

108TH CONGRESS
1ST SESSION

S. _____

IN THE SENATE OF THE UNITED STATES

Mr. DURBIN (for himself and Mrs. LINCOLN) introduced the following bill;
which was read twice and referred to the Committee on _____

A BILL

To establish a national health program administered by the Office of Personnel Management to offer health benefits plans to individuals who are not Federal employees, and for other purposes.

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 “Small Employers
5 Health Benefits Program Act of 2004”.

6 **SEC. 2. DEFINITIONS.**

7 (a) IN GENERAL.—In this Act, the terms “member
8 of family”, “health benefits plan”, “carrier”, “employee

1 organizations”, and “dependent” have the meanings given
2 such terms in section 8901 of title 5, United States Code.

3 (b) OTHER TERMS.—In this Act:

4 (1) EMPLOYEE.—The term “employee” has the
5 meaning given such term under section 3(6) of the
6 Employee Retirement Income Security Act of 1974
7 (29 U.S.C. 1002(6)). Such term shall not include an
8 employee of the Federal Government.

9 (2) EMPLOYER.—The term “employer has the
10 meaning given such term under section 3(5) of the
11 Employee Retirement Income Security Act of 1974
12 (29 U.S.C. 1002(5)), except that such term shall in-
13 clude only employers who employed an average of at
14 least 1 but not more than 100 employees on busi-
15 ness days during the year preceding the date of ap-
16 plication. Such term shall not include the Federal
17 Government.

18 (3) HEALTH STATUS-RELATED FACTOR.—The
19 term “health status-related factor” has the meaning
20 given such term in section 2791(d)(9) of the Public
21 Health Service Act (42 U.S.C. 300gg-91(d)(9)).

22 (4) OFFICE.—The term “Office” means the Of-
23 fice of Personnel Management.

24 (5) PARTICIPATING EMPLOYER.—The term
25 “participating employer” means an employer that—

1 (A) elects to provide health insurance cov-
2 erage under this Act to its employees; and

3 (B) is not offering other health insurance
4 coverage to such employees.

5 (c) APPLICATION OF CERTAIN RULES IN DETER-
6 MINATION OF EMPLOYER SIZE.—For purposes of sub-
7 section (b)(2):

8 (1) APPLICATION OF AGGREGATION RULE FOR
9 EMPLOYERS.—all persons treated as a single em-
10 ployer under subsection (b), (c), (m), or (o) of sec-
11 tion 414 of the Internal Revenue Code of 1986 shall
12 be treated as 1 employer.

13 (2) EMPLOYERS NOT IN EXISTENCE IN PRE-
14 CEDING YEAR.—In the case of an employer which
15 was not in existence for the full year prior to the
16 date on which the employer applies to participate,
17 the determination of whether such employer meets
18 the requirements of subsection (b)(2) shall be based
19 on the average number of employees that it is rea-
20 sonably expected such employer will employ on busi-
21 ness days in the employer's first full year.

22 (3) PREDECESSORS.—Any reference in this
23 subsection to an employer shall include a reference
24 to any predecessor of such employer.

1 (d) WAIVER AND CONTINUATION OF PARTICIPA-
2 TION.—

3 (1) WAIVER.—The Office may waive the limita-
4 tions relating to the size of an employer which may
5 participate in the health insurance program estab-
6 lished under this Act on a case by case basis if the
7 Office determines that such employer makes a com-
8 pelling case for such a waiver. In making determina-
9 tions under this paragraph, the Office may consider
10 the effects of the employment of temporary and sea-
11 sonal workers and other factors.

12 (2) CONTINUATION OF PARTICIPATION.—An
13 employer participating in the program under this
14 Act that experiences an increase in the number of
15 employees so that such employer has in excess of
16 100 employees, may not be excluded from participa-
17 tion solely as a result of such increase in employees.

18 **SEC. 3. HEALTH INSURANCE COVERAGE FOR NON-FEDERAL**

19 **EMPLOYEES.**

20 (a) ADMINISTRATION.—The Office shall administer a
21 health insurance program for non-Federal employees and
22 employers in accordance with this Act.

23 (b) REGULATIONS.—Except as provided under this
24 Act, the Office shall prescribe regulations to apply the pro-
25 visions of chapter 89 of title 5, United States Code, to

1 the greatest extent practicable to participating carriers,
2 employers, and employees covered under this Act.

