

109TH CONGRESS
2D SESSION

S. 2457

To amend the Internal Revenue Code to provide incentives for supplying health insurance to employees of small employers, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 27, 2006

Ms. SNOWE introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend the Internal Revenue Code to provide incentives for supplying health insurance to employees of small employers, 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; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Small Business Health Insurance Relief Act of 2006”.

6 (b) TABLE OF CONTENTS.—The table of contents of
7 this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—HEALTH CARE COVERAGE TAX INCENTIVES FOR SMALL
BUSINESSES

Subtitle A—Credit for Provision of Health Insurance

Sec. 101. Credit for health care contributions by small business employers.

Subtitle B—Simple Cafeteria Plans

Sec. 111. Establishment of simple cafeteria plans for small businesses.

Sec. 112. Modifications of rules applicable to cafeteria plans.

Sec. 113. Modification of rules applicable to flexible spending arrangements.

Subtitle C—Incentives for Insurance Companies

Sec. 121. Special deduction for certain health insurance companies in the small group market.

Sec. 122. Credit for licensing costs of certain health insurance companies.

TITLE II—SMALL BUSINESS HEALTH INSURANCE INFORMATION
PILOT PROGRAM

Sec. 201. Purpose.

Sec. 202. Definitions.

Sec. 203. Small Business Health Insurance Information Pilot Program.

Sec. 204. Reports.

Sec. 205. Authorization of appropriations.

1 TITLE I—HEALTH CARE COV-
2 ERAGE TAX INCENTIVES FOR
3 SMALL BUSINESSES
4 Subtitle A—Credit for Provision of
5 Health Insurance

6 SEC. 101. CREDIT FOR HEALTH CARE CONTRIBUTIONS BY
7 SMALL BUSINESS EMPLOYERS.

8 (a) IN GENERAL.—Subpart B of part IV of sub-
9 chapter A of chapter 1 of the Internal Revenue Code of
10 1986 (relating to other credits) is amended by adding at
11 the end the following new section:

12 “SEC. 30D. SMALL EMPLOYER HEALTH CARE CONTRIBU-
13 TIONS.

14 “(a) GENERAL RULE.—In the case of an eligible em-
15 ployer, there shall be allowed as a credit against the tax

1 imposed by this chapter for the taxable year an amount
 2 equal to the applicable percentage of the sum of—

3 “(1) the amounts contributed by such employer
 4 for qualified health insurance coverage with respect
 5 to any full-time employee during the taxable year,
 6 plus

7 “(2) the amounts contributed by such employer
 8 to any health savings account (as defined in section
 9 223(d)) of any full-time employee who is an eligible
 10 individual (as defined in section 223(c)(1)) during
 11 the taxable year.

12 “(b) LIMITATIONS.—

13 “(1) IN GENERAL.—The amount of the credit
 14 allowed under subsection (a) with respect to any em-
 15 ployee for any taxable year shall not exceed—

16 “(A) in the case of an employee with self-
 17 only coverage, \$1,500, and

18 “(B) in the case of an employee with fam-
 19 ily coverage, \$3,000.

20 “(2) LIMITATION ON PREMIUMS.—The amount
 21 taken into account under subsection (a)(1) with re-
 22 spect to any employee for any taxable year shall not
 23 exceed an amount equal to the product of—

1 “(A) \$1,500 (\$3,000 if coverage for all
2 months described in subparagraph (B)(i) is
3 family coverage), and

4 “(B) a fraction—

5 “(i) the numerator of which is the
6 number of months during the taxable year
7 for which such employee participated in
8 qualified health insurance coverage, and

9 “(ii) the denominator of which is the
10 number of months in the taxable year.

11 “(3) LIMITATION ON HSA CONTRIBUTIONS.—

12 The amount taken into account under subsection
13 (a)(2) with respect to any employee for any taxable
14 year shall not exceed an amount equal to the prod-
15 uct of—

16 “(A) \$1,500 (\$3,000 if coverage for all
17 months described in subparagraph (B)(i) is
18 family coverage), and

19 “(B) a fraction—

20 “(i) the numerator of which is the
21 number of months that the employee was
22 covered under a high deductible health
23 plan (as defined under section 223(c)(2))
24 maintained by the employer, and

1 “(ii) the denominator of which is the
2 number of months in the taxable year.

3 “(c) APPLICABLE PERCENTAGE.—For purposes of
4 subsection (a), the applicable percentage shall be—

5 “(1) in the case of an eligible employer with
6 less than 10 employees, 100 percent,

7 “(2) in the case of an eligible employer with
8 more than 9 employees but less than 20 employees,
9 80 percent,

10 “(3) in the case of an eligible employer with
11 more than 19 employees but less than 30 employees,
12 60 percent,

13 “(4) in the case of an eligible employer with
14 more than 29 employees but less than 40 employees,
15 40 percent, and

16 “(5) in the case of an eligible employer with
17 more than 39 employees, 20 percent.

18 “(d) ELIGIBLE EMPLOYER.—For purposes of this
19 section, the term ‘eligible employer’ means, with respect
20 to any taxable year, an employer—

21 “(1) with 50 or fewer employees, and

22 “(2) whose average annual gross receipts for
23 the 3-taxable year period ending with the taxable
24 year preceding such taxable year does not exceed
25 \$10,000,000.

1 “(e) QUALIFIED HEALTH INSURANCE COVERAGE.—

2 For purposes of this section, the term ‘qualified health in-
 3 surance coverage’ means health insurance coverage pur-
 4 chased or provided by an eligible employer. Such term in-
 5 cludes health insurance coverage purchased through a
 6 small business health plan (as defined in section
 7 833(b)(4)(C)).

8 “(f) SPECIAL RULES.—For purposes of this sec-
 9 tion—

10 “(1) DETERMINATION OF NUMBER OF EMPLOY-
 11 EES.—

12 “(A) IN GENERAL.—The number of em-
 13 ployees of an employer with respect to any year
 14 shall be determined by the using the average
 15 number of full-time employees of the employer
 16 on business days during the 2 preceding years.
 17 For purposes of this subparagraph, a year may
 18 only be taken into account if the employer was
 19 in existence throughout the year.

