

111TH CONGRESS
2D SESSION

H. R. 6001

To amend the Internal Revenue Code of 1986 to provide for the establishment of tax-free COBRA premium payment accounts, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JULY 30, 2010

Mr. PITTS 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 provide for the establishment of tax-free COBRA premium payment accounts, 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 “COBRA Affordability
5 Act of 2010”.

6 **SEC. 2. COBRA PREMIUM PAYMENT ACCOUNTS.**

7 (a) IN GENERAL.—Subchapter F of chapter 1 of the
8 Internal Revenue Code of 1986 (relating to exempt organi-
9 zations) is amended by adding at the end the following
10 new part:

1 **“PART IX—COBRA PREMIUM PAYMENT**
2 **ACCOUNTS**

“Sec. 530A. COBRA Premium Payment Accounts.

3 **“SEC. 530A. COBRA PREMIUM PAYMENT ACCOUNTS.**

4 “(a) GENERAL RULE.—A COBRA premium payment
5 account shall be exempt from taxation under this subtitle.
6 Notwithstanding the preceding sentence, any COBRA pre-
7 mium payment account shall be subject to the taxes im-
8 posed by section 511 (relating to imposition of tax on un-
9 related business income of charitable, etc., organizations).

10 “(b) COBRA PREMIUM PAYMENT ACCOUNT.—For
11 purposes of this title, the term ‘COBRA premium payment
12 account’ means a trust created or organized in the United
13 States for the exclusive benefit of an individual or his
14 beneficiaries, but only if the written governing instrument
15 creating the trust meets the following requirements:

16 “(1) Except in the case of a qualified rollover
17 (as defined in subsection (f)(3)), no contribution will
18 be accepted unless it is in cash, and contributions
19 will not be accepted for the taxable year on behalf
20 of any individual in excess of the amount in effect
21 for such taxable year under section 224(b).

22 “(2) The trustee is a bank (as defined in sec-
23 tion 408(n)).

24 “(3) The trust funds may only be invested in
25 interest-bearing securities of the United States.

1 “(4) The requirements of paragraphs (3)
2 through (6) of section 408(a) are met.

3 “(c) TAX TREATMENT OF DISTRIBUTIONS.—

4 “(1) INCLUSION OF AMOUNTS IN GROSS IN-
5 COME.—Except as otherwise provided in this sub-
6 section, any amount paid or distributed out of a
7 COBRA premium payment account shall be includ-
8 ible in the gross income of the payee or distributee,
9 as the case may be, in the manner as provided in
10 section 72.

11 “(2) DISTRIBUTIONS FOR COBRA PREMIUM PAY-
12 MENTS.—No amount shall be includible in gross in-
13 come under paragraph (1) if the qualified COBRA
14 premium payments of the designated beneficiary
15 during the taxable year, reduced by any credit al-
16 lowed under this chapter with respect to such pay-
17 ments for the taxable year, are not less than the ag-
18 gregate distributions during the taxable year.

19 “(3) DISTRIBUTIONS IN EXCESS OF PAY-
20 MENTS.—If such aggregate distributions exceed such
21 payments (as so reduced) during the taxable year,
22 the amount otherwise includible in gross income
23 under paragraph (1) shall be reduced by the amount
24 which bears the same ratio to the amount which
25 would be includible in gross income under paragraph

1 (1) (without regard to this paragraph) as the quali-
2 fied COBRA premium payments (as so reduced)
3 bear to such aggregate distributions.

4 “(4) MEDICARE ELIGIBILITY.—Paragraph (2)
5 shall not apply to any distribution to a beneficiary
6 after the date on which such individual is entitled to
7 benefits under part A of title XVIII of the Social Se-
8 curity Act or is enrolled under part B of such title.

9 “(d) QUALIFIED COBRA PREMIUM PAYMENTS.—
10 For purposes of this section—

11 “(1) IN GENERAL.—The term ‘qualified
12 COBRA premium payments’ means any premium
13 paid for COBRA continuation coverage.

14 “(2) COBRA CONTINUATION COVERAGE.—The
15 term ‘COBRA continuation coverage’ means con-
16 tinuation coverage provided pursuant to part 6 of
17 subtitle B of title I of the Employee Retirement In-
18 come Security Act of 1974 (other than under section
19 609), title XXII of the Public Health Service Act,
20 section 4980B of this title (other than subsection
21 (f)(1) of such section insofar as it relates to pedi-
22 atric vaccines), or section 8905a of title 5, United
23 States Code, or under a State program that provides
24 comparable continuation coverage. Such term in-
25 cludes coverage under a health flexible spending ar-

1 rangement under a cafeteria plan within the mean-
 2 ing of section 125 of the Internal Revenue Code of
 3 1986 if, at the time of the qualifying event (as de-
 4 fined in section 4980B(f)(3)), the taxpayer was cov-
 5 ered under such coverage.

