

1 “Fund, notwithstanding section 9508(c)(1) of the Internal  
2 Revenue Code of 1986” and inserting “Fund”.

3 (c) EFFECTIVE DATE.—The amendments made by  
4 this section shall take effect on the date of the enactment  
5 of this Act.

6 **SEC. 211. TREATMENT OF COKE AND COKE GAS.**

7 (a) NONAPPLICATION OF PHASEOUT.—Section  
8 45K(g)(2) is amended by adding at the end the following  
9 new subparagraph:

10 “(D) NONAPPLICATION OF PHASEOUT.—  
11 Subsection (b)(1) shall not apply.”.

12 (b) CLARIFICATION OF QUALIFYING FACILITY.—Sec-  
13 tion 45K(g)(1) is amended by inserting “(other than from  
14 petroleum based products)” after “coke or coke gas”.

15 (c) EFFECTIVE DATE.—The amendments made by  
16 this section shall take effect as if included in section 1321  
17 of the Energy Policy Act of 2005.

18 **TITLE III—HEALTH SAVINGS**  
19 **ACCOUNTS**

20 **SEC. 301. SHORT TITLE.**

21 This title may be cited as the “Health Opportunity  
22 Patient Empowerment Act of 2006”.

1 **SEC. 302. FSA AND HRA TERMINATIONS TO FUND HSAS.**

2 (a) IN GENERAL.—Section 106 (relating to contribu-  
3 tions by employer to accident and health plans) is amend-  
4 ed by adding at the end the following new subsection:

5 “(e) FSA AND HRA TERMINATIONS TO FUND  
6 HSAS.—

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

12 “(2) QUALIFIED HSA DISTRIBUTION.—The  
13 term ‘qualified HSA distribution’ means a distribu-  
14 tion from a health flexible spending arrangement or  
15 health reimbursement arrangement to the extent  
16 that such distribution—

17 “(A) does not exceed the lesser of the bal-  
18 ance in such arrangement on September 21,  
19 2006, or as of the date of such distribution,  
20 and

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

24 Such term shall not include more than 1 distribution  
25 with respect to any arrangement.

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

4           “(A) IN GENERAL.—If, at any time during  
5 the testing period, the employee is not an eligi-  
6 ble individual, then the amount of the qualified  
7 HSA distribution—

8           “(i) shall be includible in the gross in-  
9 come of the employee for the taxable year  
10 in which occurs the first month in the test-  
11 ing period for which such employee is not  
12 an eligible individual, and

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

17           “(B) EXCEPTION FOR DISABILITY OR  
18 DEATH.—Clauses (i) and (ii) of subparagraph  
19 (A) shall not apply if the employee ceases to be  
20 an eligible individual by reason of the death of  
21 the employee or the employee becoming disabled  
22 (within the meaning of section 72(m)(7)).

23           “(4) DEFINITIONS AND SPECIAL RULES.—For  
24 purposes of this subsection—

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

7           “(B) ELIGIBLE INDIVIDUAL.—The term  
8 ‘eligible individual’ has the meaning given such  
9 term by section 223(c)(1).

10           “(C) TREATMENT AS ROLLOVER CON-  
11 TRIBUTION.—A qualified HSA distribution shall  
12 be treated as a rollover contribution described  
13 in section 223(f)(5).

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

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

19           “(B) COMPARABILITY EXCISE TAX.—

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

23           “(ii) FAILURE TO OFFER TO ALL EM-  
24 PLOYEES.—In the case of a qualified HSA  
25 distribution to any employee, the failure to

1 offer such distribution to any eligible indi-  
2 vidual covered under a high deductible  
3 health plan of the employer shall (notwith-  
4 standing section 4980G(d)) be treated for  
5 purposes of section 4980G as a failure to  
6 meet the requirements of section  
7 4980G(b).”.

8 (b) CERTAIN FSA COVERAGE DISREGARDED COV-  
9 ERAGE.—Subparagraph (B) of section 223(c)(1) (relating  
10 to certain coverage disregarded) is amended by striking  
11 “and” at the end of clause (i), by striking the period at  
12 the end of clause (ii) and inserting “, and”, and by insert-  
13 ing after clause (ii) the following new clause:

14 “(iii) for taxable years beginning after  
15 December 31, 2006, coverage under a  
16 health flexible spending arrangement dur-  
17 ing any period immediately following the  
18 end of a plan year of such arrangement  
19 during which unused benefits or contribu-  
20 tions remaining at the end of such plan  
21 year may be paid or reimbursed to plan  
22 participants for qualified benefit expenses  
23 incurred during such period if—

1                   “(I) the balance in such arrange-  
2                   ment at the end of such plan year is  
3                   zero, or

4                   “(II) the individual is making a  
5                   qualified HSA distribution (as defined  
6                   in section 106(e)) in an amount equal  
7                   to the remaining balance in such ar-  
8                   rangement as of the end of such plan  
9                   year, in accordance with rules pre-  
10                  scribed by the Secretary.”.