20 “(B) EMPLOYERS NOT IN EXISTENCE IN
 21 PRECEDING YEAR.—In the case of an employer
 22 which was not in existence throughout the pre-
 23 ceding calendar year, the determination under
 24 subparagraph (A) shall be based on the average
 25 number of full-time employees that it is reason-

1 ably expected such employer will employ on
2 business days in the current calendar year.

3 “(C) SPECIAL RULES.—

4 “(i) PREDECESSORS.—Any reference
5 in this paragraph to an employer shall in-
6 clude a reference to any predecessor of
7 such employer.

8 “(ii) AGGREGATION RULES.—All per-
9 sons treated as a single employer under
10 subsection (a) or (b) of section 52, or sub-
11 section (n) or (o) of section 414, shall be
12 treated as one person.

13 “(2) SELF-EMPLOYED INDIVIDUAL TREATED AS
14 EMPLOYEE.—For purposes of this section, rules
15 similar to the rules of section 401(c) shall apply.

16 “(3) SALARY REDUCTION CONTRIBUTIONS.—
17 For purposes of subsection (a)(1), amounts contrib-
18 uted under a cafeteria plan under section 125 shall
19 not be considered to be amounts contributed by the
20 eligible employer for qualified health insurance cov-
21 erage.

22 “(4) DISALLOWANCE OF DEDUCTION.—No de-
23 duction shall be allowed for the taxable year for that
24 portion of amounts contributed for qualified health
25 insurance coverage and to health savings accounts

1 during the taxable year which is equal to the credit
 2 determined under subsection (a).

3 “(5) ELECTION NOT TO CLAIM CREDIT.—This
 4 section shall not apply to a taxpayer for any taxable
 5 year if such taxpayer elects to have this section not
 6 apply for such taxable year.

7 “(6) SPECIAL RULE FOR MARRIED INDIVID-
 8 UALS.—For purposes of subsection (b)(2), rules
 9 similar to the rules of section 223(b)(5) (other than
 10 subparagraph (B)(i) thereof) shall apply.

11 “(g) CARRYOVER OF UNUSED CREDIT AMOUNTS.—

12 “(1) IN GENERAL.—If the credit allowable
 13 under subsection (a) for a taxable year exceeds the
 14 limitation under paragraph (1) for such taxable
 15 year, such excess shall be allowed—

16 “(A) as a credit carryback to each of the
 17 3 taxable years preceding such year, and

18 “(B) as a credit carryforward to each of
 19 the 10 taxable years following such year.

20 “(2) AMOUNT CARRIED TO EACH YEAR.—For
 21 purposes of this paragraph, rules similar to the rules
 22 of section 39(a)(2) shall apply.

23 “(h) COST-OF-LIVING ADJUSTMENTS.—

24 “(1) LIMITATION.—In the case of taxable years
 25 beginning after 2007, each of the \$1,500 and

1 \$3,000 amounts under subsection (b) shall each be
2 increased by an amount equal to—

3 “(A) such dollar amount, multiplied by

4 “(B) the cost-of-living adjustment deter-
5 mined under section 1(f)(3) for the calendar
6 year in which the taxable year begins, deter-
7 mined by substituting ‘2006’ for ‘1992’ in sub-
8 paragraph (B) thereof.

9 If any dollar amount as increased under this clause
10 is not a multiple of \$100, such dollar amount shall
11 be rounded to the next lowest multiple of \$100.

12 “(2) ELIGIBLE EMPLOYER.—In the case of tax-
13 able years beginning after 2007, the \$10,000,000
14 amount under subsection (d)(2) shall be increased
15 by an amount equal to—

16 “(A) \$10,000,000, multiplied by

17 “(B) the cost-of-living adjustment deter-
18 mined under section 1(f)(3) for the calendar
19 year in which the taxable year begins, deter-
20 mined by substituting ‘2006’ for ‘1992’ in sub-
21 paragraph (B) thereof.

22 If any dollar amount as increased under this clause
23 is not a multiple of \$100,000, such dollar amount
24 shall be rounded to the next lowest multiple of \$100.

1 “(i) REGULATIONS.—The Secretary shall promulgate
 2 regulations to prevent employer contributions to health
 3 savings accounts under subsection (a)(2) to be used for
 4 purposes other than qualified medical expenses (as defined
 5 in section 223(d)(2)).”.

6 (b) CONFORMING AMENDMENT.—Section 6501(m) of
 7 the Internal Revenue Code of 1986 is amended by insert-
 8 ing “30D(f)(5),” after “30C(e)(4),”.

9 (c) CLERICAL AMENDMENT.—The table of sections
 10 for subpart B of part IV of subchapter A of chapter 1
 11 of the Internal Revenue Code of 1986 is amended by in-
 12 serting after the item relating to section 30C the following
 13 new item:

“Sec. 30D. Small employer health care contributions.”.

14 (d) EFFECTIVE DATE.—The amendments made by
 15 this section shall apply to contributions made in taxable
 16 years beginning after December 31, 2006.

17 **Subtitle B—Simple Cafeteria Plans**

18 **SEC. 111. ESTABLISHMENT OF SIMPLE CAFETERIA PLANS** 19 **FOR SMALL BUSINESSES.**

20 (a) IN GENERAL.—Section 125 of the Internal Rev-
 21 enue Code of 1986 (relating to cafeteria plans) is amended
 22 by redesignating subsections (h) and (i) as subsections (i)
 23 and (j), respectively, and by inserting after subsection (g)
 24 the following new subsection:

1 “(h) SIMPLE CAFETERIA PLANS FOR SMALL BUSI-
2 NESSES.—

3 “(1) IN GENERAL.—An eligible employer main-
4 taining a simple cafeteria plan with respect to which
5 the requirements of this subsection are met for any
6 year shall be treated as meeting any applicable non-
7 discrimination requirement with respect to benefits
8 provided under the plan during such year.

9 “(2) SIMPLE CAFETERIA PLAN.—For purposes
10 of this subsection, the term ‘simple cafeteria plan’
11 means a cafeteria plan—

12 “(A) which is established and maintained
13 by an eligible employer, and

14 “(B) with respect to which the contribution
15 requirements of paragraph (3), and the eligi-
16 bility and participation requirements of para-
17 graph (4), are met.