6 “(e) TAX TREATMENT OF ACCOUNTS.—

7 “(1) LOSS OF EXEMPTION IN CASE OF PROHIB-
 8 ITED TRANSACTIONS.—For purposes of this section,
 9 rules similar to the rules of section 408(e) shall
 10 apply.

11 “(2) OTHER RULES TO APPLY.—Rules similar
 12 to the rules of paragraphs (4), (5), and (6) of sec-
 13 tion 408(d) shall apply for purposes of this section.

14 “(f) OTHER DEFINITIONS AND SPECIAL RULES.—
 15 For purposes of this section—

16 “(1) ALL ACCOUNTS TREATED AS ONE AC-
 17 COUNT.—All COBRA premium payment accounts of
 18 a qualified individual shall be treated as 1 account.

19 “(2) TIME WHEN CONTRIBUTIONS DEEMED
 20 MADE.—A taxpayer shall be deemed to have made a
 21 contribution to a COBRA premium payment account
 22 on the last day of the preceding taxable year if the
 23 contribution is made on account of such taxable year
 24 and is made not later than the time prescribed by

1 law for filing the return for such taxable year (not
2 including extensions thereof).

3 “(3) QUALIFIED ROLLOVERS.—The term ‘quali-
4 fied rollover’ means any amount paid from a
5 COBRA premium payment account of a taxpayer
6 into another such account established for the benefit
7 of—

8 “(A) such taxpayer, or

9 “(B) any qualified individual who is—

10 “(i) the spouse of such taxpayer, or

11 “(ii) any dependent (as defined in sec-
12 tion 152) of the taxpayer.

13 Rules similar to the rules of section 408(d)(3) shall
14 apply for purposes of this paragraph.

15 “(4) CUSTODIAL ACCOUNTS.—Rules similar to
16 the rules of section 408(h) shall apply.

17 “(5) REPORTS.—The trustee of a COBRA pre-
18 mium payment account shall make such reports re-
19 garding such account to the Secretary and to the in-
20 dividual for whom the account is maintained with re-
21 spect to contributions (and the years to which they
22 relate), distributions, and such other matters as the
23 Secretary may require under regulations. The re-
24 ports required by this paragraph—

1 “(A) shall be filed at such time and in
2 such manner as the Secretary prescribes in
3 such regulations, and

4 “(B) shall be furnished to individuals—

5 “(i) not later than January 31 of the
6 calendar year following the calendar year
7 to which such reports relate, and

8 “(ii) in such manner as the Secretary
9 prescribes in such regulations.

10 “(6) INVESTMENT IN COLLECTIBLES TREATED
11 AS DISTRIBUTIONS.—Rules similar to the rules of
12 section 408(m) shall apply.

13 “(g) PENALTY FOR DISTRIBUTIONS NOT USED FOR
14 QUALIFIED COBRA PREMIUM PAYMENTS.—

15 “(1) IN GENERAL.—If any amount distributed
16 from a COBRA premium payment account is includ-
17 ible in gross income under subsection (c), the tax
18 imposed by this chapter for the taxable year of such
19 distribution shall be increased by 20 percent of such
20 amount which is includible in gross income. For pur-
21 poses of the preceding sentence, distributions which
22 are includible in gross income shall be treated as
23 first attributable to amounts contributed under sub-
24 section (d) to the extent thereof.

1 “(2) EXCEPTION FOR CERTAIN DISTRIBUTIONS.—Paragraph (1) shall not apply to distributions which are—

4 “(A) made to a beneficiary (or the estate of the account holder) on or after the death of the account holder, or

7 “(B) attributable to the account holder’s being disabled within the meaning of section 72(m)(7).”.

10 (b) DEDUCTION FOR CONTRIBUTIONS.—

11 (1) IN GENERAL.—Part VII of subchapter B of chapter I of the Internal Revenue Code of 1986 (relating to additional itemized deductions for individuals) is amended by redesignating section 224 as section 225 and by inserting after section 223 the following new section:

17 **“SEC. 224. CONTRIBUTIONS TO COBRA PREMIUM PAYMENT**
18 **ACCOUNT.**

19 “(a) ALLOWANCE OF DEDUCTION.—In the case of an individual, there shall be allowed as a deduction for the taxable year an amount equal to the contributions of the individual to a COBRA premium payment account.