11               (c) APPLICATION OF SECTION.—

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

15               (2) SUBSECTION (b).—The amendment made  
16               by subsection (b) shall take effect on the date of the  
17               enactment of this Act.

18       **SEC. 303. REPEAL OF ANNUAL DEDUCTIBLE LIMITATION**

19                               **ON HSA CONTRIBUTIONS.**

20               (a) IN GENERAL.—Paragraph (2) of section 223(b)  
21               (relating to monthly limitation) is amended—

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

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

3 (b) CONFORMING AMENDMENT.—Section  
4 223(d)(1)(A)(ii)(I) is amended by striking “subsection  
5 (b)(2)(B)(ii)” and inserting “subsection (b)(2)(B)”.

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

9 **SEC. 304. MODIFICATION OF COST-OF-LIVING ADJUSTMENT.**

10 Paragraph (1) of section 223(g) (relating to cost-of-  
11 living adjustment) is amended by adding at the end the  
12 following new flush sentence:

13 “In the case of adjustments made for any taxable  
14 year beginning after 2007, section 1(f)(4) shall be  
15 applied for purposes of this paragraph by sub-  
16 stituting ‘March 31’ for ‘August 31’, and the Sec-  
17 retary shall publish the adjusted amounts under sub-  
18 sections (b)(2) and (c)(2)(A) for taxable years begin-  
19 ning in any calendar year no later than June 1 of  
20 the preceding calendar year.”.

21 **SEC. 305. CONTRIBUTION LIMITATION NOT REDUCED FOR**  
22 **PART-YEAR COVERAGE.**

23 (a) INCREASE IN LIMIT FOR INDIVIDUALS BECOMING  
24 ELIGIBLE INDIVIDUALS AFTER BEGINNING OF THE  
25 YEAR.—Subsection (b) of section 223 (relating to limita-

1 tions) is amended by adding at the end the following new  
2 paragraph:

3 “(8) INCREASE IN LIMIT FOR INDIVIDUALS BE-  
4 COMING ELIGIBLE INDIVIDUALS AFTER THE BEGIN-  
5 NING OF THE YEAR.—

6 “(A) IN GENERAL.—For purposes of com-  
7 puting the limitation under paragraph (1) for  
8 any taxable year, an individual who is an eligi-  
9 ble individual during the last month of such  
10 taxable year shall be treated—

11 “(i) as having been an eligible indi-  
12 vidual during each of the months in such  
13 taxable year, and

14 “(ii) as having been enrolled, during  
15 each of the months such individual is  
16 treated as an eligible individual solely by  
17 reason of clause (i), in the same high de-  
18 ductible health plan in which the individual  
19 was enrolled for the last month of such  
20 taxable year.

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

23 “(i) IN GENERAL.—If, at any time  
24 during the testing period, the individual is  
25 not an eligible individual, then—

1                   “(I) gross income of the indi-  
2                   vidual for the taxable year in which  
3                   occurs the first month in the testing  
4                   period for which such individual is not  
5                   an eligible individual is increased by  
6                   the aggregate amount of all contribu-  
7                   tions to the health savings account of  
8                   the individual which could not have  
9                   been made but for subparagraph (A),  
10                  and

11                  “(II) the tax imposed by this  
12                  chapter for any taxable year on the  
13                  individual shall be increased by 10  
14                  percent of the amount of such in-  
15                  crease.

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

23                  “(iii) TESTING PERIOD.—The term  
24                  ‘testing period’ means the period beginning  
25                  with the last month of the taxable year re-

1                   ferred to in subparagraph (A) and ending  
2                   on the last day of the 12th month fol-  
3                   lowing such month.”.

4           (b) **EFFECTIVE DATE.**—The amendments made by  
5 this section shall apply to taxable years beginning after  
6 December 31, 2006.

7 **SEC. 306. EXCEPTION TO REQUIREMENT FOR EMPLOYERS**  
8                   **TO MAKE COMPARABLE HEALTH SAVINGS AC-**  
9                   **COUNT CONTRIBUTIONS.**

10           (a) **IN GENERAL.**—Section 4980G (relating to failure  
11 of employer to make comparable health savings account  
12 contributions) is amended by adding at the end the fol-  
13 lowing new subsection:

14           “(d) **EXCEPTION.**—For purposes of applying section  
15 4980E to a contribution to a health savings account of  
16 an employee who is not a highly compensated employee  
17 (as defined in section 414(q)), highly compensated em-  
18 ployees shall not be treated as comparable participating  
19 employees.”.

20           (b) **EFFECTIVE DATE.**—The amendment made by  
21 this section shall apply to taxable years beginning after  
22 December 31, 2006.