18 “(3) CONTRIBUTIONS REQUIREMENTS.—

19 “(A) IN GENERAL.—The requirements of
20 this paragraph are met if, under the plan—

21 “(i) the employer makes matching
22 contributions on behalf of each employee
23 who is eligible to participate in the plan
24 and who is not a highly compensated or
25 key employee in an amount equal to the

1 elective plan contributions of the employee
2 to the plan to the extent the employee's
3 elective plan contributions do not exceed 3
4 percent of the employee's compensation, or

5 “(ii) the employer is required, without
6 regard to whether an employee makes any
7 elective plan contribution, to make a con-
8 tribution to the plan on behalf of each em-
9 ployee who is not a highly compensated or
10 key employee and who is eligible to partici-
11 pate in the plan in an amount equal to at
12 least 2 percent of the employee's com-
13 pensation.

14 “(B) MATCHING CONTRIBUTIONS ON BE-
15 HALF OF HIGHLY COMPENSATED AND KEY EM-
16 PLOYEES.—The requirements of subparagraph
17 (A)(i) shall not be treated as met if, under the
18 plan, the rate of matching contribution with re-
19 spect to any elective plan contribution of a
20 highly compensated or key employee at any rate
21 of contribution is greater than that with respect
22 to an employee who is not a highly compensated
23 or key employee.

24 “(C) SPECIAL RULES.—

1 “(i) TIME FOR MAKING CONTRIBU-
2 TIONS.—An employer shall not be treated
3 as failing to meet the requirements of this
4 paragraph with respect to any elective plan
5 contributions of any compensation, or em-
6 ployer contributions required under this
7 paragraph with respect to any compensa-
8 tion, if such contributions are made no
9 later than the 15th day of the month fol-
10 lowing the last day of the calendar quarter
11 which includes the date of payment of the
12 compensation.

13 “(ii) FORM OF CONTRIBUTIONS.—Em-
14 ployer contributions required under this
15 paragraph may be made either to the plan
16 to provide benefits offered under the plan
17 or to any person as payment for providing
18 benefits offered under the plan.

19 “(iii) ADDITIONAL CONTRIBUTIONS.—
20 Subject to subparagraph (B), nothing in
21 this paragraph shall be treated as prohib-
22 iting an employer from making contribu-
23 tions to the plan in addition to contribu-
24 tions required under subparagraph (A).

1 “(D) DEFINITIONS.—For purposes of this
2 paragraph—

3 “(i) ELECTIVE PLAN CONTRIBU-
4 TION.—The term ‘elective plan contribu-
5 tion’ means any amount which is contrib-
6 uted at the election of the employee and
7 which is not includible in gross income by
8 reason of this section.

9 “(ii) HIGHLY COMPENSATED EM-
10 PLOYEE.—The term ‘highly compensated
11 employee’ has the meaning given such term
12 by section 414(q).

13 “(iii) KEY EMPLOYEE.—The term
14 ‘key employee’ has the meaning given such
15 term by section 416(i).

16 “(4) MINIMUM ELIGIBILITY AND PARTICIPA-
17 TION REQUIREMENTS.—

18 “(A) IN GENERAL.—The requirements of
19 this paragraph shall be treated as met with re-
20 spect to any year if, under the plan—

21 “(i) all employees who had at least
22 1,000 hours of service for the preceding
23 plan year are eligible to participate, and

24 “(ii) each employee eligible to partici-
25 pate in the plan may, subject to terms and

1 conditions applicable to all participants,
2 elect any benefit available under the plan.

3 “(B) CERTAIN EMPLOYEES MAY BE EX-
4 CLUDED.—For purposes of subparagraph
5 (A)(i), an employer may elect to exclude under
6 the plan employees—

7 “(i) who have less than 1 year of serv-
8 ice with the employer as of any day during
9 the plan year,

10 “(ii) who have not attained the age of
11 21 before the close of a plan year,

12 “(iii) who are covered under an agree-
13 ment which the Secretary of Labor finds to
14 be a collective bargaining agreement if
15 there is evidence that the benefits covered
16 under the cafeteria plan were the subject
17 of good faith bargaining between employee
18 representatives and the employer, or

19 “(iv) who are described in section
20 410(b)(3)(C) (relating to nonresident
21 aliens working outside the United States).

22 A plan may provide a shorter period of service
23 or younger age for purposes of clause (i) or (ii).

24 “(5) ELIGIBLE EMPLOYER.—For purposes of
25 this subsection—

1 “(A) IN GENERAL.—The term ‘eligible em-
2 ployer’ means, with respect to any year, any
3 employer if such employer employed an average
4 of 100 or fewer employees on business days
5 during either of the 2 preceding years. For pur-
6 poses of this subparagraph, a year may only be
7 taken into account if the employer was in exist-
8 ence throughout the year.

9 “(B) EMPLOYERS NOT IN EXISTENCE DUR-
10 ING PRECEDING YEAR.—If an employer was not
11 in existence throughout the preceding year, the
12 determination under subparagraph (A) shall be
13 based on the average number of employees that
14 it is reasonably expected such employer will em-
15 ploy on business days in the current year.

16 “(C) GROWING EMPLOYERS RETAIN
17 TREATMENT AS SMALL EMPLOYER.—If—

18 “(i) an employer was an eligible em-
19 ployer for any year (a ‘qualified year’), and

20 “(ii) such employer establishes a sim-
21 ple cafeteria plan for its employees for
22 such year, then, notwithstanding the fact
23 the employer fails to meet the require-
24 ments of subparagraph (A) for any subse-
25 quent year, such employer shall be treated

as an eligible employer for such subsequent year with respect to employees (whether or not employees during a qualified year) of any trade or business which was covered by the plan during any qualified year. This subparagraph shall cease to apply if the employer employs an average of 200 more employees on business days during any year preceding any such subsequent year.

“(D) SPECIAL RULES.—

“(i) PREDECESSORS.—Any reference in this paragraph to an employer shall include a reference to any predecessor of such employer.

“(ii) AGGREGATION RULES.—All persons treated as a single employer under subsection (a) or (b) of section 52, or subsection (n) or (o) of section 414, shall be treated as one person.