3 (c) LIMITATIONS.—In no event shall the enactment
4 of this Act result in—

5 (1) any increase in the level of individual or
6 Federal Government contributions required under
7 chapter 89 of title 5, United States Code, including
8 copayments or deductibles;

9 (2) any decrease in the types of benefits offered
10 under such chapter 89; or

11 (3) any other change that would adversely af-
12 fect the coverage afforded under such chapter 89 to
13 employees and annuitants and members of family
14 under that chapter.

15 (d) ENROLLMENT.—The Office shall develop methods
16 to facilitate enrollment under this Act, including the use
17 of the Internet.

18 (e) CONTRACTS FOR ADMINISTRATION.—The Office
19 may enter into contracts for the performance of appro-
20 priate administrative functions under this Act.

21 (f) SEPARATE RISK POOL.—In the administration of
22 this Act, the Office shall ensure that covered employees
23 under this Act are in a risk pool that is separate from
24 the risk pool maintained for covered individuals under
25 chapter 89 of title 5, United States Code.

1 (g) RULE OF CONSTRUCTION.—Nothing in this Act
2 shall be construed to require a carrier that is participating
3 in the program under chapter 89 of title 5, United States
4 Code, to provide health benefits plan coverage under this
5 Act.

6 **SEC. 4. CONTRACT REQUIREMENT.**

7 (a) IN GENERAL.—The Office may enter into con-
8 tracts with qualified carriers offering health benefits plans
9 of the type described in section 8903 or 8903a of title
10 5, United States Code, without regard to section 5 of title
11 41, United States Code, or other statutes requiring com-
12 petitive bidding, to provide health insurance coverage to
13 employees of participating employers under this Act. Each
14 contract shall be for a uniform term of at least 1 year,
15 but may be made automatically renewable from term to
16 term in the absence of notice of termination by either
17 party. In entering into such contracts, the Office shall en-
18 sure that health benefits coverage is provided for individ-
19 uals only, married individuals without children, and fami-
20 lies.

21 (b) ELIGIBILITY.—A carrier shall be eligible to enter
22 into a contract under subsection (a) if such carrier—

23 (1) is licensed to offer health benefits plan cov-
24 erage in each State in which the plan is offered; and

1 (2) meets such other requirements as deter-
2 mined appropriate by the Office.

3 (c) STATEMENT OF BENEFITS.—Each contract
4 under this Act shall contain a detailed statement of bene-
5 fits offered and shall include information concerning such
6 maximums, limitations, exclusions, and other definitions
7 of benefits as the Office considers necessary or desirable.

8 (d) STANDARDS.—The minimum standards pre-
9 scribed for health benefits plans under section 8902(e) of
10 title 5, United States Code, and for carriers offering plans,
11 shall apply to plans and carriers under this Act. Approval
12 of a plan may be withdrawn by the Office only after notice
13 and opportunity for hearing to the carrier concerned with-
14 out regard to subchapter II of chapter 5 and chapter 7
15 of title 5, United States Code.

16 (e) CONVERSION.—

17 (1) IN GENERAL.—A contract may not be made
18 or a plan approved under this section if the carrier
19 under such contract or plan does not offer to each
20 enrollee whose enrollment in the plan is ended, ex-
21 cept by a cancellation of enrollment, a temporary ex-
22 tension of coverage during which the individual may
23 exercise the option to convert, without evidence of
24 good health, to a nongroup contract providing health
25 benefits. An enrollee who exercises this option shall

1 pay the full periodic charges of the nongroup con-
2 tract.

3 (2) NONCANCELLABLE.—The benefits and cov-
4 erage made available under paragraph (1) are
5 noncancellable by the carrier except for fraud, over-
6 insurance, or nonpayment of periodic charges.

7 (f) RATES.—Rates charged under health benefits
8 plans under this Act shall reasonably and equitably reflect
9 the cost of the benefits provided. Such rates shall be deter-
10 mined on a basis which, in the judgment of the Office,
11 is consistent with the lowest schedule of basic rates gen-
12 erally charged for new group health benefits plans issued
13 to large employers. The rates determined for the first con-
14 tract term shall be continued for later contract terms, ex-
15 cept that they may be readjusted for any later term, based
16 on past experience and benefit adjustments under the later
17 contract. Any readjustment in rates shall be made in ad-
18 vance of the contract term in which they will apply and
19 on a basis which, in the judgment of the Office, is con-
20 sistent with the general practice of carriers which issue
21 group health benefits plans to large employers. Rates
22 charged for coverage under this Act shall not vary based
23 on health-status related factors.

