

**AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 6134
OFFERED BY MR. THOMAS OF CALIFORNIA**

Strike all after the enacting clause and insert the following:

1 SECTION 1. SHORT TITLE.

2 This Act may be cited as the “Health Opportunity
3 Patient Empowerment Act of 2006”.

4 SEC. 2. FSA AND HRA TERMINATIONS TO FUND HSAS.

5 (a) IN GENERAL.—Section 106 of the Internal Rev-
6 enue Code of 1986 (relating to contributions by employer
7 to accident and health plans) is amended by adding at the
8 end the following new subsection:

9 “(e) FSA AND HRA TERMINATIONS TO FUND
10 HSAS.—

11 “(1) IN GENERAL.—A plan shall not fail to be
12 treated as a health flexible spending arrangement or
13 health reimbursement arrangement under this sec-
14 tion or section 105 merely because such plan pro-
15 vides for a qualified HSA distribution.

16 “(2) QUALIFIED HSA DISTRIBUTION.—The
17 term ‘qualified HSA distribution’ means a distribu-
18 tion from a health flexible spending arrangement or

1 health reimbursement arrangement to the extent
2 that such distribution—

3 “(A) does not exceed the lesser of the bal-
4 ance in such arrangement on September 21,
5 2006, or as of the date of such distribution,
6 and

7 “(B) is contributed by the employer di-
8 rectly to the health savings account of the em-
9 ployee before January 1, 2012.

10 Such term shall not include more than 1 distribution
11 with respect to any arrangement.

12 “(3) ADDITIONAL TAX FOR FAILURE TO MAIN-
13 TAIN HIGH DEDUCTIBLE HEALTH PLAN COV-
14 ERAGE.—

15 “(A) IN GENERAL.—If, at any time during
16 the testing period, the employee is not an eligi-
17 ble individual, then the amount of the qualified
18 HSA distribution—

19 “(i) shall be includible in the gross in-
20 come of the employee for the taxable year
21 in which occurs the first month in the test-
22 ing period for which such employee is not
23 an eligible individual, and

24 “(ii) the tax imposed by this chapter
25 for such taxable year on the employee shall

1 be increased by 10 percent of the amount
2 which is so includible.

3 “(B) EXCEPTION FOR DISABILITY OR
4 DEATH.—Clauses (i) and (ii) of subparagraph
5 (A) shall not apply if the employee ceases to be
6 an eligible individual by reason of the death of
7 the employee or the employee becoming disabled
8 (within the meaning of section 72(m)(7)).

9 “(4) DEFINITIONS AND SPECIAL RULES.—For
10 purposes of this subsection—

11 “(A) TESTING PERIOD.—The term ‘testing
12 period’ means the period beginning with the
13 month in which the qualified HSA distribution
14 is contributed to the health savings account and
15 ending on the last day of the 12th month fol-
16 lowing such month.

17 “(B) ELIGIBLE INDIVIDUAL.—The term
18 ‘eligible individual’ has the meaning given such
19 term by section 223(e)(1).

20 “(C) TREATMENT AS ROLLOVER CON-
21 TRIBUTION.—A qualified HSA distribution shall
22 be treated as a rollover contribution described
23 in section 223(f)(5).

24 “(5) TAX TREATMENT RELATING TO DISTRIBU-
25 TIONS.—For purposes of this title—

1 “(A) IN GENERAL.—A qualified HSA dis-
2 tribution shall be treated as a payment de-
3 scribed in subsection (d).

4 “(B) COMPARABILITY EXCISE TAX.—

5 “(i) IN GENERAL.—Except as pro-
6 vided in clause (ii), section 4980G shall
7 not apply to qualified HSA distributions.

8 “(ii) FAILURE TO OFFER TO ALL EM-
9 PLOYEES.—In the case of a qualified HSA
10 distribution to any employee, the failure to
11 offer such distribution to any eligible indi-
12 vidual covered under a high deductible
13 health plan of the employer shall (notwith-
14 standing section 4980G(d)) be treated for
15 purposes of section 4980G as a failure to
16 meet the requirements of section
17 4980G(b).”.