“(6) APPLICABLE NONDISCRIMINATION REQUIREMENT.—For purposes of this subsection, the term ‘applicable nondiscrimination requirement’ means any requirement under subsection (b) of this section, section 79(d), section 105(h), or paragraph (2), (3), (4), or (8) of section 129(d).

1 “(7) COMPENSATION.—The term ‘compensa-
 2 tion’ has the meaning given such term by section
 3 414(s).”.

4 (b) EFFECTIVE DATE.—The amendments made by
 5 this section shall apply to years beginning after December
 6 31, 2006.

7 **SEC. 112. MODIFICATIONS OF RULES APPLICABLE TO CAFETERIA PLANS.**
 8

9 (a) APPLICATION TO SELF-EMPLOYED INDIVID-
 10 UALS.—

11 (1) IN GENERAL.—Section 125(d) of the Inter-
 12 nal Revenue Code of 1986 (defining cafeteria plan)
 13 is amended by adding at the end the following new
 14 paragraph:

15 “(3) EMPLOYEE TO INCLUDE SELF-EM-
 16 PLOYED.—

17 “(A) IN GENERAL.—The term ‘employee’
 18 includes an individual who is an employee with-
 19 in the meaning of section 401(c)(1) (relating to
 20 self-employed individuals).

21 “(B) LIMITATION.—The amount which
 22 may be excluded under subsection (a) with re-
 23 spect to a participant in a cafeteria plan by rea-
 24 son of being an employee under subparagraph
 25 (A) shall not exceed the employee’s earned in-

1 come (within the meaning of section 401(c)) de-
 2 rived from the trade or business with respect to
 3 which the cafeteria plan is established.”.

4 (2) APPLICATION TO BENEFITS WHICH MAY BE
 5 PROVIDED UNDER CAFETERIA PLAN.—

6 (A) GROUP-TERM LIFE INSURANCE.—Sec-
 7 tion 79 of such Code (relating to group-term
 8 life insurance provided to employees) is amend-
 9 ed by adding at the end the following new sub-
 10 section:

11 “(f) EMPLOYEE INCLUDES SELF-EMPLOYED.—

12 “(1) IN GENERAL.—For purposes of this sec-
 13 tion, the term ‘employee’ includes an individual who
 14 is an employee within the meaning of section
 15 401(c)(1) (relating to self-employed individuals).

16 “(2) LIMITATION.—The amount which may be
 17 excluded under the exceptions contained in sub-
 18 section (a) or (b) with respect to an individual treat-
 19 ed as an employee by reason of paragraph (1) shall
 20 not exceed the employee’s earned income (within the
 21 meaning of section 401(c)) derived from the trade or
 22 business with respect to which the individual is so
 23 treated.”.

1 (B) ACCIDENT AND HEALTH PLANS.—Sec-
 2 tion 105(g) of such Code is amended to read as
 3 follows:

4 “(g) EMPLOYEE INCLUDES SELF-EMPLOYED.—

5 “(1) IN GENERAL.—For purposes of this sec-
 6 tion, the term ‘employee’ includes an individual who
 7 is an employee within the meaning of section
 8 401(c)(1) (relating to self-employed individuals).

9 “(2) LIMITATION.—The amount which may be
 10 excluded under this section by reason of subsection
 11 (b) or (c) with respect to an individual treated as an
 12 employee by reason of paragraph (1) shall not ex-
 13 ceed the employee’s earned income (within the mean-
 14 ing of section 401(c)) derived from the trade or
 15 business with respect to which the accident or health
 16 insurance was established.”.

17 (C) CONTRIBUTIONS BY EMPLOYERS TO
 18 ACCIDENT AND HEALTH PLANS.—

19 (i) IN GENERAL.—Section 106 of such
 20 Code, as amended by subsection (b), is
 21 amended by adding after subsection (b) the
 22 following new subsection:

23 “(c) EMPLOYER TO INCLUDE SELF-EMPLOYED.—

24 “(1) IN GENERAL.—For purposes of this sec-
 25 tion, the term ‘employee’ includes an individual who

1 is an employee within the meaning of section
2 401(c)(1) (relating to self-employed individuals).

3 “(2) LIMITATION.—The amount which may be
4 excluded under subsection (a) with respect to an in-
5 dividual treated as an employee by reason of para-
6 graph (1) shall not exceed the employee’s earned in-
7 come (within the meaning of section 401(c)) derived
8 from the trade or business with respect to which the
9 accident or health insurance was established.”.

10 (ii) CLARIFICATION OF LIMITATIONS
11 ON OTHER COVERAGE.—The first sentence
12 of section 162(l)(2)(B) is amended to read
13 as follows: “Paragraph (1) shall not apply
14 to any taxpayer for any calendar month for
15 which the taxpayer participates in any sub-
16 sidized health plan maintained by any em-
17 ployer (other than an employer described
18 in section 401(c)(4)) of the taxpayer or the
19 spouse of the taxpayer.”.

20 (b) LONG-TERM CARE INSURANCE PERMITTED TO
21 BE OFFERED UNDER CAFETERIA PLANS AND FLEXIBLE
22 SPENDING ARRANGEMENTS.—

23 (1) CAFETERIA PLANS.—The last sentence of
24 section 125(f) of the Internal Revenue Code of 1986
25 (defining qualified benefits) is amended to read as

1 follows: “Such term shall include the payment of
 2 premiums for any qualified long-term care insurance
 3 contract (as defined in section 7702B) to the extent
 4 the amount of such payment does not exceed the eli-
 5 gible long-term care premiums (as defined in section
 6 213(d)(10)) for such contract.”.

7 (2) FLEXIBLE SPENDING ARRANGEMENTS.—
 8 Section 106 of such Code (relating to contributions
 9 by employer to accident and health plans) is amend-
 10 ed by striking subsection (c).

11 (c) EFFECTIVE DATE.—The amendments made by
 12 this section shall apply to taxable years beginning after
 13 December 31, 2006.