23 “(b) MAXIMUM AMOUNT OF DEDUCTION.—

1 “(1) DOLLAR LIMITATION.—The amount allow-
2 able as a deduction under subsection (a) for a tax-
3 able year shall not exceed the lesser of—

4 “(A) \$2,500,

5 “(B) the amount equal to the excess of—

6 “(i) the aggregate contributions to all
7 COBRA premium payment accounts of the
8 individual for all prior taxable years, over

9 “(ii) \$11,814 (\$27,286 in the case of
10 a joint return), or

11 “(C) an amount equal to the compensation
12 includible in the individual’s gross income for
13 such taxable year.

14 “(2) LIMITATION BASED ON ADJUSTED GROSS
15 INCOME.—

16 “(A) IN GENERAL.—Each of the dollar
17 limitations contained in subparagraphs (A) and
18 (B) of paragraph (1) for such taxable year shall
19 be reduced (but not below zero) by the amount
20 determined under subparagraph (B).

21 “(B) AMOUNT OF REDUCTION.—

22 “(i) IN GENERAL.—The amount de-
23 termined under this subparagraph with re-
24 spect to any dollar limitation shall be the

1 amount which bears the same ratio to such
2 limitation as—

3 “(I) the excess of—

4 “(aa) the taxpayer’s ad-
5 justed gross income for such tax-
6 able year, over

7 “(bb) the applicable dollar
8 amount, bears to

9 “(II) \$10,000 (\$20,000 in the
10 case of a joint return).

11 “(ii) NO REDUCTION BELOW \$200
12 UNTIL COMPLETE PHASE-OUT.—No dollar
13 limitation shall be reduced below \$200
14 under paragraph (1) unless (without re-
15 gard to this subparagraph) such limitation
16 is reduced to zero.

17 “(iii) ROUNDING.—Any amount deter-
18 mined under this subparagraph which is
19 not a multiple of \$10 shall be rounded to
20 the next lowest \$10.

21 “(C) ADJUSTED GROSS INCOME; APPLICA-
22 BLE DOLLAR AMOUNT.—For purposes of this
23 paragraph—

1 “(i) ADJUSTED GROSS INCOME.—Ad-
2 justed gross income of any taxpayer shall
3 be determined—

4 “(I) after application of sections
5 86 and 469, and

6 “(II) without regard to sections
7 135, 137, 199, 221, 222, and 911 or
8 the deduction allowable under this
9 section.

10 “(ii) APPLICABLE DOLLAR AMOUNT.—
11 The term ‘applicable dollar amount’
12 means, with respect to a taxable year, the
13 applicable amount determined under sec-
14 tion 219(g)(3)(B) for the taxable year.

15 “(c) OTHER LIMITATIONS AND RESTRICTIONS.—

16 “(1) BENEFICIARY MUST NOT BE MEDICARE
17 ELIGIBLE.—No deduction shall be allowed under
18 this section with respect to any contribution to a
19 COBRA premium payment account for the benefit
20 of an individual after the date on which such indi-
21 vidual is entitled to benefits under part A of title
22 XVIII of the Social Security Act or is enrolled under
23 part B of such title.

24 “(2) RECONTRIBUTED AMOUNTS.—No deduc-
25 tion shall be allowed under this section with respect

1 to a rollover contribution described in section
2 530A(f)(3).

3 “(3) DENIAL OF DEDUCTION FOR AMOUNT
4 CONTRIBUTED TO INHERITED ACCOUNTS.—No de-
5 duction shall be allowed under this section with re-
6 spect to any amount paid to an inherited COBRA
7 premium payment account (within the meaning of
8 section 408(d)(3)(C)(ii)) by reason of the last sen-
9 tence of section 530A(f)(3).

10 “(d) COBRA PREMIUM PAYMENT ACCOUNT.—For
11 purposes of this section, the term ‘COBRA premium pay-
12 ment account’ has the meaning given such term by section
13 530A.

14 “(e) APPLICABLE DEFINITIONS AND RULES.—For
15 purposes of this section, definitions and rules similar to
16 the definitions and rules of section 219(f) (other than
17 paragraphs (5) and (8)) shall apply.