18 (b) CERTAIN FSA COVERAGE DISREGARDED COV-
19 ERAGE.—Subparagraph (B) of section 223(c)(1) of such
20 Code (relating to certain coverage disregarded) is amend-
21 ed by striking “and” at the end of clause (i), by striking
22 the period at the end of clause (ii) and inserting “, and”,
23 and by inserting after clause (ii) the following new clause:

24 “(iii) for taxable years beginning after
25 December 31, 2006, coverage under a

1 health flexible spending arrangement dur-
2 ing any period immediately following the
3 end of a plan year of such arrangement
4 during which unused benefits or contribu-
5 tions remaining at the end of such plan
6 year may be paid or reimbursed to plan
7 participants for qualified benefit expenses
8 incurred during such period if—

9 “(I) the balance in such arrange-
10 ment at the end of such plan year is
11 zero, or

12 “(II) the individual is making a
13 qualified HSA distribution (as defined
14 in section 106(e)) in an amount equal
15 to the remaining balance in such ar-
16 rangement as of the end of such plan
17 year, in accordance with rules pre-
18 scribed by the Secretary.”.

19 (c) APPLICATION OF SECTION.—

20 (1) SUBSECTION (a).—The amendment made
21 by subsection (a) shall apply to distributions on or
22 after the date of the enactment of this Act.

23 (2) SUBSECTION (b).—The amendment made
24 by subsection (b) shall take effect on the date of the
25 enactment of this Act.

1 **SEC. 3. REPEAL OF ANNUAL DEDUCTIBLE LIMITATION ON**
2 **HSA CONTRIBUTIONS.**

3 (a) IN GENERAL.—Paragraph (2) of section 223(b)
4 of the Internal Revenue Code of 1986 (relating to monthly
5 limitation) is amended—

6 (1) in subparagraph (A) by striking “the lesser
7 of—” and all that follows and inserting “\$2,250.”,
8 and

9 (2) in subparagraph (B) by striking “the lesser
10 of—” and all that follows and inserting “\$4,500.”.

11 (b) CONFORMING AMENDMENT.—Section
12 223(d)(1)(A)(ii)(I) of such Code is amended by striking
13 “subsection (b)(2)(B)(ii)” and inserting “subsection
14 (b)(2)(B)”.

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

18 **SEC. 4. MODIFICATION OF COST-OF-LIVING ADJUSTMENT.**

19 Paragraph (1) of section 223(g) of the Internal Rev-
20 enue Code of 1986 (relating to cost-of-living adjustment)
21 is amended by adding at the end the following new flush
22 sentence:

23 “In the case of adjustments made for any taxable
24 year beginning after 2007, section 1(f)(4) shall be
25 applied for purposes of this paragraph by sub-
26 stituting ‘March 31’ for ‘August 31’, and the Sec-

1 retary shall publish the adjusted amounts under sub-
2 sections (b)(2) and (c)(2)(A) for taxable years begin-
3 ning in any calendar year no later than June 1 of
4 the preceding calendar year.”.

5 **SEC. 5. CONTRIBUTION LIMITATION NOT REDUCED FOR**
6 **PART-YEAR COVERAGE.**

7 (a) INCREASE IN LIMIT FOR INDIVIDUALS BECOMING
8 ELIGIBLE INDIVIDUALS AFTER BEGINNING OF THE
9 YEAR.—Subsection (b) of section 223 of the Internal Rev-
10 enue Code of 1986 (relating to limitations) is amended
11 by adding at the end the following new paragraph:

12 “(8) INCREASE IN LIMIT FOR INDIVIDUALS BE-
13 COMING ELIGIBLE INDIVIDUALS AFTER THE BEGIN-
14 NING OF THE YEAR.—

15 “(A) IN GENERAL.—For purposes of com-
16 puting the limitation under paragraph (1) for
17 any taxable year, an individual who is an eligi-
18 ble individual during the last month of such
19 taxable year shall be treated—

20 “(i) as having been an eligible indi-
21 vidual during each of the months in such
22 taxable year, and

23 “(ii) as having been enrolled, during
24 each of the months such individual is
25 treated as an eligible individual solely by

1 reason of clause (i), in the same high de-
2 ductible health plan in which the individual
3 was enrolled for the last month of such
4 taxable year.

