

108TH CONGRESS
1ST SESSION

H. R. 2596

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.

IN THE HOUSE OF REPRESENTATIVES

JUNE 25, 2003

Mr. THOMAS introduced the following bill; which was referred to the
Committee on Ways and Means

A BILL

To amend the Internal Revenue Code of 1986 to 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,*

3 **SECTION 1. SHORT TITLE.**

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

1 **SEC. 2. HEALTH SAVINGS SECURITY ACCOUNTS AND**
2 **HEALTH SAVINGS ACCOUNTS.**

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

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

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

15 “(b) LIMITATIONS.—

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

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

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

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

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

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

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

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

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

20 “(II) files a joint return, and

21 “(C) zero in any other case.

22 “(3) ADDITIONAL CONTRIBUTIONS FOR INDI-
23 VIDUALS 55 OR OLDER.—

24 “(A) IN GENERAL.—In the case of an indi-
25 vidual who has attained the age of 55 before

1 the close of the taxable year, paragraph (2)
 2 shall be applied by increasing the \$2,000
 3 amount in paragraph (2)(A) and the \$4,000
 4 amount in paragraph (2)(B) by the additional
 5 contribution amount.

6 “(B) ADDITIONAL CONTRIBUTION
 7 AMOUNT.—For purposes of this section, the ad-
 8 ditional contribution amount is the amount de-
 9 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.

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

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

17 “(i) the amount (if any) by which the
 18 taxpayer’s adjusted gross income for such
 19 taxable year exceeds \$75,000 (\$150,000 in
 20 the case of a joint return), bears to

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

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

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

11 “(ii) \$20,000.

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

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

22 “(E) ADJUSTED GROSS INCOME.—For pur-
23 poses of this paragraph, adjusted gross income
24 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 “(5) COORDINATION WITH OTHER CONTRIBU-
6 TIONS.—The limitation which would (but for this
7 paragraph) apply under this subsection to the tax-
8 payer for any taxable year shall be reduced (but not
9 below zero) by the sum of—

10 “(A) the aggregate amount paid during
11 such taxable year to Archer MSAs of such indi-
12 vidual,

13 “(B) the aggregate amount paid during
14 such taxable year to health savings accounts of
15 such individual, and

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

20 “(6) SPECIAL RULES FOR MARRIED INDIVID-
21 UALS, DEPENDENTS, AND MEDICARE ELIGIBLE INDI-
22 VIDUALS.—Rules similar to the rules of paragraphs
23 (3), (6), and (7) of section 220(b) shall apply for
24 purposes of this section.

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

1 “(1) ELIGIBLE INDIVIDUAL.—

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

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

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

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

16 “(2) MINIMUM DEDUCTIBLE PLAN.—

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

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

22 “(ii) in the case of family coverage,
23 which has an annual deductible which is
24 not less than twice the dollar amount in

1 clause (i) (as increased under subpara-
2 graph (B)).

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

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

10 “(I) such dollar amount, multi-
11 plied by

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

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

23 “(C) SPECIAL RULES.—

24 “(i) EXCLUSION OF CERTAIN
25 PLANS.—Such term does not include a

1 health plan if substantially all of its cov-
2 erage is coverage described in paragraph
3 (1)(B).

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

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

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

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

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

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

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

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

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

14 “(i) unless it is in cash and is contrib-
15 uted by—

16 “(I) the account beneficiary,

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

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

21 “(ii) to the extent such contribution,
22 when added to previous contributions to
23 the trust for the calendar year, exceeds the
24 highest annual limitation which could
25 apply to an individual under subsection (b)

1 for a taxable year beginning in such cal-
2 endar year.

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

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

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

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

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

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

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

1 “(i) insurance which constitutes a
2 minimum deductible plan if no portion of
3 the cost of such insurance is paid by an
4 employer or former employer of the ac-
5 count beneficiary or the spouse of such
6 beneficiary, and

7 “(ii) any health insurance (other than
8 health insurance substantially all of its
9 coverage is coverage described in sub-
10 section (c)(1)(B)) if the account bene-
11 ficiary has attained age 65, and

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

14 “(4) ACCOUNT BENEFICIARY.—The term ‘ac-
15 count beneficiary’ means the individual on whose be-
16 half the health savings security account was estab-
17 lished.

