

108TH CONGRESS  
1ST SESSION

# H. R. 518

To amend the Internal Revenue Code of 1986 to increase portability among retirement plans.

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## IN THE HOUSE OF REPRESENTATIVES

JANUARY 31, 2003

Mr. POMEROY introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committee on Education and the Workforce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

To amend the Internal Revenue Code of 1986 to increase portability among 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; AMENDMENT OF 1986 CODE;**

4 **TABLE OF CONTENTS.**

5 (a) SHORT TITLE.—This Act may be cited as the  
6 “Retirement Account Portability Improvement Act of  
7 2003”.

8 (b) AMENDMENT OF 1986 CODE.—Except as other-  
9 wise expressly provided, whenever in this Act an amend-

1 ment or repeal is expressed in terms of an amendment  
 2 to, or repeal of, a section or other provision, the reference  
 3 shall be considered to be made to a section or other provi-  
 4 sion of the Internal Revenue Code of 1986.

5 (c) TABLE OF CONTENTS.—The table of contents of  
 6 this Act is as follows:

- Sec. 1. Short title; amendment of 1986 Code; table of contents.
- Sec. 2. Allow rollovers to spouse's retirement plans.
- Sec. 3. Rollovers by nonspouse beneficiaries.
- Sec. 4. Facilitation under fiduciary rules of certain rollovers and annuity distributions.
- Sec. 5. Faster vesting of employer nonelective contributions.
- Sec. 6. Allow direct rollovers from retirement plans to Roth IRAs.
- Sec. 7. Rollover of after-tax amounts in annuity contracts.
- Sec. 8. Elimination of higher penalty on certain SIMPLE distributions.
- Sec. 9. SIMPLE plan portability.
- Sec. 10. Clarifications regarding purchase of permissive service credit.
- Sec. 11. Certain rollovers of benefits permitted.
- Sec. 12. Disposition of unused health benefits in cafeteria plans and flexible spending arrangements.

7 **SEC. 2. ALLOW ROLLOVERS TO SPOUSE'S RETIREMENT**  
 8 **PLANS.**

9 (a) EXEMPT TRUSTS.—Paragraph (9) of section  
 10 402(c) (relating to rollover where spouse receives distribu-  
 11 tion after death of employee) is amended—

12 (1) by inserting “or transferred by the employee  
 13 to the spouse” after “after the employee's death” in  
 14 the text, and

15 (2) by amending the heading to read as follows:  
 16 “ROLLOVER WHERE SPOUSE OF EMPLOYEE RE-  
 17 CEIVES DISTRIBUTION.—”.

1 (b) IRAS.—Paragraph (3) of section 408(d) (relating  
2 to rollover contributions) is amended by adding at the end  
3 the following:

4 “(J) ROLLOVERS TO SPOUSE’S AC-  
5 COUNT.—For purposes of this paragraph, rules  
6 similar to the rules of section 402(c)(9) shall  
7 apply, except that the term ‘individual’ shall be  
8 applied in lieu of ‘employee’.”.

9 (c) EMPLOYEE ANNUITIES.—Subparagraph (B) of  
10 section 403(a)(4) (relating to rollover amounts) is amend-  
11 ed by inserting “and (9)” after “through (7)”.

12 (d) EFFECTIVE DATE.—The amendments made by  
13 this section shall apply to years beginning after the date  
14 of the enactment of this Act.

15 **SEC. 3. ROLLOVERS BY NONSPOUSE BENEFICIARIES.**

16 (a) IN GENERAL.—

17 (1) QUALIFIED PLANS.—Section 402(c) (relat-  
18 ing to rollovers from exempt trusts) is amended by  
19 adding at the end the following new paragraph:

20 “(11) ROLLOVER WHERE NONSPOUSE BENE-  
21 FICIARY RECEIVES DISTRIBUTION AFTER DEATH OF  
22 EMPLOYEE.—

23 “(A) IN GENERAL.—If any distribution at-  
24 tributable to an employee is paid to a des-  
25 ignated beneficiary (as defined by section

1           401(a)(9)(E)) other than the surviving spouse  
2           of the employee after the employee’s death, the  
3           preceding provisions of this subsection shall  
4           apply to such distribution in the same manner  
5           as if the designated beneficiary were the em-  
6           ployee, except that only a plan described in  
7           clause (i) or (ii) of paragraph (8)(B) that is es-  
8           tablished in the name of the employee for the  
9           benefit of the designated beneficiary shall be  
10          treated as an eligible retirement plan with re-  
11          spect to such distribution.