24 (g) REQUIREMENT OF PAYMENT FOR OR PROVISION
25 OF HEALTH SERVICE.—Each contract entered into under

1 this Act shall require the carrier to agree to pay for or
2 provide a health service or supply in an individual case
3 if the Office finds that the employee, annuitant, family
4 member, former spouse, or person having continued cov-
5 erage under section 8905a of title 5, United States Code,
6 is entitled thereto under the terms of the contract.

7 (h) PREEMPTION.—

8 (1) IN GENERAL.—The terms of any contract
9 entered into under this Act that relate to the nature,
10 provision, or extent of coverage or benefits (includ-
11 ing payments with respect to benefits) shall super-
12 sede and preempt any State or local law, or any reg-
13 ulation issued thereunder, which relates to health in-
14 surance or plans.

15 (2) HEALTH PROVIDERS.—

16 (A) IN GENERAL.—Notwithstanding para-
17 graph (1), if a contract entered into under this
18 Act provides for the provision of, the payment
19 for, or the reimbursement of the cost of health
20 services for the care and treatment of any par-
21 ticular health condition, the carrier shall pro-
22 vide, pay, or reimburse up to the limits of its
23 contract for any such health service properly
24 provided by any person licensed under State law
25 to provide such service if such service is pro-

1 and is not a qualified beneficiary as defined under section
2 4980B(g)(1) of the Internal Revenue Code of 1986 shall
3 be treated in a similar manner as an individual who begins
4 employment as an employee under chapter 89 of title 5,
5 United States Code.

6 (b) PREEXISTING CONDITION EXCLUSIONS.—

7 (1) IN GENERAL.—Each contract under this
8 Act may include a preexisting condition exclusion as
9 defined under section 9801(b)(1) of the Internal
10 Revenue Code of 1986.

11 (2) EXCLUSION PERIOD.—

12 (A) IN GENERAL.—A preexisting condition
13 exclusion under this subsection shall provide for
14 coverage of a preexisting condition to begin not
15 later than 1 year after the date on which the
16 coverage of the individual under a health bene-
17 fits plan commences, reduced by 1 month for
18 each month that the individual was covered
19 under a health insurance plan immediately pre-
20 ceding the date the individual submitted an ap-
21 plication for coverage under this Act.

22 (B) LAPSE IN COVERAGE.—For purposes
23 of this paragraph, a lapse in coverage of not
24 more than 63 days immediately preceding the
25 date of the submission of an application for cov-

1 erage under this Act shall not be considered a
2 lapse in continuous coverage.

3 (c) RATES AND PREMIUMS.—

4 (1) IN GENERAL.—Rates charged and pre-
5 miums paid for a health benefits plan under this
6 Act—

7 (A) may be adjusted and differ from such
8 rates charged and premiums paid for the same
9 health benefits plan offered under chapter 89 of
10 title 5, United States Code;

11 (B) shall be negotiated in the same man-
12 ner as rates and premiums are negotiated
13 under such chapter 89; and

14 (C) shall be adjusted to cover the adminis-
15 trative costs of the Office under this Act.

16 (2) DETERMINATIONS.—In determining rates
17 and premiums under this Act—

18 (A) the age of covered individuals may be
19 considered; and

20 (B) rebates or lower rates and premiums
21 may be set to encourage longevity of coverage.

22 (d) TERMINATION AND REENROLLMENT.—If an indi-
23 vidual who is enrolled in a health benefits plan under this
24 Act terminates the enrollment, the individual shall not be
25 eligible for reenrollment until the first open enrollment pe-

1 rioid following the expiration of 6 months after the date
2 of such termination.

3 (e) **RULE OF CONSTRUCTION.**—Nothing in this Act
4 shall be construed to limit the application of the service-
5 charge system used by the Office for determining profits
6 for participating carriers under chapter 89 of title 5,
7 United States Code.