14 **SEC. 113. MODIFICATION OF RULES APPLICABLE TO FLEXI-**
 15 **BLE SPENDING ARRANGEMENTS.**

16 (a) IN GENERAL.—Section 125 of the Internal Rev-
 17 enue Code of 1986, as amended by section 111, is amend-
 18 ed by redesignating subsections (i) and (j) as subsections
 19 (j) and (k), respectively, and by inserting after subsection
 20 (h) the following new subsection:

21 “(i) SPECIAL RULES APPLICABLE TO FLEXIBLE
 22 SPENDING ARRANGEMENTS.—

23 “(1) IN GENERAL.—For purposes of this title,
 24 a plan or other arrangement shall not fail to be

1 treated as a flexible spending or similar arrangement
 2 solely because under the plan or arrangement—

3 “(A) the amount of the reimbursement for
 4 covered expenses at any time may not exceed
 5 the balance in the participant’s account for the
 6 covered expenses as of such time,

7 “(B) except as provided in paragraph
 8 (4)(A)(ii), a participant may elect at any time
 9 specified by the plan or arrangement to make
 10 or modify any election regarding the covered
 11 benefits, or the level of covered benefits, of the
 12 participant under the plan, and

13 “(C) a participant is permitted access to
 14 any unused balance in the participant’s ac-
 15 counts under such plan or arrangement in the
 16 manner provided under paragraph (2) or (3).

17 “(2) CARRYOVERS AND ROLLOVERS OF UNUSED
 18 BENEFITS IN HEALTH AND DEPENDENT CARE AR-
 19 RANGEMENTS.—

20 “(A) IN GENERAL.—A plan or arrange-
 21 ment may permit a participant in a health flexi-
 22 ble spending arrangement or dependent care
 23 flexible spending arrangement to elect—

24 “(i) to carry forward any aggregate
 25 unused balances in the participant’s ac-

1 counts under such arrangement as of the
 2 close of any year to the succeeding year, or

3 “(ii) to have such balance transferred
 4 to a plan described in subparagraph (E).

5 Such carryforward or transfer shall be treated
 6 as having occurred within 30 days of the close
 7 of the year.

8 “(B) DOLLAR LIMIT ON
 9 CARRYFORWARDS.—

10 “(i) IN GENERAL.—The amount which
 11 a participant may elect to carry forward
 12 under subparagraph (A)(i) from any year
 13 shall not exceed \$500. For purposes of this
 14 paragraph, all plans and arrangements
 15 maintained by an employer or any related
 16 person shall be treated as 1 plan.

17 “(ii) COST-OF-LIVING ADJUSTMENT.—
 18 In the case of any taxable year beginning
 19 in a calendar year after 2007, the \$500
 20 amount under clause (i) shall be increased
 21 by an amount equal to—

22 “(I) \$500, multiplied by

23 “(II) the cost-of-living adjust-
 24 ment determined under section 1(f)(3)
 25 for such calendar year, determined by

1 substituting ‘2006’ for ‘1992’ in sub-
2 paragraph (B) thereof.

3 If any dollar amount as increased under
4 this clause is not a multiple of \$100, such
5 amount shall be rounded to the next lowest
6 multiple of \$100.

7 “(C) EXCLUSION FROM GROSS INCOME.—
8 No amount shall be required to be included in
9 gross income under this chapter by reason of
10 any carryforward or transfer under this para-
11 graph.

12 “(D) COORDINATION WITH LIMITS.—

13 “(i) CARRYFORWARDS.—The max-
14 imum amount which may be contributed to
15 a health flexible spending arrangement or
16 dependent care flexible spending arrange-
17 ment for any year to which an unused
18 amount is carried under this paragraph
19 shall be reduced by such amount.

20 “(ii) ROLLOVERS.—Any amount
21 transferred under subparagraph (A)(ii)
22 shall be treated as an eligible rollover
23 under section 219, 223(f)(5), 401(k),
24 403(b), or 457, whichever is applicable, ex-
25 cept that—

1 “(I) the amount of the contribu-
 2 tions which a participant may make to
 3 the plan under any such section for
 4 the taxable year including the transfer
 5 shall be reduced by the amount trans-
 6 ferred, and

7 “(II) in the case of a transfer to
 8 a plan described in clause (ii) or (iii)
 9 of subparagraph (E), the transferred
 10 amounts shall be treated as elective
 11 deferrals for such taxable year.

12 “(E) PLANS.—A plan is described in this
 13 subparagraph if it is—

14 “(i) an individual retirement plan,

15 “(ii) a qualified cash or deferred ar-
 16 rangement described in section 401(k),

17 “(iii) a plan under which amounts are
 18 contributed by an individual’s employer for
 19 an annuity contract described in section
 20 403(b),

21 “(iv) an eligible deferred compensa-
 22 tion plan described in section 457, or

23 “(v) a health savings account de-
 24 scribed in section 223.

25 “(3) DISTRIBUTION UPON TERMINATION.—

1 “(A) IN GENERAL.—A plan or arrange-
 2 ment may permit a participant (or any des-
 3 ignated heir of the participant) to receive a
 4 cash payment equal to the aggregate unused ac-
 5 count balances in the plan or arrangement as of
 6 the date the individual is separated (including
 7 by death or disability) from employment with
 8 the employer maintaining the plan or arrange-
 9 ment.

10 “(B) INCLUSION IN INCOME.—Any pay-
 11 ment under subparagraph (A) shall be includ-
 12 ible in gross income for the taxable year in
 13 which such payment is distributed to the em-
 14 ployee.

15 “(4) TERMS RELATING TO FLEXIBLE SPENDING
 16 ARRANGEMENTS.—

17 “(A) FLEXIBLE SPENDING ARRANGE-
 18 MENTS.—

19 “(i) IN GENERAL.—For purposes of
 20 this subsection, a flexible spending ar-
 21 rangement is a benefit program which pro-
 22 vides employees with coverage under which
 23 specified incurred expenses may be reim-
 24 bursed (subject to reimbursement maxi-
 25 mums and other reasonable conditions).

1 “(ii) ELECTIONS REQUIRED.—A plan
 2 or arrangement shall not be treated as a
 3 flexible spending arrangement unless a
 4 participant may at least 4 times during
 5 any year make or modify any election re-
 6 garding covered benefits or the level of cov-
 7 ered benefits.