12           “(B) SPECIAL RULES.—

13                   “(i) DEATH OF EMPLOYEE BEFORE  
14                   ENTIRE INTEREST DISTRIBUTED.—An eli-  
15                   gible retirement plan that receives a trans-  
16                   fer described in this paragraph shall, with  
17                   respect to amounts attributable to such  
18                   transferred amount, be subject to rules  
19                   similar to clauses (ii) and (iii) of section  
20                   401(a)(9)(B).

21                   “(ii) DISTRIBUTIONS ATTRIBUTED TO  
22                   EMPLOYEE.—For purposes of this sub-  
23                   section, any distribution from the eligible  
24                   retirement plan of amounts attributable to  
25                   such transferred amount shall be treated

1 as a distribution attributable to the em-  
2 ployee, not as a distribution attributable to  
3 the designated beneficiary.”.

4 (2) SECTION 403(a) PLANS.—Subparagraph (B)  
5 of section 403(a)(4) is amended by striking “and  
6 (9)” and inserting “, (9), and (11)”.

7 (3) SECTION 403(b) PLANS.—Subparagraph (B)  
8 of section 403(b)(8) is amended by striking “and  
9 (9)” and inserting “, (9), and (10)”.

10 (4) SECTION 457 PLANS.—Subparagraph (B) of  
11 section 457(e)(16) is amended by striking “and (9)”  
12 and inserting “, (9), and (10)”.

13 (b) EFFECTIVE DATE.—The amendments made by  
14 this section shall apply to distributions after December 31,  
15 2002.

16 **SEC. 4. FACILITATION UNDER FIDUCIARY RULES OF CER-**  
17 **TAIN ROLLOVERS AND ANNUITY DISTRIBUTI-**  
18 **ONS.**

19 (a) IN GENERAL.—Section 404(c) of the Employee  
20 Retirement Income Security Act of 1974 (29 U.S.C.  
21 1104(c)) is amended by adding at the end the following  
22 new paragraph:

23 “(4)(A) In the case of a pension plan which makes  
24 a transfer under section 401(a)(31)(A) of the Internal  
25 Revenue Code of 1986 to an individual retirement plan

1 (as defined in section 7701(a)(37) of such Code) in con-  
2 nection with a participant or beneficiary or makes a dis-  
3 tribution to a participant or beneficiary of an annuity con-  
4 tract described in subparagraph (B), the participant or  
5 beneficiary shall, for purposes of paragraph (1), be treated  
6 as exercising control over the transfer or distribution if—

7           “(i) the participant or beneficiary elected such  
8           transfer or distribution, and

9           “(ii) in connection with such election, the par-  
10          ticipant or beneficiary was given an opportunity to  
11          elect any other individual retirement plan (in the  
12          case of a transfer) or any other annuity contract de-  
13          scribed in subparagraph (B) (in the case of a dis-  
14          tribution).

15          “(B) An annuity contract is described in this sub-  
16          paragraph if it provides, either on an immediate or de-  
17          ferred basis, a series of substantially equal periodic pay-  
18          ments (not less frequently than annually) for the life of  
19          the employee or the joint lives of the employee and the  
20          employee’s designated beneficiary. Annuity payments shall  
21          not fail to be treated as part of a series of substantially  
22          equal periodic payments because the amount of the peri-  
23          odic payments may vary in accordance with investment ex-  
24          perience, reallocations among investment options, actu-  
25          arial gains or losses, cost of living indices, or similar fluc-

1 tuating criteria. The availability of a commutation benefit,  
2 a minimum period of payments certain, or a minimum  
3 amount to be paid in any event shall not affect the treat-  
4 ment of an annuity contract as an annuity contract de-  
5 scribed in this subparagraph.