8 **SEC. 7. ENCOURAGING PARTICIPATION BY CARRIERS**
9 **THROUGH ADJUSTMENTS FOR RISK.**

10 (a) **APPLICATION OF RISK CORRIDORS.**—

11 (1) **IN GENERAL.**—This section shall only apply
12 to carriers with respect to health benefits plans of-
13 fered under this Act during any of calendar years
14 2005 through 2009.

15 (2) **NOTIFICATION OF COSTS UNDER THE**
16 **PLAN.**—In the case of a carrier that offers a health
17 benefits plan under this Act in any of calendar years
18 2005 through 2009, the carrier shall notify the Of-
19 fice, before such date in the succeeding year as the
20 Office specifies, of the total amount of costs incurred
21 in providing benefits under the health benefits plan
22 for the year involved and the portion of such costs
23 that is attributable to administrative expenses.

24 (3) **ALLOWABLE COSTS DEFINED.**—For pur-
25 poses of this section, the term “allowable costs”

1 means, with respect to a health benefits plan offered
2 by a carrier under this Act, for a year, the total
3 amount of costs described in paragraph (2) for the
4 plan and year, reduced by the portion of such costs
5 attributable to administrative expenses incurred in
6 providing the benefits described in such paragraph.

7 (b) ADJUSTMENT OF PAYMENT.—

8 (1) NO ADJUSTMENT IF ALLOWABLE COSTS
9 WITHIN 3 PERCENT OF TARGET AMOUNT.—If the al-
10 lowable costs for the carrier with respect to the
11 health benefits plan involved for a calendar year are
12 at least 97 percent, but do not exceed 103 percent,
13 of the target amount for the plan and year involved,
14 there shall be no payment adjustment under this
15 section for the plan and year.

16 (2) INCREASE IN PAYMENT IF ALLOWABLE
17 COSTS ABOVE 103 PERCENT OF TARGET AMOUNT.—

18 (A) COSTS BETWEEN 103 AND 108 PER-
19 CENT OF TARGET AMOUNT.—If the allowable
20 costs for the carrier with respect to the health
21 benefits plan involved for the year are greater
22 than 103 percent, but not greater than 108
23 percent, of the target amount for the plan and
24 year, the Office shall reimburse the carrier for
25 such excess costs through payment to the car-

1 rier of an amount equal to 75 percent of the
2 difference between such allowable costs and 103
3 percent of such target amount.

4 (B) COSTS ABOVE 108 PERCENT OF TAR-
5 GET AMOUNT.—If the allowable costs for the
6 carrier with respect to the health benefits plan
7 involved for the year are greater than 108 per-
8 cent of the target amount for the plan and
9 year, the Office shall reimburse the carrier for
10 such excess costs through payment to the car-
11 rier in an amount equal to the sum of—

12 (i) 3.75 percent of such target
13 amount; and

14 (ii) 90 percent of the difference be-
15 tween such allowable costs and 108 percent
16 of such target amount.

17 (3) REDUCTION IN PAYMENT IF ALLOWABLE
18 COSTS BELOW 97 PERCENT OF TARGET AMOUNT.—

19 (A) COSTS BETWEEN 92 AND 97 PERCENT
20 OF TARGET AMOUNT.—If the allowable costs for
21 the carrier with respect to the health benefits
22 plan involved for the year are less than 97 per-
23 cent, but greater than or equal to 92 percent,
24 of the target amount for the plan and year, the
25 carrier shall be required to pay into the contin-

1 agency reserve fund maintained under section
2 8909(b)(2) of title 5, United States Code, an
3 amount equal to 75 percent of the difference
4 between 97 percent of the target amount and
5 such allowable costs.

6 (B) COSTS BELOW 92 PERCENT OF TARGET
7 AMOUNT.—If the allowable costs for the carrier
8 with respect to the health benefits plan involved
9 for the year are less than 92 percent of the tar-
10 get amount for the plan and year, the carrier
11 shall be required to pay into the stabilization
12 fund under section 8909(b)(2) of title 5, United
13 States Code, an amount equal to the sum of—

14 (i) 3.75 percent of such target
15 amount; and

16 (ii) 90 percent of the difference be-
17 tween 92 percent of such target amount
18 and such allowable costs.