5 “(B) FAILURE TO MAINTAIN HIGH DE-
6 DUCTIBLE HEALTH PLAN COVERAGE.—

7 “(i) IN GENERAL.—If, at any time
8 during the testing period, the individual is
9 not an eligible individual, then—

10 “(I) gross income of the indi-
11 vidual for the taxable year in which
12 occurs the first month in the testing
13 period for which such individual is not
14 an eligible individual is increased by
15 the aggregate amount of all contribu-
16 tions to the health savings account of
17 the individual which could not have
18 been made but for subparagraph (A),
19 and

20 “(II) the tax imposed by this
21 chapter for any taxable year on the
22 individual shall be increased by 10
23 percent of the amount of such in-
24 crease.

1 “(ii) EXCEPTION FOR DISABILITY OR
2 DEATH.—Subclauses (I) and (II) of clause
3 (i) shall not apply if the individual ceased
4 to be an eligible individual by reason of the
5 death of the individual or the individual
6 becoming disabled (within the meaning of
7 section 72(m)(7)).

8 “(iii) TESTING PERIOD.—The term
9 ‘testing period’ means the period beginning
10 with the last month of the taxable year re-
11 ferred to in subparagraph (A) and ending
12 on the last day of the 12th month fol-
13 lowing such month.”.

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

17 **SEC. 6. EXCEPTION TO REQUIREMENT FOR EMPLOYERS TO**
18 **MAKE COMPARABLE HEALTH SAVINGS AC-**
19 **COUNT CONTRIBUTIONS.**

20 (a) IN GENERAL.—Section 4980G of the Internal
21 Revenue Code of 1986 (relating to failure of employer to
22 make comparable health savings account contributions) is
23 amended by adding at the end the following new sub-
24 section:

1 “(d) EXCEPTION.—For purposes of applying section
2 4980E to a contribution to a health savings account of
3 an employee who is not a highly compensated employee
4 (as defined in section 414(q)), highly compensated em-
5 ployees shall not be treated as comparable participating
6 employees.”.

7 (b) EFFECTIVE DATE.—The amendment made by
8 this section shall apply to taxable years beginning after
9 December 31, 2006.

10 **SEC. 7. ONE-TIME DISTRIBUTION FROM INDIVIDUAL RE-**
11 **TIREMENT PLANS TO FUND HSAS.**

12 (a) IN GENERAL.—Subsection (d) of section 408 of
13 the Internal Revenue Code of 1986 (relating to taxability
14 of beneficiary of employees’ trust) is amended by adding
15 at the end the following new paragraph:

16 “(9) DISTRIBUTION FOR HEALTH SAVINGS AC-
17 COUNT FUNDING.—

18 “(A) IN GENERAL.—In the case of an indi-
19 vidual who is an eligible individual (as defined
20 in section 223(c)) and who elects the applica-
21 tion of this paragraph for a taxable year, gross
22 income of the individual for the taxable year
23 does not include a qualified HSA funding dis-
24 tribution to the extent such distribution is oth-
25 erwise includible in gross income.

1 “(B) QUALIFIED HSA FUNDING DISTRIBUTION.—For purposes of this paragraph, the
2 term ‘qualified HSA funding distribution’
3 means a distribution from an individual retirement
4 plan (other than a plan described in sub-
5 section (k) or (p)) of the employee to the extent
6 that such distribution is contributed to the
7 health savings account of the individual in a di-
8 rect trustee-to-trustee transfer.