6 “(C) Under regulations prescribed by the Secretary,  
7 this paragraph shall apply without regard to whether the  
8 particular individual retirement plan receiving the transfer  
9 or the particular annuity contract being distributed is spe-  
10 cifically identified by the pension plan as available to the  
11 participant or beneficiary.

12 “(D) Notwithstanding the preceding provisions of  
13 this paragraph, paragraph (1)(B) shall not apply with re-  
14 spect to liability under section 406 in connection with the  
15 specific identification of any individual retirement plan or  
16 annuity contract as being available to the participant or  
17 beneficiary.”.

18 (b) EFFECTIVE DATE AND RELATED RULES.—

19 (1) EFFECTIVE DATE.—The amendment made  
20 by this section shall take effect on the date of the  
21 enactment of this Act.

22 (2) ISSUANCE OF FINAL REGULATIONS.—Final  
23 regulations under section 404(c)(4) of the Employee  
24 Retirement Income Security Act of 1974 (added by

1 this section) shall be issued no later than 1 year  
2 after the date of the enactment of this Act.

3 **SEC. 5. FASTER VESTING OF EMPLOYER NONELECTIVE**  
4 **CONTRIBUTIONS.**

5 (a) AMENDMENTS TO THE INTERNAL REVENUE  
6 CODE OF 1986.—

7 (1) IN GENERAL.—Paragraph (2) of section  
8 411(a) (relating to employer contributions) is  
9 amended to read as follows:

10 “(2) EMPLOYER CONTRIBUTIONS.—

11 “(A) DEFINED BENEFIT PLANS.—

12 “(i) IN GENERAL.—In the case of a  
13 defined benefit plan, a plan satisfies the  
14 requirements of this paragraph if it satis-  
15 fies the requirements of clause (ii) or (iii).

16 “(ii) 5-YEAR VESTING.—A plan satis-  
17 fies the requirements of this clause if an  
18 employee who has completed at least 5  
19 years of service has a nonforfeitable right  
20 to 100 percent of the employee’s accrued  
21 benefit derived from employer contribu-  
22 tions.

23 “(iii) 3 TO 7 YEAR VESTING.—A plan  
24 satisfies the requirements of this clause if  
25 an employee has a nonforfeitable right to

1 a percentage of the employee’s accrued  
2 benefit derived from employer contribu-  
3 tions determined under the following table:

<b>“Years of service:</b>	<b>The nonforfeitable percentage is:</b>
3 .....	20
4 .....	40
5 .....	60
6 .....	80
7 or more .....	100.

4 “(B) DEFINED CONTRIBUTION PLANS.—

5 “(i) IN GENERAL.—In the case of a  
6 defined contribution plan, a plan satisfies  
7 the requirements of this paragraph if it  
8 satisfies the requirements of clause (ii) or  
9 (iii).

10 “(ii) 3-YEAR VESTING.—A plan satis-  
11 fies the requirements of this clause if an  
12 employee who has completed at least 3  
13 years of service has a nonforfeitable right  
14 to 100 percent of the employee’s accrued  
15 benefit derived from employer contribu-  
16 tions.

17 “(iii) 2 TO 6 YEAR VESTING.—A plan  
18 satisfies the requirements of this clause if  
19 an employee has a nonforfeitable right to  
20 a percentage of the employee’s accrued  
21 benefit derived from employer contribu-  
22 tions determined under the following table:

<b>“Years of service:</b>	<b>The nonforfeitable percentage is:</b>
2 .....	20
3 .....	40
4 .....	60
5 .....	80
6 .....	100.”.

1           (2) CONFORMING AMENDMENT.—Section  
2           411(a) (relating to general rule for minimum vesting  
3           standards) is amended by striking paragraph (12).

4           (b) AMENDMENTS TO THE EMPLOYEE RETIREMENT  
5 INCOME SECURITY ACT OF 1974.—

6           (1) IN GENERAL.—Paragraph (2) of section  
7           203(a) of the Employee Retirement Income Security  
8           Act of 1974 (29 U.S.C. 1053(a)(2)) is amended to  
9           read as follows:

10           “(2)(A)(i) In the case of a defined benefit plan,  
11           a plan satisfies the requirements of this paragraph  
12           if it satisfies the requirements of clause (ii) or (iii).