19 (4) TARGET AMOUNT DESCRIBED.—

20 (A) IN GENERAL.—For purposes of this
21 subsection, the term “target amount” means,
22 with respect to a health benefits plan offered by
23 a carrier under this Act in any of calendar
24 years 2005 through 2009, an amount equal
25 to—

1 (i) the total of the monthly premiums
2 estimated by the carrier and approved by
3 the Office to be paid for enrollees in the
4 plan under this Act for the calendar year
5 involved; reduced by

6 (ii) the amount of administrative ex-
7 penses that the carrier estimates, and the
8 Office approves, will be incurred by the
9 carrier with respect to the plan for such
10 calendar year.

11 (B) SUBMISSION OF TARGET AMOUNT.—
12 Not later than December 31, 2004, and each
13 December 31 thereafter through calendar year
14 2008, a carrier shall submit to the Office a de-
15 scription of the target amount for such carrier
16 with respect to health benefits plans provided
17 by the carrier under this Act.

18 (c) DISCLOSURE OF INFORMATION.—

19 (1) IN GENERAL.—Each contract under this
20 Act shall provide—

21 (A) that a carrier offering a health benefits
22 plan under this Act shall provide the Office
23 with such information as the Office determines
24 is necessary to carry out this subsection includ-
25 ing the notification of costs under subsection

1 (a)(2) and the target amount under subsection
2 (b)(4)(B); and

3 (B) that the Office has the right to inspect
4 and audit any books and records of the organi-
5 zation that pertain to the information regarding
6 costs provided to the Office under such sub-
7 sections.

8 (2) RESTRICTION ON USE OF INFORMATION.—
9 Information disclosed or obtained pursuant to the
10 provisions of this subsection may be used by officers,
11 employees, and contractors of the Office only for the
12 purposes of, and to the extent necessary in, carrying
13 out this section.

14 **SEC. 8. ENCOURAGING PARTICIPATION BY CARRIERS**
15 **THROUGH REINSURANCE.**

16 (a) ESTABLISHMENT.—The Office shall establish a
17 reinsurance fund to provide payments to carriers that ex-
18 perience one or more catastrophic claims during a year
19 for health benefits provided to individuals enrolled in a
20 health benefits plan under this Act.

21 (b) ELIGIBILITY FOR PAYMENTS.—To be eligible for
22 a payment from the reinsurance fund for a plan year, a
23 carrier under this Act shall submit to the Office an appli-
24 cation that contains—

1 (1) a certification by the carrier that the carrier
2 paid for at least one episode of care during the year
3 for covered health benefits for an individual in an
4 amount that is in excess of \$50,000; and

5 (2) such other information determined appro-
6 priate by the Office.

7 (c) PAYMENT.—

8 (1) IN GENERAL.—The amount of a payment
9 from the reinsurance fund to a carrier under this
10 section for a catastrophic episode of care shall be de-
11 termined by the Office but shall not exceed an
12 amount equal to 80 percent of the applicable cata-
13 strophic claim amount.

14 (2) APPLICABLE CATASTROPHIC CLAIM
15 AMOUNT.—For purposes of paragraph (1), the appli-
16 cable catastrophic episode of care amount shall be
17 equal to the difference between—

18 (A) the amount of the catastrophic claim;

19 and

20 (B) \$50,000.

21 (3) LIMITATION.—In determining the amount
22 of a payment under paragraph (1), if the amount of
23 the catastrophic claim exceeds the amount that
24 would be paid for the healthcare items or services in-
25 volved under title XVIII of the Social Security Act

1 (42 U.S.C. 1395 et seq.), the Office shall use the
2 amount that would be paid under such title XVIII
3 for purposes of paragraph (2)(A).

4 (d) DEFINITION.—In this section, the term “cata-
5 strophic claim” means a claim submitted to a carrier, by
6 or on behalf of an enrollee in a health benefits plan under
7 this Act, that is in excess of \$50,000.

8 **SEC. 9. CONTINGENCY RESERVE FUND.**

9 Beginning on October 1, 2009, the Office may use
10 amounts appropriated under section 14(a) that remain un-
11 obligated to establish a contingency reserve fund to pro-
12 vide assistance to carriers offering health benefits plans
13 under this Act that experience unanticipated financial
14 hardships (as determined by the Office).