1 **SEC. 307. ONE-TIME DISTRIBUTION FROM INDIVIDUAL RE-**  
2 **TIREMENT PLANS TO FUND HSAS.**

3 (a) IN GENERAL.—Subsection (d) of section 408 (re-  
4 lating to taxability of beneficiary of employees’ trust) is  
5 amended by adding at the end the following new para-  
6 graph:

7 “(9) DISTRIBUTION FOR HEALTH SAVINGS AC-  
8 COUNT FUNDING.—

9 “(A) IN GENERAL.—In the case of an indi-  
10 vidual who is an eligible individual (as defined  
11 in section 223(c)) and who elects the applica-  
12 tion of this paragraph for a taxable year, gross  
13 income of the individual for the taxable year  
14 does not include a qualified HSA funding dis-  
15 tribution to the extent such distribution is oth-  
16 erwise includible in gross income.

17 “(B) QUALIFIED HSA FUNDING DISTRIBUTION.—For purposes of this paragraph, the  
18 term ‘qualified HSA funding distribution’  
19 means a distribution from an individual retire-  
20 ment plan (other than a plan described in sub-  
21 section (k) or (p)) of the employee to the extent  
22 that such distribution is contributed to the  
23 health savings account of the individual in a di-  
24 rect trustee-to-trustee transfer.

25 “(C) LIMITATIONS.—

1                   “(i) MAXIMUM DOLLAR LIMITA-  
2                   TION.—The amount excluded from gross  
3                   income by subparagraph (A) shall not ex-  
4                   ceed the excess of—

5                   “(I) the annual limitation under  
6                   section 223(b) computed on the basis  
7                   of the type of coverage under the high  
8                   deductible health plan covering the in-  
9                   dividual at the time of the qualified  
10                  HSA funding distribution, over

11                  “(II) in the case of a distribution  
12                  described in clause (ii)(II), the  
13                  amount of the earlier qualified HSA  
14                  funding distribution.

15                  “(ii) ONE-TIME TRANSFER.—

16                  “(I) IN GENERAL.—Except as  
17                  provided in subclause (II), an indi-  
18                  vidual may make an election under  
19                  subparagraph (A) only for one quali-  
20                  fied HSA funding distribution during  
21                  the lifetime of the individual. Such an  
22                  election, once made, shall be irrev-  
23                  ocable.

24                  “(II) CONVERSION FROM SELF-  
25                  ONLY TO FAMILY COVERAGE.—If a

1 qualified HSA funding distribution is  
2 made during a month in a taxable  
3 year during which an individual has  
4 self-only coverage under a high de-  
5 ductible health plan as of the first day  
6 of the month, the individual may elect  
7 to make an additional qualified HSA  
8 funding distribution during a subse-  
9 quent month in such taxable year dur-  
10 ing which the individual has family  
11 coverage under a high deductible  
12 health plan as of the first day of the  
13 subsequent month.

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

16 “(i) IN GENERAL.—If, at any time  
17 during the testing period, the individual is  
18 not an eligible individual, then the aggre-  
19 gate amount of all contributions to the  
20 health savings account of the individual  
21 made under subparagraph (A)—

22 “(I) shall be includible in the  
23 gross income of the individual for the  
24 taxable year in which occurs the first  
25 month in the testing period for which

1 such individual is not an eligible indi-  
2 vidual, and

3 “(II) the tax imposed by this  
4 chapter for any taxable year on the  
5 individual shall be increased by 10  
6 percent of the amount which is so in-  
7 cludible.

8 “(ii) EXCEPTION FOR DISABILITY OR  
9 DEATH.—Subclauses (I) and (II) of clause  
10 (i) shall not apply if the individual ceased  
11 to be an eligible individual by reason of the  
12 death of the individual or the individual  
13 becoming disabled (within the meaning of  
14 section 72(m)(7)).

15 “(iii) TESTING PERIOD.—The term  
16 ‘testing period’ means the period beginning  
17 with the month in which the qualified HSA  
18 funding distribution is contributed to a  
19 health savings account and ending on the  
20 last day of the 12th month following such  
21 month.

22 “(E) APPLICATION OF SECTION 72.—Not-  
23 withstanding section 72, in determining the ex-  
24 tent to which an amount is treated as otherwise  
25 includible in gross income for purposes of sub-

1 paragraph (A), the aggregate amount distrib-  
2 uted from an individual retirement plan shall be  
3 treated as includible in gross income to the ex-  
4 tent that such amount does not exceed the ag-  
5 gregate amount which would have been so in-  
6 cludible if all amounts from all individual retire-  
7 ment plans were distributed. Proper adjust-  
8 ments shall be made in applying section 72 to  
9 other distributions in such taxable year and  
10 subsequent taxable years.”.

11 (b) COORDINATION WITH LIMITATION ON CON-  
12 TRIBUTIONS TO HSAS.—Section 223(b)(4) (relating to co-  
13 ordination with other contributions) is amended by strik-  
14 ing “and” at the end of subparagraph (A), by striking  
15 the period at the end of subparagraph (B) and inserting  
16 “, and”, and by inserting after subparagraph (B) the fol-  
17 lowing new subparagraph:

18 “(C) the aggregate amount contributed to  
19 health savings accounts of such individual for  
20 such taxable year under section 408(d)(9) (and  
21 such amount shall not be allowed as a deduc-  
22 tion under subsection (a)).”.

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