13           “(ii) A plan satisfies the requirements of this  
14           clause if an employee who has completed at least 5  
15           years of service has a nonforfeitable right to 100  
16           percent of the employee’s accrued benefit derived  
17           from employer contributions.

18           “(iii) A plan satisfies the requirements of this  
19           clause if an employee has a nonforfeitable right to  
20           a percentage of the employee’s accrued benefit de-

1 rived from employer contributions determined under  
 2 the following table:

<b>“Years of service:</b>	<b>The nonforfeitable percentage is:</b>
3 .....	20
4 .....	40
5 .....	60
6 .....	80
7 or more .....	100.

3 “(B)(i) In the case of an individual account  
 4 plan, a plan satisfies the requirements of this para-  
 5 graph if it satisfies the requirements of clause (ii) or  
 6 (iii).

7 “(ii) A plan satisfies the requirements of this  
 8 clause if an employee who has completed at least 3  
 9 years of service has a nonforfeitable right to 100  
 10 percent of the employee’s accrued benefit derived  
 11 from employer contributions.

12 “(iii) A plan satisfies the requirements of this  
 13 clause if an employee has a nonforfeitable right to  
 14 a percentage of the employee’s accrued benefit de-  
 15 rived from employer contributions determined under  
 16 the following table:

<b>“Years of service:</b>	<b>The nonforfeitable percentage is:</b>
2 .....	20
3 .....	40
4 .....	60
5 .....	80
6 .....	100.”.

1           (2) CONFORMING AMENDMENT.—Section  
2 203(a) of such Act is amended by striking para-  
3 graph (4).

4           (c) EFFECTIVE DATES.—

5           (1) IN GENERAL.—Except as provided in para-  
6 graph (2), the amendments made by this section  
7 shall apply to contributions for plan years beginning  
8 after December 31, 2003.

9           (2) COLLECTIVE BARGAINING AGREEMENTS.—

10 In the case of a plan maintained pursuant to one or  
11 more collective bargaining agreements between em-  
12 ployee representatives and one or more employers  
13 ratified by the date of the enactment of this Act, the  
14 amendments made by this section shall not apply to  
15 contributions on behalf of employees covered by any  
16 such agreement for plan years beginning before the  
17 earlier of—

18           (A) the later of—

19           (i) the date on which the last of such  
20 collective bargaining agreements termi-  
21 nates (determined without regard to any  
22 extension thereof on or after such date of  
23 the enactment); or

24           (ii) January 1, 2004; or

25           (B) January 1, 2008.

1           (3) SERVICE REQUIRED.—With respect to any  
2 plan, the amendments made by this section shall not  
3 apply to any employee before the date that such em-  
4 ployee has 1 hour of service under such plan in any  
5 plan year to which the amendments made by this  
6 section apply.

7 **SEC. 6. ALLOW DIRECT ROLLOVERS FROM RETIREMENT**  
8 **PLANS TO ROTH IRAS.**

9           (a) IN GENERAL.—Subsection (e) of section 408A  
10 (defining qualified rollover contribution) is amended to  
11 read as follows:

12           “(e) QUALIFIED ROLLOVER CONTRIBUTION.—For  
13 purposes of this section, the term ‘qualified rollover con-  
14 tribution’ means a rollover contribution—

15                   “(1) to a Roth IRA from another such account,  
16                   “(2) from an eligible retirement plan, but only  
17 if—

18                           “(A) in the case of an individual retire-  
19 ment plan, such rollover contribution meets the  
20 requirements of section 408(d)(3), and

21                           “(B) in the case of any eligible retirement  
22 plan (as defined in section 402(c)(8)(B) other  
23 than clauses (i) and (ii) thereof), such rollover  
24 contribution meets the requirements of section  
25 402(c), 403(b)(8), or 457(e)(16), as applicable.

1 For purposes of section 408(d)(3)(B), there shall be dis-  
2 regarded any qualified rollover contribution from an indi-  
3 vidual retirement plan (other than a Roth IRA) to a Roth  
4 IRA.”.