15 **SEC. 10. EMPLOYER PARTICIPATION.**

16 (a) REGULATIONS.—The Office shall prescribe regu-
17 lations providing for employer participation under this
18 Act, including the offering of health benefits plans under
19 this Act to employees.

20 (b) ENROLLMENT AND OFFERING OF OTHER COV-
21 ERAGE.—

22 (1) ENROLLMENT.—A participating employer
23 shall ensure that each eligible employee has an op-
24 portunity to enroll in a plan under this Act.

1 (3) Serve as a channel of communication be-
2 tween carriers, participating employers, and individ-
3 uals relating to the administration of this Act.

4 (4) Otherwise carry out such activities for the
5 administration of this Act, in such manner, as may
6 be provided for in the contract entered into under
7 this section.

8 (5) The processing of grievances and appeals.

9 (b) APPLICATION.—To be eligible to receive a con-
10 tract under subsection (a), an entity shall prepare and
11 submit to the Office an application at such time, in such
12 manner, and containing such information as the Office
13 may require.

14 (c) PROCESS.—

15 (1) COMPETITIVE BIDDING.—All contracts
16 under this section shall be awarded through a com-
17 petitive bidding process on a bi-annual basis.

18 (2) REQUIREMENT.—No contract shall be en-
19 tered into with any entity under this section unless
20 the Office finds that such entity will perform its ob-
21 ligations under the contract efficiently and effec-
22 tively and will meet such requirements as to finan-
23 cial responsibility, legal authority, and other matters
24 as the Office finds pertinent.

1 (3) PUBLICATION OF STANDARDS AND CRI-
2 TERIA.—The Office shall publish in the Federal
3 Register standards and criteria for the efficient and
4 effective performance of contract obligations under
5 this section, and opportunity shall be provided for
6 public comment prior to implementation. In estab-
7 lishing such standards and criteria, the Office shall
8 provide for a system to measure an entity's perform-
9 ance of responsibilities.

10 (4) TERM.—Each contract under this section
11 shall be for a term of at least 1 year, and may be
12 made automatically renewable from term to term in
13 the absence of notice by either party of intention to
14 terminate at the end of the current term, except that
15 the Office may terminate any such contract at any
16 time (after such reasonable notice and opportunity
17 for hearing to the entity involved as the Office may
18 provide in regulations) if the Office finds that the
19 entity has failed substantially to carry out the con-
20 tract or is carrying out the contract in a manner in-
21 consistent with the efficient and effective adminis-
22 tration of the program established by this Act.

23 (d) TERMS OF CONTRACT.—A contract entered into
24 under this section shall include—

1 (1) a description of the duties of the con-
2 tracting entity;

3 (2) an assurance that the entity will furnish to
4 the Office such timely information and reports as
5 the Office determines appropriate;

6 (3) an assurance that the entity will maintain
7 such records and afford such access thereto as the
8 Office finds necessary to assure the correctness and
9 verification of the information and reports under
10 paragraph (2) and otherwise to carry out the pur-
11 poses of this Act;

12 (4) an assurance that the entity shall comply
13 with such confidentiality and privacy protection
14 guidelines and procedures as the Office may require;
15 and

16 (5) such other terms and conditions not incon-
17 sistent with this section as the Office may find nec-
18 essary or appropriate.

19 **SEC. 12. COORDINATION WITH SOCIAL SECURITY BENE-**
20 **FITS.**

21 Benefits under this Act shall, with respect to an indi-
22 vidual who is entitled to benefits under part A of title
23 XVIII of the Social Security Act, be offered (for use in
24 coordination with those medicare benefits) to the same ex-

1 tent and in the same manner as if coverage were under
2 chapter 89 of title 5, United States Code.

3 **SEC. 13. PUBLIC EDUCATION CAMPAIGN.**

4 (a) IN GENERAL.—In carrying out this Act, the Of-
5 fice shall develop and implement an educational campaign
6 to provide information to employers and the general public
7 concerning the health insurance program developed under
8 this Act.

9 (b) ANNUAL PROGRESS REPORTS.—Not later than 1
10 year and 2 years after the implementation of the campaign
11 under subsection (a), the Office shall submit to the appro-
12 priate committees of Congress a report that describes the
13 activities of the Office under subsection (a), including a
14 determination by the office of the percentage of employers
15 with knowledge of the health benefits programs provided
16 for under this Act.

