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April 11, 2008

The Honorable Charles B. Rangel  
Chairman  
U.S. House Committee on Ways & Means  
1102 Longworth House Office Building  
Washington, DC 20515

The Honorable Jim McCrery  
Ranking Member  
U.S. House Committee on Ways & Means  
1139E Longworth House Office Building  
Washington, DC 20515

Dear Chairman Rangel and Ranking Member McCrery:

On April 9, the Ways and Means Committee reported HSA legislation requiring substantiation of qualified medical expenses. We appreciate the Committee's attention to the issue of whether the HSA program is functioning as designed, and we would note that existing law is silent on the question of whether qualified expenditures should be substantiated by the administrator or self-certified. Either is permitted.

Prior to markup, we had suggested that any new legislation should only require that administrators *report to the IRS on the amount of unsubstantiated distributions*. The Ways and Means bill goes beyond that and would treat unsubstantiated distributions as taxable. Our preferred reporting approach would allow HSA administrators to compete in the market on the extent to which they would offer substantiation services to their clients, balanced against the extra expense that would entail. We continue to believe that is a better and more acceptable approach, and we agree with those critics who argue that full FSA-level substantiation should not be required at this time. Contrary to allegations that we are trying to gain an unfair advantage in the market, this approach would permit the use of substantiation technology which is inexpensive and widely available in the market and would not even permit the use of Evolution Benefits' patented technology (which blocks non-qualified expenditures at point of sale). The reporting approach should reduce the number of taxable distributions which are not being reported and help both taxpayers and the IRS to manage the program properly.

Of course, even a substantiation reporting requirement may be unnecessary if there is evidence that account holders are properly self-certifying their taxable HSA distributions. The Treasury Department presented preliminary information during the Ways and Means markup that a material number of taxpayers with HSAs were indeed reporting some of their distributions as taxable. This is important new information and it needs to be further developed and analyzed. For this reason, and because we believe the Congress needs to study this whole area more closely, we would urge that the measure as reported out on April 9 be withdrawn or rejected at this time.

Sincerely,

Evolution Benefits, Inc.