8 “(B) HEALTH AND DEPENDENT CARE AR-
 9 RANGEMENTS.—The terms ‘health flexible
 10 spending arrangement’ and ‘dependent care
 11 flexible spending arrangement’ means any flexi-
 12 ble spending arrangement (or portion thereof)
 13 which provides payments for expenses incurred
 14 for medical care (as defined in section 213(d))
 15 or dependent care (within the meaning of sec-
 16 tion 129), respectively.”.

17 (b) CONFORMING AMENDMENT.—

18 (1) The heading for section 125 of the Internal
 19 Revenue Code of 1986 is amended by inserting
 20 “**AND FLEXIBLE SPENDING ARRANGEMENTS**”
 21 after “**PLANS**”.

22 (2) The item relating to section 125 of such
 23 Code in the table of sections for part III of sub-
 24 chapter B of chapter 1 is amended by inserting “and
 25 flexible spending arrangements” after “plans”.

1 (c) EFFECTIVE DATE.—The amendments made by
 2 this section shall apply to years beginning after December
 3 31, 2006.

4 **Subtitle C—Incentives for** 5 **Insurance Companies**

6 **SEC. 121. SPECIAL DEDUCTION FOR CERTAIN HEALTH IN-**
 7 **SURANCE COMPANIES IN THE SMALL GROUP**
 8 **MARKET.**

9 (a) IN GENERAL.—Section 833 of the Internal Rev-
 10 enue Code of 1986 is amended to read as follows:

11 **“SEC. 833. SPECIAL DEDUCTION FOR HEALTH INSURANCE**
 12 **RELATED TO SMALL GROUP COVERAGE AND**
 13 **SMALL BUSINESS HEALTH PLANS.**

14 “(a) GENERAL RULE.—In the case of any insurance
 15 company other than a life insurance company, the deduc-
 16 tion determined under subsection (b) for any taxable year
 17 shall be allowed.

18 “(b) AMOUNT OF DEDUCTION.—

19 “(1) IN GENERAL.—Except as provided in para-
 20 graph (2), the deduction determined under this sub-
 21 section for any taxable year is the excess (if any)
 22 of—

23 “(A) 50 percent of the claims incurred
 24 during the taxable year and liabilities incurred

1 during the taxable year under cost-plus con-
 2 tracts, over

3 “(B) the adjusted surplus as of the begin-
 4 ning of the taxable year.

5 “(2) LIMITATION.—The deduction determined
 6 under paragraph (1) for any taxable year shall not
 7 exceed taxable income for such taxable year (deter-
 8 mined without regard to such deduction).

9 “(3) ADJUSTED SURPLUS.—For purposes of
 10 this subsection—

11 “(A) IN GENERAL.—The adjusted surplus
 12 as of the beginning of any taxable year is an
 13 amount equal to the adjusted surplus as of the
 14 beginning of the preceding taxable year—

15 “(i) increased by the amount of any
 16 adjusted taxable income for such preceding
 17 taxable year, or

18 “(ii) decreased by the amount of any
 19 adjusted net operating loss for such pre-
 20 ceding taxable year.

21 “(B) SPECIAL RULE.—The adjusted sur-
 22 plus as of the beginning of the organization’s
 23 1st taxable year beginning after December 31,
 24 2006, shall be its surplus as of such time. For
 25 purposes of the preceding sentence, the term

1 ‘surplus’ means the excess of the total assets
 2 over the total liabilities as shown on the annual
 3 statement.

4 “(C) ADJUSTED TAXABLE INCOME.—The
 5 term ‘adjusted taxable income’ means taxable
 6 income determined—

7 “(i) without regard to the deduction
 8 determined under this subsection,

9 “(ii) without regard to any
 10 carryforward or carryback to such taxable
 11 year, and

12 “(iii) by increasing gross income by
 13 an amount equal to the net exempt income
 14 for the taxable year.

15 “(D) ADJUSTED NET OPERATING LOSS.—
 16 The term ‘adjusted net operating loss’ means
 17 the net operating loss for any taxable year de-
 18 termined with the adjustments set forth in sub-
 19 paragraph (C).

20 “(E) NET EXEMPT INCOME.—The term
 21 ‘net exempt income’ means—

22 “(i) any tax-exempt interest received
 23 or accrued during the taxable year, re-
 24 duced by any amount (not otherwise de-
 25 ductible) which would have been allowable

1 as a deduction for the taxable year if such
 2 interest were not tax-exempt, and

3 “(ii) the aggregate amount allowed as
 4 a deduction for the taxable year under sec-
 5 tions 243, 244, and 245.

6 The amount determined under clause (ii) shall
 7 be reduced by the amount of any decrease in
 8 deductions allowable for the taxable year by
 9 reason of section 832(b)(5)(B) to the extent
 10 such decrease is attributable to deductions
 11 under sections 243, 244, and 245.

12 “(4) ONLY CERTAIN HEALTH-RELATED ITEMS
 13 TAKEN INTO ACCOUNT.—

14 “(A) IN GENERAL.—Any determination
 15 under this subsection shall be made by only
 16 taking into account items attributable to the
 17 qualified health-related business of the tax-
 18 payer.

19 “(B) QUALIFIED HEALTH RELATED BUSI-
 20 NESS.—For purposes of this paragraph, the
 21 term ‘qualified health-related business’ means
 22 health-related business which is attributable
 23 to—

1 “(i) the small group market (as de-
 2 fined under section 2791(e)(6) of the Pub-
 3 lic Health Service Act), and

4 “(ii) small business health plans.

5 “(C) SMALL BUSINESS HEALTH PLAN.—

6 “(i) IN GENERAL.—For purposes of
 7 this section, the term ‘small business
 8 health plan’ means a group health plan
 9 whose sponsor is (or is deemed under this
 10 section to be) described in clause (ii).