17 (c) PUBLIC EDUCATION CAMPAIGN.—There is au-
18 thorized to be appropriated to carry out this section, such
19 sums as may be necessary for each of fiscal years 2005
20 and 2006.

21 **SEC. 14. APPROPRIATIONS.**

22 (a) MANDATORY APPROPRIATIONS.—There are au-
23 thorized to be appropriated, and there are appropriated,
24 to carry out sections 7 and 8—

25 (1) \$4,000,000,000 for fiscal year 2005;

- 1 (2) \$4,000,000,000 for fiscal year 2006;
2 (3) \$4,000,000,000 for fiscal year 2007;
3 (4) \$3,000,000,000 for fiscal year 2008; and
4 (5) \$3,000,000,000 for fiscal year 2009.

5 (b) OTHER APPROPRIATIONS.—There are authorized
6 to be appropriated to the Office, such sums as may be
7 necessary in each fiscal year for the development and ad-
8 ministration of the program under this Act.

9 **SEC. 15. REFUNDABLE CREDIT FOR SMALL BUSINESS EM-**
10 **PLOYEE HEALTH INSURANCE EXPENSES.**

11 (a) IN GENERAL.—Subpart C of part IV of sub-
12 chapter A of chapter 1 of the Internal Revenue Code of
13 1986 (relating to refundable credits) is amended by redес-
14 ignating section 36 as section 37 and inserting after sec-
15 tion 35 the following new section:

16 **“SEC. 36. SMALL BUSINESS EMPLOYEE HEALTH INSURANCE**
17 **EXPENSES.**

18 “(a) DETERMINATION OF AMOUNT.—In the case of
19 a qualified small employer, there shall be allowed as a
20 credit against the tax imposed by this subtitle for the tax-
21 able year an amount equal to the sum of—

22 “(1) the expense amount described in sub-
23 section (b), and

24 “(2) the expense amount described in sub-
25 section (c),

1 paid by the taxpayer during the taxable year.

2 “(b) SUBSECTION (b) EXPENSE AMOUNT.—For pur-
3 poses of this section—

4 “(1) IN GENERAL.—The expense amount de-
5 scribed in this subsection is the applicable percent-
6 age of the amount of qualified employee health in-
7 surance expenses of each qualified employee.

8 “(2) APPLICABLE PERCENTAGE.—For purposes
9 of paragraph (1)—

10 “(A) IN GENERAL.—The applicable per-
11 centage is equal to—

12 “(i) 25 percent in the case of self-only
13 coverage,

14 “(ii) 35 percent in the case of family
15 coverage (as defined in section 220(c)(5)),
16 and

17 “(iii) 30 percent in the case of cov-
18 erage for married adults with no children.

19 “(B) BONUS FOR PAYMENT OF GREATER
20 PERCENTAGE OF PREMIUMS.—The applicable
21 percentage otherwise specified in subparagraph
22 (A) shall be increased by 5 percentage points
23 for each additional 10 percent of the qualified
24 employee health insurance expenses of each

1 qualified employee exceeding 60 percent which
2 are paid by the qualified small employer.

3 “(c) SUBSECTION (c) EXPENSE AMOUNT.—For pur-
4 poses of this section—

5 “(1) IN GENERAL.—The expense amount de-
6 scribed in this subsection is, with respect to the first
7 credit year of a qualified small employer which is an
8 eligible employer, 10 percent of the qualified em-
9 ployee health insurance expenses of each qualified
10 employee.

11 “(2) FIRST CREDIT YEAR.—For purposes of
12 paragraph (1), the term ‘first credit year’ means the
13 taxable year which includes the date that the health
14 insurance coverage to which the qualified employee
15 health insurance expenses relate becomes effective.

16 “(3) ELIGIBLE EMPLOYER.—For purposes of
17 paragraph (1), the term ‘eligible employer’ shall not
18 include a qualified small employer if, during the 3-
19 taxable year period immediately preceding the first
20 credit year, the employer or any member of any con-
21 trolled group including the employer (or any prede-
22 cessor of either) established or maintained health in-
23 surance coverage for substantially the same employ-
24 ees as are the qualified employees to which the
25 qualified employee health insurance expenses relate.