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

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

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

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

4 “(D) Section 408(g) (relating to commu-
5 nity property laws).

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

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

16 “(e) TAX TREATMENT OF ACCOUNTS.—

17 “(1) IN GENERAL.—A health savings security
18 account is exempt from taxation under this subtitle
19 unless such account has ceased to be a health sav-
20 ings security account. Notwithstanding the preceding
21 sentence, any such account is subject to the taxes
22 imposed by section 511 (relating to imposition of tax
23 on unrelated business income of charitable, etc. or-
24 ganizations).

1 “(2) ACCOUNT TERMINATIONS.—Rules similar
2 to the rules of paragraphs (2) and (4) of section
3 408(e) shall apply to health savings security ac-
4 counts, and any amount treated as distributed under
5 such similar rules shall be treated as not used to pay
6 qualified medical expenses.

7 “(f) TAX TREATMENT OF DISTRIBUTIONS.—

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

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

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

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

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

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

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

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

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

21 “(A) IN GENERAL.—If any excess con-
22 tribution is contributed for a taxable year to
23 any health savings security account of an indi-
24 vidual, paragraph (2) shall not apply to dis-
25 tributions from the health savings security ac-

1 counts of such individual (to the extent such
2 distributions do not exceed the aggregate excess
3 contributions to all such accounts of such indi-
4 vidual for such year) if—

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

10 “(ii) no deduction is allowed under
11 this section with respect to such contribu-
12 tion,

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

16 “(iv) such distribution satisfies the re-
17 quirements of subparagraph (B).

18 “(B) RULES RELATED TO ORDERING.—

19 “(i) DISTRIBUTIONS LIMITED TO CON-
20 TRIBUTIONS.—Subparagraph (A) shall
21 apply to distributions to a person only to
22 the extent of the contributions of such per-
23 son to such accounts during such taxable
24 year.

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

5 “(I) first, to members of the fam-
6 ily of the account beneficiary,

7 “(II) second, to the account ben-
8 eficiary,

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

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

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

24 “(C) TREATMENT OF NET INCOME.—Any
25 net income described in subparagraph (A)(iii)

1 shall be included in the gross income of the per-
2 son receiving the distribution for the taxable
3 year in which received.

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

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

19 “(A) IN GENERAL.—The tax imposed by
20 this chapter on the account beneficiary for any
21 taxable year in which there is a payment or dis-
22 tribution from a health savings security account
23 of such beneficiary which is includible in gross
24 income under paragraph (2) shall be increased

1 by 15 percent of the amount which is so includ-
2 ible.

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

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

14 “(5) ROLLOVER CONTRIBUTION.—

15 “(A) IN GENERAL.—Paragraph (2) shall
16 not apply to any amount paid or distributed
17 from a health savings security account to the
18 account beneficiary to the extent the amount
19 received is paid into a health savings security
20 account, or a health savings account, for the
21 benefit of such beneficiary not later than the
22 60th day after the day on which the beneficiary
23 receives 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 security account if, at any time
3 during the 1-year period ending on the day of
4 such receipt, such individual received any other
5 amount described in subparagraph (A) from a
6 health savings security account which was not
7 includible in the individual's gross income be-
8 cause of the application 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 security account to make such
14 reports regarding such account to the Secretary and to
15 the account beneficiary with respect to contributions, dis-
16 tributions, and such other matters as the Secretary deter-
17 mines appropriate. The reports required by this subsection
18 shall be filed at such time and in such manner and fur-
19 nished to such individuals at such time and in such man-
20 ner as may be required by the Secretary.

21 “(h) REGULATIONS.—The Secretary may issue regu-
22 lations to carry out the purposes of this section, including
23 regulations regarding the proper treatment of distribu-
24 tions described in subsection (f)(3) and nondeductible con-

1 tributions by members of the family of the account bene-
2 ficiary.

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

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

10 “(b) LIMITATIONS.—

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

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

21 “(3) COORDINATION WITH OTHER CONTRIBU-
22 TIONS.—The limitation which would (but for this
23 paragraph) apply under this subsection to the tax-
24 payer for any taxable year shall be reduced (but not
25 below zero) by the sum of—

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

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

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

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

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

17 “(1) ELIGIBLE INDIVIDUAL.—

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

21 “(i) such individual is covered under a
22 high deductible health plan as of the 1st
23 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 be-
7 cause—

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.

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