

111TH CONGRESS  
1ST SESSION

# H. R. 544

To amend the Internal Revenue Code of 1986 to allow amounts in a health flexible spending arrangement that are unused during a plan year to be carried over to subsequent plan years or deposited into certain health or retirement plans.

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## IN THE HOUSE OF REPRESENTATIVES

JANUARY 14, 2009

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

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## A BILL

To amend the Internal Revenue Code of 1986 to allow amounts in a health flexible spending arrangement that are unused during a plan year to be carried over to subsequent plan years or deposited into certain health or retirement plans.

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 “Flexible Health Sav-  
5 ings Act of 2009”.

1 **SEC. 2. DISPOSITION OF UNUSED HEALTH BENEFITS IN**  
2 **CAFETERIA PLANS AND FLEXIBLE SPENDING**  
3 **ARRANGEMENTS.**

4 (a) IN GENERAL.—Section 125 of the Internal Rev-  
5 enue Code of 1986 (relating to cafeteria plans) is amended  
6 by redesignating subsections (i) and (j) as subsections (j)  
7 and (k), respectively, and by inserting after subsection (h)  
8 the following new subsection:

9 “(i) CONTRIBUTIONS OF CERTAIN UNUSED HEALTH  
10 BENEFITS.—

11 “(1) IN GENERAL.—For purposes of this title,  
12 a plan or other arrangement shall not fail to be  
13 treated as a cafeteria plan or health flexible spend-  
14 ing arrangement solely because qualified benefits  
15 under such plan include a health flexible spending  
16 arrangement under which not more than \$500 of  
17 unused health benefits may be—

18 “(A) carried forward to the succeeding  
19 plan year of such health flexible spending ar-  
20 rangement,

21 “(B) to the extent permitted by sections  
22 223, contributed on behalf of the employee to a  
23 health savings account (as defined in section  
24 223(d)), maintained for the benefit of such em-  
25 ployee, or

1           “(C) contributed to a qualified retirement  
2 plan (as defined in section 4974(e)), or an eligi-  
3 ble deferred compensation plan (as defined in  
4 section 457(b)) of an eligible employer de-  
5 scribed in section 457(e)(1)(A).

6           “(2) SPECIAL RULES FOR TREATMENT OF CON-  
7 TRIBUTIONS TO HEALTH AND RETIREMENT  
8 PLANS.—For purposes of this title, contributions  
9 under subparagraph (B) or (C) of paragraph (1)—

10           “(A) shall be treated as a contribution  
11 made by the employee (and includible in the  
12 gross income of such employee) in the case of  
13 a contribution to a health savings account,

14           “(B) shall be treated as elective deferrals  
15 (as defined in section 402(g)(3)) in the case of  
16 contributions to a qualified cash or deferred ar-  
17 rangement (as defined in section 401(k)) or to  
18 an annuity contract described in section 403(b),

19           “(C) shall be treated as employer contribu-  
20 tions to which the employee has a nonforfeitable  
21 right in the case of a plan (other than a plan  
22 described in subparagraph (A)) which is de-  
23 scribed in section 401(a) which includes a trust  
24 exempt from tax under section 501(a),

1           “(D) shall be treated as deferred com-  
2           pensation in the case of contributions to an eli-  
3           gible deferred compensation plan (as defined in  
4           section 457(b)), and

5           “(E) shall be treated in the manner des-  
6           ignated for purposes of section 408 or 408A in  
7           the case of contributions to an individual retire-  
8           ment plan.

9           “(3) HEALTH FLEXIBLE SPENDING ARRANGE-  
10          MENT.—For purposes of this subsection, the term  
11          ‘health flexible spending arrangement’ means a flexi-  
12          ble spending arrangement (as defined in section  
13          106(c)) that is a qualified benefit and only permits  
14          reimbursement for expenses for medical care (as de-  
15          fined in section 213(d)(1) (without regard to sub-  
16          paragraphs (C) and (D) thereof).

17          “(4) UNUSED HEALTH BENEFITS.—For pur-  
18          poses of this subsection, with respect to an em-  
19          ployee, the term ‘unused health benefits’ means the  
20          excess of—

21                 “(A) the maximum amount of reimburse-  
22                 ment allowable to the employee during a plan  
23                 year under a health flexible spending arrange-  
24                 ment, taking into account any election by the  
25                 employee, over

1                   “(B) the actual amount of reimbursement  
2                   during such year under such arrangement.”.

3           (b) **EFFECTIVE DATE.**—The amendment made by  
4 subsection (a) shall apply to plan years ending after the  
5 date of the enactment of this Act.

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