18 “(f) INFLATION ADJUSTMENT.—In the case of any
19 taxable year beginning after December 31, 2011, each dol-
20 lar amount in subsection (b)(1) shall be increased by an
21 amount equal to the product of—

22 “(1) such amount, and

23 “(2) the cost-of-living adjustment determined
24 under section 213(d)(10)(B) for the calendar year in
25 which the taxable year begins by substituting ‘cal-

1 endar year 2010’ for ‘calendar year 1997’ in clause
2 (i) thereof.

3 If any amount as adjusted under the preceding sentence
4 is not a multiple of \$100, such amount shall be rounded
5 to the nearest multiple of \$100.

6 “(g) REGULATIONS.—The Secretary shall issue such
7 regulations as may be necessary or appropriate to carry
8 out this section.”.

9 (2) CLERICAL AMENDMENT.—The table of sec-
10 tions for part VII of subchapter B of chapter 1 of
11 such Code is amended by striking the item relating
12 to section 224 and inserting the following:

“Sec. 224. Contributions to COBRA premium payment account.
“Sec. 225. Cross reference.”.

13 (c) TAX ON EXCESS CONTRIBUTIONS.—

14 (1) TAX IMPOSED.—Subsection (a) of section
15 4973 of such Code is amended by striking “or” at
16 the end of paragraph (4), by redesignating para-
17 graph (5) as paragraph (6), and by inserting after
18 paragraph (4) the following new paragraph:

19 “(5) a COBRA premium payment account
20 (within the meaning of section 530A(b)), or”.

21 (2) EXCESS CONTRIBUTIONS.—Section 4973 of
22 such Code is amended by adding at the end the fol-
23 lowing subsection:

1 “(h) COBRA PREMIUM PAYMENT ACCOUNTS.—For
2 purposes of this section, in the case of COBRA premium
3 payment accounts, the term ‘excess contributions’ means
4 the sum of—

5 “(1) the excess (if any) of—

6 “(A) the amount contributed for the tax-
7 able year to the accounts (other than a quali-
8 fied rollover, as defined in section 530A(f)(3)),
9 over

10 “(B) the amount allowable under section
11 224 for such contributions, and

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

15 “(A) the distributions out of the accounts
16 for the taxable year which were included in the
17 gross income of the payee under section
18 530A(c)(1),

19 “(B) the distributions out of the accounts
20 for the taxable year to which rules similar to
21 the rules of section 408(d)(5) apply by reason
22 of section 530A(e)(2), and

23 “(C) the excess (if any) of the maximum
24 amount allowable as a contribution under sec-
25 tion 224 for the taxable year over the amount

1 contributed to the account for the taxable year
2 (other than a contribution under section
3 530A(f)(3)).

4 For purposes of this subsection, any contribution which
5 is distributed from the COBRA premium payment account
6 in a distribution to which rules similar to the rules of sec-
7 tion 408(d)(4) apply by reason of section 530A(e)(2) shall
8 be treated as an amount not contributed.”.

9 (d) TAX ON PROHIBITED TRANSACTIONS.—Section
10 4975 of such Code is amended—

11 (1) by adding at the end of subsection (c) the
12 following paragraph:

13 “(7) SPECIAL RULE FOR COBRA PREMIUM PAY-
14 MENT ACCOUNTS.—An individual for whose benefit a
15 COBRA premium payment account is established
16 and any contributor to such account shall be exempt
17 from the tax imposed by this section with respect to
18 any transaction concerning such account (which
19 would otherwise be taxable under this section) if,
20 with respect to such transaction, the account ceases
21 to be a COBRA premium payment account by rea-
22 son of the application of section 530A(e)(1) to such
23 account.”, and

24 (2) in subsection (e)(1), by striking “or” at the
25 end of subparagraph (F), by redesignating subpara-

1 graph (G) as subparagraph (H), and by inserting
 2 after subparagraph (F) the following new subpara-
 3 graph:

4 “(G) a COBRA premium payment account
 5 described in section 530A(b), or”.

6 (e) FAILURE TO PROVIDE REPORTS ON COBRA
 7 PREMIUM PAYMENT ACCOUNTS.—Paragraph (2) of sec-
 8 tion 6693(a) of such Code is amended by striking “and”
 9 at the end of subparagraph (D), by striking the period
 10 and inserting “, and” at the end of subparagraph (E),
 11 and by inserting after subparagraph (E) the following new
 12 subparagraph:

13 “(F) section 530A(f)(5) (relating to
 14 COBRA premium payment accounts).”.

