

**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.

2 This Act may be cited as the “Health Flexible Spend-
3 ing Arrangements Improvements Act of 2012”.

**4 SEC. 2. TAXABLE DISTRIBUTIONS OF UNUSED BALANCES
5 UNDER HEALTH FLEXIBLE SPENDING AR-
6 RANGEMENTS.**

7 (a) IN GENERAL.—Section 125 of the Internal Rev-
8 enue Code of 1986 is amended by redesignating sub-
9 sections (k) and (l) as subsections (l) and (m), respec-
10 tively, and by inserting after subsection (j) the following
11 new subsection:

12 “(k) TAXABLE DISTRIBUTIONS OF UNUSED BAL-
13 ANCES UNDER HEALTH FLEXIBLE SPENDING ARRANGE-
14 MENTS.—

15 “(1) IN GENERAL.—For purposes of this sec-
16 tion and sections 105(b) and 106, a plan or other
17 arrangement which (but for any qualified distribu-
18 tion) would be a health flexible spending arrange-

1 ment shall not fail to be treated as a cafeteria plan
2 or health flexible spending arrangement (and shall
3 not fail to be treated as an accident or health plan)
4 merely because such arrangement provides for quali-
5 fied distributions.

6 “(2) QUALIFIED DISTRIBUTIONS.—For pur-
7 poses of this subsection, the term ‘qualified distribu-
8 tion’ means any distribution to an individual under
9 the arrangement referred to in paragraph (1) with
10 respect to any plan year if—

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

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

19 “(i) \$500, or

20 “(ii) the excess of—

21 “(I) the salary reduction con-
22 tributions made under such arrange-
23 ment for such plan year, over

24 “(II) the reimbursements for ex-
25 penses incurred for medical care made

1 under such arrangement for such plan
2 year.

3 “(3) TAX TREATMENT OF QUALIFIED DIS-
4 TRIBUTIONS.—Qualified distributions shall be in-
5 cludible in the gross income of the employee in the
6 taxable year in which distributed and shall be taken
7 into account as wages or compensation under the
8 applicable provisions of subtitle C when so distrib-
9 uted.

10 “(4) COORDINATION WITH QUALIFIED RESERV-
11 IST DISTRIBUTIONS.—A qualified reservist distribu-
12 tion (as defined in subsection (h)(2)) shall not be
13 treated as a qualified distribution and shall not be
14 taken into account in applying the limitation of
15 paragraph (2)(B)(i).”.

16 (b) CONFORMING AMENDMENT.—Paragraph (1) of
17 section 409A(d)(1) of such Code is amended by striking
18 “and” at the end of subparagraph (A), by striking the
19 period at the end of subparagraph (B) and inserting “,
20 and”, and by adding at the end the following new subpara-
21 graph:

22 “(C) a health flexible spending arrange-
23 ment to which subsection (h) or (k) of section
24 125 applies.”.

1 (c) EFFECTIVE DATE.—The amendments made by
2 this section shall apply to plan years beginning after De-
3 cember 31, 2012.