1 “(d) LIMITATION BASED ON WAGES.—

2 “(1) IN GENERAL.—The percentage which
3 would (but for this subsection) be taken into account
4 as the percentage for purposes of subsection (b)(2)
5 or (c)(1) for the taxable year shall be reduced (but
6 not below zero) by the percentage determined under
7 paragraph (2).

8 “(2) AMOUNT OF REDUCTION.—

9 “(A) IN GENERAL.—The percentage deter-
10 mined under this paragraph is the percentage
11 which bears the same ratio to the percentage
12 which would be so taken into account as—

13 “(i) the excess of—

14 “(I) the qualified employee’s
15 wages at an annual rate during such
16 taxable year, over

17 “(II) \$25,000, bears to

18 “(ii) \$5,000.

19 “(B) ANNUAL ADJUSTMENT.—For each
20 taxable year after 2005, the dollar amounts
21 specified for the preceding taxable year (after
22 the application of this subparagraph) shall be
23 increased by the same percentage as the aver-
24 age percentage increase in premiums under the
25 Federal Employees Health Benefits Program

1 under chapter 89 of title 5, United States Code
2 for the calendar year in which such taxable year
3 begins over the preceding calendar year.

4 “(e) DEFINITIONS.—For purposes of this section—

5 “(1) QUALIFIED SMALL EMPLOYER.—The term
6 ‘qualified small employer’ means any employer (as
7 defined in section 2(b)(2) of the Small Employers
8 Health Benefits Program Act of 2004) which—

9 “(A) is a participating employer (as de-
10 fined in section 2(b)(5) of such Act), and

11 “(B) pays or incurs at least 60 percent of
12 the qualified employee health insurance ex-
13 penses of each qualified employee.

14 “(2) QUALIFIED EMPLOYEE HEALTH INSUR-
15 ANCE EXPENSES.—

16 “(A) IN GENERAL.—The term ‘qualified
17 employee health insurance expenses’ means any
18 amount paid by an employer for health insur-
19 ance coverage under such Act to the extent
20 such amount is attributable to coverage pro-
21 vided to any employee while such employee is a
22 qualified employee.

23 “(B) EXCEPTION FOR AMOUNTS PAID
24 UNDER SALARY REDUCTION ARRANGEMENTS.—

25 No amount paid or incurred for health insur-

1 ance coverage pursuant to a salary reduction
2 arrangement shall be taken into account under
3 subparagraph (A).

4 “(3) QUALIFIED EMPLOYEE.—

5 “(A) IN GENERAL.—The term ‘qualified
6 employee’ means, with respect to any period, an
7 employee (as defined in section 2(b)(1) of such
8 Act) of an employer if the total amount of
9 wages paid or incurred by such employer to
10 such employee at an annual rate during the
11 taxable year exceeds \$5,000.

12 “(B) WAGES.—The term ‘wages’ has the
13 meaning given such term by section 3121(a)
14 (determined without regard to any dollar limita-
15 tion contained in such section).

16 “(f) CERTAIN RULES MADE APPLICABLE.—For pur-
17 poses of this section, rules similar to the rules of section
18 52 shall apply.

19 “(g) CREDITS FOR NONPROFIT ORGANIZATIONS.—
20 Any credit which would be allowable under subsection (a)
21 with respect to a qualified small business if such qualified
22 small business were not exempt from tax under this chap-
23 ter shall be treated as a credit allowable under this sub-
24 part to such qualified small business.”.

25 (b) CONFORMING AMENDMENTS.—

1 (1) Paragraph (2) of section 1324(b) of title
2 31, United States Code, is amended by inserting be-
3 fore the period “, or from section 36 of such Code”.

4 (2) The table of sections for subpart C of part
5 IV of subchapter A of chapter 1 of the Internal Rev-
6 enue Code of 1986 is amended by striking the last
7 item and inserting the following new items:

 “Sec. 36. Small business employee health insurance expenses.

 “Sec. 37. Overpayments of tax.”.

8 (e) **EFFECTIVE DATE.**—The amendments made by
9 this section shall apply to amounts paid or incurred in tax-
10 able years beginning after December 31, 2004.

11 **SEC. 16. EFFECTIVE DATE.**

12 Except as provided in section 10(e), this Act shall
13 take effect on the date of enactment of this Act and shall
14 apply to contracts that take effect with respect to calendar
15 year 2005 and each calendar year thereafter.