9 “(C) LIMITATIONS.—

10 “(i) MAXIMUM DOLLAR LIMITATION.—The amount excluded from gross
11 income by subparagraph (A) shall not ex-
12 ceed the excess of—
13

14 “(I) the annual limitation under
15 section 223(b) computed on the basis
16 of the type of coverage under the high
17 deductible health plan covering the in-
18 dividual at the time of the qualified
19 HSA funding distribution, over
20

21 “(II) in the case of a distribution
22 described in clause (ii)(II), the
23 amount of the earlier qualified HSA
24 funding distribution.

25 “(ii) ONE-TIME TRANSFER.—

1 “(I) IN GENERAL.—Except as
2 provided in subclause (II), an indi-
3 vidual may make an election under
4 subparagraph (A) only for one quali-
5 fied HSA funding distribution during
6 the lifetime of the individual. Such an
7 election, once made, shall be irrev-
8 ocable.

9 “(II) CONVERSION FROM SELF-
10 ONLY TO FAMILY COVERAGE.—If a
11 qualified HSA funding distribution is
12 made during a month in a taxable
13 year during which an individual has
14 self-only coverage under a high de-
15 ductible health plan as of the first day
16 of the month, the individual may elect
17 to make an additional qualified HSA
18 funding distribution during a subse-
19 quent month in such taxable year dur-
20 ing which the individual has family
21 coverage under a high deductible
22 health plan as of the first day of the
23 subsequent month.

24 “(D) FAILURE TO MAINTAIN HIGH DE-
25 DUCTIBLE HEALTH PLAN COVERAGE.—

1 “(i) IN GENERAL.—If, at any time
2 during the testing period, the individual is
3 not an eligible individual, then the aggregate
4 amount of all contributions to the
5 health savings account of the individual
6 made under subparagraph (A)—

7 “(I) shall be includible in the
8 gross income of the individual for the
9 taxable year in which occurs the first
10 month in the testing period for which
11 such individual is not an eligible individual, and
12

13 “(II) the tax imposed by this
14 chapter for any taxable year on the
15 individual shall be increased by 10
16 percent of the amount which is so includible.
17

18 “(ii) EXCEPTION FOR DISABILITY OR
19 DEATH.—Subclauses (I) and (II) of clause
20 (i) shall not apply if the individual ceased
21 to be an eligible individual by reason of the
22 death of the individual or the individual
23 becoming disabled (within the meaning of
24 section 72(m)(7)).

1 “(iii) TESTING PERIOD.—The term
2 ‘testing period’ means the period beginning
3 with the month in which the qualified HSA
4 funding distribution is contributed to a
5 health savings account and ending on the
6 last day of the 12th month following such
7 month.

8 “(E) APPLICATION OF SECTION 72.—Not-
9 withstanding section 72, in determining the ex-
10 tent to which an amount is treated as otherwise
11 includible in gross income for purposes of sub-
12 paragraph (A), the aggregate amount distrib-
13 uted from an individual retirement plan shall be
14 treated as includible in gross income to the ex-
15 tent that such amount does not exceed the ag-
16 gregate amount which would have been so in-
17 cludible if all amounts from all individual retire-
18 ment plans were distributed. Proper adjust-
19 ments shall be made in applying section 72 to
20 other distributions in such taxable year and
21 subsequent taxable years.”.

22 (b) COORDINATION WITH LIMITATION ON CON-
23 TRIBUTIONS TO HSAs.—Section 223(b)(4) of such Code
24 (relating to coordination with other contributions) is
25 amended by striking “and” at the end of subparagraph

1 (A), by striking the period at the end of subparagraph
2 (B) and inserting “, and”, and by inserting after subpara-
3 graph (B) the following new subparagraph:

4 “(C) the aggregate amount contributed to
5 health savings accounts of such individual for
6 such taxable year under section 408(d)(9) (and
7 such amount shall not be allowed as a deduc-
8 tion under subsection (a)).”.

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