AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 1004
OFFERED BY MR. CAMP OF MICHIGAN

Strike all after the enacting clause and insert the following:

1 SECTION 1. SHORT TITLE.

This Act may be cited as the “Health Flexible Spending Arrangements Improvements Act of 2012”.

2 SEC. 2. TAXABLE DISTRIBUTIONS OF UNUSED BALANCES UNDER HEALTH FLEXIBLE SPENDING ARRANGEMENTS.

(a) In General.—Section 125 of the Internal Revenue Code of 1986 is amended by redesignating subsections (k) and (l) as subsections (l) and (m), respectively, and by inserting after subsection (j) the following new subsection:

“(k) Taxable Distributions of Unused Balances Under Health Flexible Spending Arrangements.—

“(1) In General.—For purposes of this section and sections 105(b) and 106, a plan or other arrangement which (but for any qualified distribution) would be a health flexible spending arrange-
ment shall not fail to be treated as a cafeteria plan or health flexible spending arrangement (and shall not fail to be treated as an accident or health plan) merely because such arrangement provides for qualified distributions.

“(2) QUALIFIED DISTRIBUTIONS.—For purposes of this subsection, the term ‘qualified distribution’ means any distribution to an individual under the arrangement referred to in paragraph (1) with respect to any plan year if—

“(A) such distribution is made after the last date on which requests for reimbursement under such arrangement for such plan year may be made and not later than the end of the 7th month following the close of such plan year, and

“(B) such distribution does not exceed the lesser of—

“(i) $500, or

“(ii) the excess of—

“(I) the salary reduction contributions made under such arrangement for such plan year, over

“(II) the reimbursements for expenses incurred for medical care made
under such arrangement for such plan year.

“(3) Tax Treatment of Qualified Distributions.—Qualified distributions shall be includible in the gross income of the employee in the taxable year in which distributed and shall be taken into account as wages or compensation under the applicable provisions of subtitle C when so distributed.

“(4) Coordination with Qualified Reservist Distributions.—A qualified reservist distribution (as defined in subsection (h)(2)) shall not be treated as a qualified distribution and shall not be taken into account in applying the limitation of paragraph (2)(B)(i).”.

(b) Conforming Amendment.—Paragraph (1) of section 409A(d)(1) of such Code is amended by striking “and” at the end of subparagraph (A), by striking the period at the end of subparagraph (B) and inserting “, and”, and by adding at the end the following new subparagraph:

“(C) a health flexible spending arrangement to which subsection (h) or (k) of section 125 applies.”.
(c) **Effective Date.**—The amendments made by this section shall apply to plan years beginning after December 31, 2012.