5 (b) CONFORMING AMENDMENTS.—

6 (1) Section 408A(c)(3)(B) is amended—

7 (A) in the text by striking “individual re-  
8 tirement plan” and inserting “an eligible retire-  
9 ment plan (as defined by section  
10 402(c)(8)(B))”, and

11 (B) in the heading by striking “IRA” and  
12 inserting “ELIGIBLE RETIREMENT PLAN”.

13 (2) Section 408A(d)(3) is amended—

14 (A) in subparagraph (A) by striking “sec-  
15 tion 408(d)(3)” inserting “sections 402(c),  
16 403(b)(8), 408(d)(3), and 457(e)(16)”,

17 (B) in subparagraph (B) by striking “indi-  
18 vidual retirement plan” and inserting “eligible  
19 retirement plan (as defined by section  
20 402(c)(8)(B))”,

21 (C) in subparagraph (D) by striking “or  
22 6047” after “408(i)”,

23 (D) in subparagraph (D) by striking “or  
24 both” and inserting “persons subject to section

1           6047(d)(1), or all of the foregoing persons”,  
2           and

3           (E) in the heading by striking “IRA” and  
4           inserting “ELIGIBLE RETIREMENT PLAN”.

5           (c) EFFECTIVE DATE.—The amendments made by  
6 this section shall apply to distributions after December 31,  
7 2003.

8   **SEC. 7. ROLLOVER OF AFTER-TAX AMOUNTS IN ANNUITY**  
9                           **CONTRACTS.**

10          (a) IN GENERAL.—Subparagraph (A) of section  
11 402(c)(2) (maximum amount which may be rolled over)  
12 is amended by striking “and which” and inserting “or to  
13 an annuity contract described in section 403(b) and such  
14 plan or contract”.

15          (b) EFFECTIVE DATE.—The amendment made by  
16 subsection (a) shall apply to taxable years beginning after  
17 December 31, 2003.

18   **SEC. 8. ELIMINATION OF HIGHER PENALTY ON CERTAIN**  
19                           **SIMPLE DISTRIBUTIONS.**

20          (a) IN GENERAL.—Subsection (t) of section 72 (re-  
21 lating to 10-percent additional tax on early distributions  
22 from qualified retirement plans) is amended by striking  
23 paragraph (6) and redesignating paragraphs (7), (8), and  
24 (9) as paragraphs (6), (7), and (8), respectively.

25          (b) CONFORMING AMENDMENTS.—

1           (1) Section 72(t)(2)(E) is amended by striking  
2           “paragraph (7)” and inserting “paragraph (6)”.

3           (2) Section 72(t)(2)(F) is amended by striking  
4           “paragraph (8)” and inserting “paragraph (7)”.

5           (3) Section 408(d)(3)(G) is amended by insert-  
6           ing by striking “applies” and inserting “applied on  
7           the day before the date of the enactment of Retire-  
8           ment Account Portability Improvement Act of  
9           2003”.

10           (4) Section 457(a)(2) is amended by striking  
11           “section 72(t)(9)” and inserting “section 72(t)(8)”.

12           (c) EFFECTIVE DATE.—The amendments made by  
13 this section shall apply to years beginning after December  
14 31, 2003.

15 **SEC. 9. SIMPLE PLAN PORTABILITY.**

16           (a) REPEAL OF LIMITATION.—Paragraph (3) of sec-  
17 tion 408(d) (relating to rollover contributions) is amended  
18 by striking subparagraph (G) and redesignating subpara-  
19 graphs (H), (I), and (J) as subparagraphs (G), (H), and  
20 (I), respectively.

21           (b) Section 402(c)(8)(B) is amended by adding at the  
22 end the following new sentence: “Individual retirement ac-  
23 counts and individual retirement annuities described in  
24 clauses (i) and (ii) shall be treated as eligible retirement  
25 plans without regard to whether they are part of a sim-

1 plified employee pension (within the meaning of section  
2 408(k)) or a simplified retirement account (within the  
3 meaning of section 408(p)).”.

4 (c) EFFECTIVE DATE.—The amendment made by  
5 this section shall apply to years beginning after December  
6 31, 2003.

