A), the term ‘excess
21 contribution’ means any contribution (other
22 than a rollover contribution from another health
23 savings account, or from an Archer MSA, which
24 is not includible in gross income) to the extent
25 such contribution results in the aggregate con-



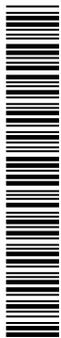
1 tributions to health savings accounts of the ac-
 2 count beneficiary for the taxable year to be in
 3 excess of the limitation under subsection (b)
 4 (determined without regard to paragraph (5)
 5 thereof) which applies to such beneficiary for
 6 such year.

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

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

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

21 “(C) EXCEPTION FOR DISTRIBUTIONS
 22 AFTER MEDICARE ELIGIBILITY.—Subparagraph
 23 (A) shall not apply to any payment or distribu-
 24 tion after the date on which the account bene-



1 ficiary attains the age specified in section 1811
2 of the Social Security Act.

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

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

15 “(h) REGULATIONS.—The Secretary may issue regu-
16 lations to carry out the purposes of this section, including
17 regulations regarding the proper treatment of distribu-
18 tions described in subsection (f)(3) and nondeductible con-
19 tributions by members of the family of the account bene-
20 ficiary.”.

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 paragraph:



1 “(19) HEALTH SAVINGS ACCOUNTS.—The de-
2 duction allowed by section 223.”.

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

8 (d) EXCLUSIONS FOR EMPLOYER CONTRIBUTIONS TO
9 HEALTH 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 subsection:

14 “(d) CONTRIBUTIONS TO HEALTH SAVINGS AC-
15 COUNTS.—

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 ac-
19 count of such employee shall be treated as employer-
20 provided coverage for medical expenses under an ac-
21 cident or health plan to the extent such amounts do
22 not exceed the excess of—

23 “(A) the limitation under section 223(b)
24 (determined without regard to this subsection)



1 which is applicable to such employee for such
2 taxable year, over

3 “(B) the aggregate amount treated as em-
4 ployer-provided coverage for medical expenses
5 under an accident or health plan under sub-
6 section (b).

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

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

15 “(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.”.**

16 (2) EXCLUSION FROM EMPLOYMENT TAXES.—

17 (A) RAILROAD RETIREMENT TAX.—Sub-
18 section (e) of section 3231 of such Code is
19 amended by adding at the end the following
20 new paragraph:

21 “(11) HEALTH SAVINGS ACCOUNT CONTRIBU-
22 TIONS.—The term ‘compensation’ shall not include
23 any payment made to or for the benefit of an em-



1 ployee if at the time of such payment it is reason-
2 able to believe that the employee will be able to ex-
3 clude such payment from income under section
4 106(d).”.

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

11 “(18) any payment made to or for the benefit
12 of an employee if at the time of such payment it is
13 reasonable to believe that the employee will be able
14 to exclude such payment from income under section
15 106(d).”.

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

22 “(22) any payment made to or for the benefit
23 of an employee if at the time of such payment it is
24 reasonable to believe that the employee will be able



1 to exclude such payment from income under section
2 106(d).”

3 (3) EMPLOYER CONTRIBUTIONS REQUIRED TO
4 BE SHOWN ON W-2.—Subsection (a) of section 6051
5 of such Code is amended by striking “and” at the
6 end of paragraph (10), by striking the period at the
7 end of paragraph (11) and inserting “, and”, and by
8 inserting after paragraph (11) the following new
9 paragraph:

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

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

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

19 **“SEC. 4980G. FAILURE OF EMPLOYER TO MAKE COM-**
20 **PARABLE HEALTH SAVINGS ACCOUNT CON-**
21 **TRIBUTIONS.**

22 “(a) GENERAL RULE.—In the case of an employer
23 who makes a contribution to the health savings account
24 of any employee with respect to coverage under a min-
25 imum deductible plan of the employer during a calendar



1 year, there is hereby imposed a tax on the failure of such
2 employer to meet the requirements of subsection (d) for
3 such calendar year.

4 “(b) AMOUNT OF TAX.—The amount of the tax im-
5 posed by subsection (a) on any failure for any calendar
6 year is the amount equal to 35 percent of the aggregate
7 amount contributed by the employer to health savings ac-
8 counts of employees for taxable years of such employees
9 ending with or within such calendar year.