15 (f) PENALTY NOT PART OF REGULAR TAX.—Para-
 16 graph (2) of section 26(b) of such Code is amended by
 17 striking “and” at the end of subparagraph (W), by strik-
 18 ing the period at the end of subparagraph (X) and insert-
 19 ing “, and”, and by inserting after subparagraph (X) the
 20 following new subparagraph:

21 “(Y) section 530A(g) (relating to penalty
 22 for distributions not used for Qualified COBRA
 23 premium payments).”.

1 (g) CLERICAL AMENDMENT.—The table of parts for
 2 subchapter F of chapter 1 of such Code is amended by
 3 adding at the end the following new item:

“PART IX. COBRA PREMIUM PAYMENT ACCOUNTS.”.

4 (h) EFFECTIVE DATE.—The amendments made by
 5 this section shall apply to taxable years beginning after
 6 December 31, 2010.

7 **SEC. 3. COBRA ELECTION OF DIFFERENT COVERAGE.**

8 (a) IN GENERAL.—Paragraph (2) of section
 9 4980B(f) of the Internal Revenue Code of 1986 is amend-
 10 ed by adding at the end the following:

11 “(F) ELECTION OF DIFFERENT COV-
 12 ERAGE.—

13 “(i) IN GENERAL.—In lieu of subpara-
 14 graph (A), coverage meets the require-
 15 ments of this subparagraph if the qualified
 16 beneficiary may elect to enroll in coverage
 17 under a plan offered by the employer in-
 18 volved, or the employee organization in-
 19 volved (including, for this purpose, a joint
 20 board of trustees of a multiemployer trust
 21 affiliated with one or more multiemployer
 22 plans), that is different than coverage
 23 under the plan in which such individual
 24 was enrolled at the time the qualifying
 25 event occurred.

1 “(ii) REQUIREMENTS.—A qualified
2 beneficiary may make an election under
3 clause (i) only if—

4 “(I) the employer involved has
5 made a determination that such em-
6 ployer will permit qualified bene-
7 ficiaries to enroll in different coverage
8 as provided for this subparagraph,

9 “(II) the premium for such dif-
10 ferent coverage does not exceed the
11 premium for coverage in which the in-
12 dividual was enrolled at the time the
13 qualifying event occurred,

14 “(III) the different coverage in
15 which the individual elects to enroll is
16 coverage that is also offered to the ac-
17 tive employees of the employer at the
18 time at which such election is made,
19 and

20 “(IV) the different coverage is
21 coverage other than nonqualifying cov-
22 erage.

23 “(iii) NONQUALIFYING COVERAGE DE-
24 SCRIBED.—For purposes of clause (ii)(IV),

1 the term ‘nonqualifying coverage’ means
2 coverage which is—

3 “(I) coverage that provides only
4 dental, vision, counseling, or referral
5 services (or a combination of such
6 services),

7 “(II) a flexible spending arrange-
8 ment (as defined in section 106(c)(2))
9 in which the individual is not a partic-
10 ipant on the date of the qualifying
11 event, or

12 “(III) coverage that provides cov-
13 erage for services or treatments fur-
14 nished in an on-site medical facility
15 maintained by the employer and that
16 consists primarily of first-aid services,
17 prevention and wellness care, or simi-
18 lar care (or a combination of such
19 care).

20 “(iv) FSA CONTRIBUTIONS.—For
21 purposes of this paragraph, an employer
22 making contributions to a flexible spending
23 arrangement (as so defined) of an em-
24 ployee prior to the qualifying event is not
25 obligated to continue making contributions

1 to such arrangement of such employee
2 after the qualifying event.”.

3 (b) EFFECTIVE DATE.—

4 (1) IN GENERAL.—The amendment made by
5 this section shall apply with respect to qualifying
6 events occurring on or after the date of the enact-
7 ment of this Act.

8 (2) QUALIFYING EVENTS BEFORE ENACT-
9 MENT.—In the case of a qualifying event occurring
10 before the date of the enactment of this Act, if the
11 election period specified in section 4980B(f)(5) of
12 the Internal Revenue Code of 1986 with respect to
13 such qualifying event has not expired on the date of
14 the enactment of this Act, then the amendment
15 made by this section shall apply with respect to such
16 qualifying event and such election period shall not
17 expire until the later of—

18 (A) the 60-day period beginning on the
19 date of the enactment of this Act, or

20 (B) the date on which such election would
21 expire under section 4980B(f)(5) without re-
22 gard to subparagraph (A).

○