11 “(ii) SPONSORSHIP.—The sponsor of
 12 a group health plan is described in this
 13 clause if such sponsor—

14 “(I) is organized and maintained
 15 in good faith, with a constitution and
 16 bylaws specifically stating its purpose
 17 and providing for periodic meetings on
 18 at least an annual basis, as a bona
 19 fide trade association, a bona fide in-
 20 dustry association (including a rural
 21 electric cooperative association or a
 22 rural telephone cooperative associa-
 23 tion), a bona fide professional associa-
 24 tion, a bona fide chamber of com-
 25 merce (or similar bona fide business

1 association, including a corporation or
2 similar organization that operates on
3 a cooperative basis (within the mean-
4 ing of section 1381)), or a bona fide
5 labor union, for substantial purposes
6 other than that of obtaining or pro-
7 viding medical care,

8 “(II) is established as a perma-
9 nent entity which receives the active
10 support of its members and requires
11 for membership payment on a periodic
12 basis of dues or payments necessary
13 to maintain eligibility for membership
14 in the sponsor, and

15 “(III) does not condition mem-
16 bership, such dues or payments, or
17 coverage under the plan on the basis
18 of health status-related factors with
19 respect to the employees of its mem-
20 bers (or affiliated members), or the
21 dependents of such employees, and
22 does not condition such dues or pay-
23 ments on the basis of group health
24 plan participation.

1 Any sponsor consisting of an association of
 2 entities which meet the requirements of
 3 subclause (I), (II), and (III) shall be
 4 deemed to be a sponsor described in this
 5 clause.”.

6 (b) CONFORMING AMENDMENT.—The table of sec-
 7 tion for part II of subchapter L of chapter 1 of the Inter-
 8 nal Revenue Code of 1986 is amended by striking the item
 9 relating to section 833 and inserting the following:

“Sec. 833. Special deduction for health insurance related to small group
 coverage.”.

10 (c) EFFECTIVE DATE.—The amendments made by
 11 this section shall apply to taxable years beginning after
 12 December 31, 2006.

13 **SEC. 122. CREDIT FOR LICENSING COSTS OF CERTAIN**
 14 **HEALTH INSURANCE COMPANIES.**

15 (a) IN GENERAL.—Subpart D of part IV of sub-
 16 chapter A of chapter 1 of the Internal Revenue Code of
 17 1986 (relating to business related credits) is amended by
 18 adding at the end the following new section:

19 **“SEC. 45N. HEALTH INSURANCE LICENSING CREDIT.**

20 “(a) DETERMINATION OF AMOUNT.—For purposes of
 21 section 38, the health insurance licensing credit deter-
 22 mined under this section with respect to any eligible entity
 23 for any taxable year is an amount equal to the qualified

1 licensing costs paid or incurred by such eligible entity in
2 each State during the taxable year.

3 “(b) LIMITATION.—The qualified licensing costs
4 taken into account under subsection (a) with respect to
5 any State for any taxable year shall not exceed the lesser
6 of—

7 “(1) 50 percent of qualified licensing costs paid
8 or incurred by such eligible entity with respect to
9 such State during the taxable year, or

10 “(2) \$10,000.

11 “(c) ELIGIBLE ENTITY.—For purposes of this sec-
12 tion, the term ‘eligible entity’ means an insurance com-
13 pany (as defined in section 816(a)) other than life which
14 conducts qualified health-related business during the tax-
15 able year in the State in which the qualifying licensing
16 costs are incurred.

17 “(d) QUALIFIED LICENSING COSTS.—For purposes
18 of this section, the term ‘qualified licensing costs’ means
19 costs in connection with satisfying State licensing require-
20 ments related to conducting a qualified health-related
21 business in such State.

22 “(e) QUALIFIED HEALTH-RELATED BUSINESS.—For
23 purposes of this section, the term ‘qualified health-related
24 business’ has the meaning given such term under section
25 833(b)(4).

1 “(f) REGULATIONS.—Not later than 6 months after
 2 the date of the enactment of this section, the Secretary
 3 shall promulgate regulations on allocating qualified licens-
 4 ing costs between a qualified health-related business and
 5 other businesses of an eligible entity.

6 “(g) TERMINATION.—This section shall not apply to
 7 costs paid or incurred in taxable years beginning after De-
 8 cember 31, 2011.”.

9 (b) CREDIT TREATED AS BUSINESS CREDIT.—Sec-
 10 tion 38(b) of the Internal Revenue Code of 1986 (relating
 11 to current year business credit) is amended by striking
 12 “and” at the end of paragraph (28), by striking the period
 13 at the end of paragraph (29) and inserting “, plus”, and
 14 by adding at the end the following new paragraph:

15 “(30) the health insurance licensing credit de-
 16 termined under section 45N(a).”.

17 (c) CLERICAL AMENDMENT.—The table of sections
 18 for subpart D of part IV of subchapter A of chapter 1
 19 of the Internal Revenue Code of 1986 is amended by add-
 20 ing at the end the following new item:

“Sec. 45N. Health insurance licensing credit.”.

21 (d) EFFECTIVE DATE.—The amendments made by
 22 this section shall apply to taxable years beginning after
 23 December 31, 2006.

1 **TITLE II—SMALL BUSINESS**
2 **HEALTH INSURANCE INFOR-**
3 **MATION PILOT PROGRAM**

4 **SEC. 201. PURPOSE.**

5 The purpose of this title is to establish a 4-year pilot
6 program to provide information and educational materials
7 to small business concerns regarding health insurance op-
8 tions, including coverage options within the small group
9 market.

10 **SEC. 202. DEFINITIONS.**

11 In this title:

12 (1) ADMINISTRATOR.—The term “Adminis-
13 trator” means the Administrator of the Small Busi-
14 ness Administration, acting through the Associate
15 Administrator for Small Business Development Cen-
16 ters.

17 (2) ASSOCIATION.—The term “association”
18 means an association established under section
19 21(a)(3)(A) of the Small Business Act (15 U.S.C.
20 648(a)(3)(A)) representing a majority of small busi-
21 ness development centers.

22 (3) PARTICIPATING SMALL BUSINESS DEVELOP-
23 MENT CENTER.—The term “participating small
24 business development center” means a small busi-

1 ness development center described in section 21 of
2 the Small Business Act (15 U.S.C. 648) that—

3 (A) is certified under section 21(k)(2) of
4 the Small Business Act (15 U.S.C. 648(k)(2));
5 and

6 (B) receives a grant under the pilot pro-
7 gram.