10 “(c) WAIVER BY SECRETARY.—In the case of a fail-
11 ure which is due to reasonable cause and not to willful
12 neglect, the Secretary may waive part or all of the tax
13 imposed by subsection (a) to the extent that the payment
14 of such tax would be excessive relative to the failure in-
15 volved.

16 “(d) EMPLOYER REQUIRED TO MAKE COMPARABLE
17 HEALTH SAVINGS ACCOUNT CONTRIBUTIONS FOR ALL
18 PARTICIPATING EMPLOYEES.—An employer meets the re-
19 quirements of this subsection for any calendar year if the
20 employer meets the requirements of section 4980E(d) ap-
21 plied by—

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

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



1 “(g) EXCESS CONTRIBUTIONS TO HEALTH SAVINGS
2 ACCOUNTS.—For purposes of this section, in the case of
3 health savings accounts (within the meaning of section
4 223(d)), the term ‘excess contributions’ means the sum
5 of—

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

13 “(2) the amount determined under this sub-
14 section for the preceding taxable year, reduced by
15 the sum of—

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

19 “(B) the excess (if any) of—

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

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

24 For purposes of this subsection, any contribution which
25 is distributed out of the health savings account in a dis-



1 tribution to which section 223(f)(3) applies shall be treat-
2 ed as an amount not contributed.”.

3 (f) TAX ON PROHIBITED TRANSACTIONS.—

4 (1) Section 4975 of such Code (relating to tax
5 on prohibited transactions) is amended by adding at
6 the end of subsection (c) the following new para-
7 graph:

8 “(6) SPECIAL RULE FOR HEALTH SAVINGS AC-
9 COUNTS.—An individual for whose benefit a health
10 savings account (within the meaning of section
11 223(d)) is established shall be exempt from the tax
12 imposed by this section with respect to any trans-
13 action concerning such account (which would other-
14 wise be taxable under this section) if, with respect
15 to such transaction, the account ceases to be a
16 health savings account by reason of the application
17 of section 223(e)(2) to such account.”.

18 (2) Paragraph (1) of section 4975(e) of such
19 Code is amended by redesignating subparagraphs
20 (E) and (F) as subparagraphs (F) and (G), respec-
21 tively, and by inserting after subparagraph (D) the
22 following new subparagraph:

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



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

7 “(C) section 223(g) (relating to health sav-
8 ings accounts),”.

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

16 “(v) any contract which is a health
17 savings account (as defined in section
18 223(d)).”.

19 (i) CONFORMING AMENDMENTS.—

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

“Sec. 223. Health savings accounts.

“Sec. 224. Cross reference.”.



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

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

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

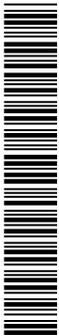
8 (j) EFFECTIVE DATE.—The amendments made by
9 this section shall apply to taxable years beginning after
10 December 31, 2003.

11 **SEC. 3. DISPOSITION OF UNUSED HEALTH BENEFITS IN**
12 **CAFETERIA PLANS AND FLEXIBLE SPENDING**
13 **ARRANGEMENTS.**

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

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

21 “(1) IN GENERAL.—For purposes of this title,
22 a plan or other arrangement shall not fail to be
23 treated as a cafeteria plan solely because qualified
24 benefits under such plan include a health flexible



1 spending arrangement under which not more than
2 \$500 of unused health benefits may be—

3 “(A) carried forward to the succeeding
4 plan year of such health flexible spending ar-
5 rangement,

6 “(B) to the extent permitted by section
7 223, contributed on behalf of the employee to a
8 health savings account (as defined in section
9 223(d)) maintained for the benefit of such em-
10 ployee, or

11 “(C) contributed to a qualified retirement
12 plan (as defined in section 4974(c)), or an eligi-
13 ble deferred compensation plan (as defined in
14 section 457(b)) of an eligible employer de-
15 scribed in section 457(e)(1)(A), but only to the
16 extent such amount would not be allowed as a
17 deduction under section 223 if made directly by
18 the employee to a health savings account of the
19 employee (determined without regard to any
20 other contributions made by 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 in the case of a plan (other than a plan
6 described in subparagraph (A)) which is de-
7 scribed in section 401(a) which includes a trust
8 exempt from tax under section 501(a),

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

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

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