7 **SEC. 10. CLARIFICATIONS REGARDING PURCHASE OF PER-**  
8 **MISSIVE SERVICE CREDIT.**

9 (a) IN GENERAL.—Subparagraph (A) of section  
10 457(e)(17) (relating to trustee-to-trustee transfers to pur-  
11 chase permissive service credit), and subparagraph (A) of  
12 section 403(b)(13) (relating to trustee-to-trustee transfers  
13 to purchase permissive service credit), are both amended  
14 by striking “section 415(n)(3)(A)” and inserting “section  
15 415(n)(3) (without regard to subparagraphs (B) and (C)  
16 thereof)”.

17 (b) TRANSFERS MAY BE FROM ANY GOVERNMENTAL  
18 PLAN.—Section 457(e)(17), and section 403(b)(13), are  
19 both amended by inserting “from any governmental plan  
20 (as so defined)” after “414(d)”.

21 (c) EFFECTIVE DATE.—The amendments made by  
22 this section shall take effect as if included in the amend-  
23 ments made by section 647 of the Economic Growth and  
24 Tax Relief Reconciliation Act of 2001.

1 **SEC. 11. CERTAIN ROLLOVERS OF BENEFITS PERMITTED.**

2 (a) IN GENERAL.—Paragraph (10) of section 457(e)  
3 is amended—

4 (1) by striking “A participant” and inserting  
5 “(A) EXCLUSION FROM INCOME.—A participant”,  
6 and

7 (2) by adding at the end the following:

8 “(B) TRANSFERS PERMITTED.—A transfer  
9 from one such plan to another such plan of the  
10 entire benefit of one or more participants shall  
11 not fail to be permitted solely because all assets  
12 of the transferor plan are not transferred to the  
13 transferee plan.”.

14 (b) EFFECTIVE DATE.—

15 (1) IN GENERAL.—The amendments made by  
16 this section shall apply to taxable years beginning  
17 after December 31, 2003.

18 (2) SPECIAL RULE.—An individual shall not be  
19 precluded from participating in an eligible deferred  
20 compensation plan by reason of having received a  
21 distribution under section 457(e)(9) of the Internal  
22 Revenue Code of 1986 as in effect prior to the en-  
23 actment of the Small Business Job Protection Act of  
24 1996.

1 **SEC. 12. DISPOSITION OF UNUSED HEALTH BENEFITS IN**  
2 **CAFETERIA PLANS AND FLEXIBLE SPENDING**  
3 **ARRANGEMENTS.**

4 (a) IN GENERAL.—Section 125 (relating to cafeteria  
5 plans) is amended by redesignating subsections (h) and  
6 (i) as subsections (i) and (j), respectively, and by inserting  
7 after subsection (g) the following:

8 “(h) CARRYFORWARDS OR PAYMENTS OF CERTAIN  
9 UNUSED HEALTH BENEFITS.—

10 “(1) IN GENERAL.—For purposes of this title,  
11 a plan or other arrangement shall not fail to be  
12 treated as a cafeteria plan solely because qualified  
13 benefits under such plan include a health flexible  
14 spending arrangement under which not more than  
15 \$500 of unused health benefits may be contributed  
16 on behalf of an employee to a qualified retirement  
17 plan (as defined in section 4974(c)) or an eligible  
18 deferred compensation plan (as defined in section  
19 457(b)).

20 “(2) CONTRIBUTION OF UNUSED HEALTH BEN-  
21 EFITS ON BEHALF OF EMPLOYEE.—For purposes of  
22 this title, contributions on behalf of an employee de-  
23 scribed in paragraph (1) shall be treated as elective  
24 contributions made pursuant to a choice by the em-  
25 ployee between such contributions and compensation  
26 which would otherwise be includible in the gross in-

1       come of the employee. Contributions described in  
2       paragraph (1) shall be excluded from the gross in-  
3       come of the employee, or included in the gross in-  
4       come of the employee and allowed as a deduction by  
5       the employee, to the extent that elective contribu-  
6       tions would be treated in that manner under this  
7       title.

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

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

20                       “(A) the maximum amount of reimburse-  
21       ment allowable to the employee during a plan  
22       year under a health flexible spending arrange-  
23       ment, taking into account any election by the  
24       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 taxable years beginning after  
5 December 31, 2003.

○