8 (4) PILOT PROGRAM.—The term “pilot pro-
9 gram” means the small business health insurance in-
10 formation pilot program established under this title.

11 (5) SMALL BUSINESS CONCERN.—The term
12 “small business concern” has the same meaning as
13 in section 3 of the Small Business Act (15 U.S.C.
14 632).

15 (6) STATE.—The term “State” means each of
16 the several States, the District of Columbia, the
17 Commonwealth of Puerto Rico, the Virgin Islands,
18 American Samoa, and Guam.

19 **SEC. 203. SMALL BUSINESS HEALTH INSURANCE INFORMA-**
20 **TION PILOT PROGRAM.**

21 (a) AUTHORITY.—The Administrator shall establish
22 a pilot program to make grants to small business develop-
23 ment centers to provide information and educational mate-
24 rials regarding health insurance options, including cov-

1 erage options within the small group market, to small
2 business concerns.

3 (b) APPLICATIONS.—

4 (1) POSTING OF INFORMATION.—Not later than
5 90 days after the date of enactment of this Act, the
6 Administrator shall post on the website of the Small
7 Business Administration and publish in the Federal
8 Register a guidance document describing—

9 (A) the requirements of an application for
10 a grant under the pilot program; and

11 (B) the types of informational and edu-
12 cational materials regarding health insurance
13 options to be created under the pilot program,
14 including by referencing such materials devel-
15 oped by the Healthcare Leadership Council.

16 (2) SUBMISSION.—A small business develop-
17 ment center desiring a grant under the pilot pro-
18 gram shall submit an application at such time, in
19 such manner, and accompanied by such information
20 as the Administrator may reasonably require.

21 (c) SELECTION OF PARTICIPATING SBDCs.—

22 (1) IN GENERAL.—The Administrator shall se-
23 lect not more than 20 small business development
24 centers to receive a grant under the pilot program.

1 (2) SELECTION OF PROGRAMS.—In selecting
2 small business development centers under paragraph
3 (1), the Administrator shall not select—

4 (A) more than 2 programs from each of
5 the groups of States described in paragraph
6 (3); and

7 (B) more than 1 program in any State.

8 (3) GROUPINGS.—The groups of States de-
9 scribed in this paragraph are the following:

10 (A) GROUP 1.—Group 1 shall consist of
11 Maine, Massachusetts, New Hampshire, Con-
12 necticut, Vermont, and Rhode Island.

13 (B) GROUP 2.—Group 2 shall consist of
14 New York, New Jersey, Puerto Rico, and the
15 Virgin Islands.

16 (C) GROUP 3.—Group 3 shall consist of
17 Pennsylvania, Maryland, West Virginia, Vir-
18 ginia, the District of Columbia, and Delaware.

19 (D) GROUP 4.—Group 4 shall consist of
20 Georgia, Alabama, North Carolina, South Caro-
21 lina, Mississippi, Florida, Kentucky, and Ten-
22 nessee.

23 (E) GROUP 5.—Group 5 shall consist of Il-
24 linois, Ohio, Michigan, Indiana, Wisconsin, and
25 Minnesota.

1 (F) GROUP 6.—Group 6 shall consist of
 2 Texas, New Mexico, Arkansas, Oklahoma, and
 3 Louisiana.

4 (G) GROUP 7.—Group 7 shall consist of
 5 Missouri, Iowa, Nebraska, and Kansas.

6 (H) GROUP 8.—Group 8 shall consist of
 7 Colorado, Wyoming, North Dakota, South Da-
 8 kota, Montana, and Utah.

9 (I) GROUP 9.—Group 9 shall consist of
 10 California, Guam, American Samoa, Hawaii,
 11 Nevada, and Arizona.

12 (J) GROUP 10.—Group 10 shall consist of
 13 Washington, Alaska, Idaho, and Oregon.

14 (4) DEADLINE FOR SELECTION.—The Adminis-
 15 trator shall make selections under this subsection
 16 not later than 6 months after the later of the date
 17 on which the information described in subsection
 18 (b)(1) is posted on the website of the Small Business
 19 Administration and the date on which the informa-
 20 tion described in subsection (b)(1) is published in
 21 the Federal Register.

22 (d) USE OF FUNDS.—

23 (1) IN GENERAL.—A participating small busi-
 24 ness development center shall use funds provided
 25 under the pilot program to—

1 (A) create and distribute informational
2 materials; and

3 (B) conduct training and educational ac-
4 tivities.

5 (2) CONTENT OF MATERIALS.—In creating ma-
6 terials under the pilot program, a participating small
7 business development center shall evaluate and in-
8 corporate relevant portions of existing informational
9 materials regarding health insurance options, such
10 as the materials created by the Healthcare Leader-
11 ship Council.

12 (e) GRANT AMOUNTS.—Each participating small
13 business development center program shall receive a grant
14 in an amount equal to—

15 (1) not less than \$150,000 per fiscal year; and

16 (2) not more than \$300,000 per fiscal year.

17 (f) MATCHING REQUIREMENT.—Subparagraphs (A)
18 and (B) of section 21(a)(4) of the Small Business Act (15
19 U.S.C. 648(a)(4)) shall apply to assistance made available
20 under the pilot program.

21 **SEC. 204. REPORTS.**

22 Each participating small business development center
23 shall transmit to the Administrator and the Chief Counsel
24 for Advocacy of the Small Business Administration, as the

1 Administrator may direct, a quarterly report that in-
2 cludes—

3 (1) a summary of the information and edu-
4 cational materials regarding health insurance op-
5 tions provided by the participating small business
6 development center under the pilot program; and

7 (2) the number of small business concerns as-
8 sisted under the pilot program.

9 **SEC. 205. AUTHORIZATION OF APPROPRIATIONS.**

10 (a) IN GENERAL.—There are authorized to be appro-
11 priated to carry out this title—

12 (1) \$5,000,000 for the first fiscal year begin-
13 ning after the date of enactment of this Act; and

14 (2) \$5,000,000 for each of the 3 fiscal years
15 following the fiscal year described in paragraph (1).

16 (b) LIMITATION ON USE OF OTHER FUNDS.—The
17 Administrator may carry out the pilot program only with
18 amounts appropriated in advance specifically to carry out
19 this title.

○