

# COMPLIANCE OVERVIEW



## Health Savings Accounts (HSAs)— Q&As from the IRS

Many employers offer high-deductible health plans (HDHPs) to control premium costs, and then pair this coverage with health savings accounts (HSAs) to help employees with their health care expenses. An HSA is a tax-favored trust or account that can be contributed to by, or on behalf of, an eligible individual for the purpose of paying qualified medical expenses.

HSAs provide a triple tax advantage—contributions, investment earnings and amounts distributed for qualified medical expenses are all exempt from federal income tax, FICA tax and most state income taxes. Due to an HSA's potential tax savings, federal tax law imposes strict requirements for HSA eligibility, contributions and distributions.

The basic rules for HSAs are contained in Internal Revenue Code (Code) Section 223. Since Code Section 223 was enacted in 2003, the Internal Revenue Service (IRS) has issued guidance on HSAs, mainly in the format of questions and answers (Q&As). This Compliance Overview includes key compliance Q&As that the IRS has issued on HSAs, with updates for current cost-of-living adjustments.

### LINKS AND RESOURCES

- [IRS Publication 969](#), Health Savings Accounts and Other Tax-favored Health Plans
- IRS Q&As on HSAs: [IRS Notice 2008-59](#), [IRS Notice 2004-50](#) and [IRS Notice 2004-2](#)

### Eligibility Rules

To be HSA-eligible, an individual must:

- Be covered by an HDHP;
- Not be covered by other health coverage that is not an HDHP (with certain exceptions);
- Not be enrolled in Medicare; and
- Not be eligible to be claimed as a dependent on another person's tax return.

### Distribution Rules

- HSA owners may take distributions from their accounts at any time, even if they are no longer eligible for HSA contributions.
- HSA distributions are not taxable if the funds are used to pay for qualified medical expenses that were incurred after the HSA was established.

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## Eligibility

### **Who is eligible to establish an HSA?**

An “eligible individual” can establish an HSA. An “eligible individual” means, with respect to any month, any individual who:

- Is covered under a HDHP on the first day of such month;
- Is not also covered by any other health plan that is not an HDHP (with certain exceptions for plans providing certain limited types of coverage);
- Is not entitled to benefits under Medicare (generally, has not yet reached age 65); and
- May not be claimed as a dependent on another person's tax return. (*IRS Notice 2004-2*)

### **What is an HDHP?**

Generally, an HDHP is a health plan that satisfies certain requirements with respect to deductibles and out-of-pocket expenses. The minimum annual deductibles and the maximum out-of-pocket expense limits for HDHP coverage are adjusted for increases in the cost of living. A plan does not fail to qualify as an HDHP merely because it does not have a deductible (or has a small deductible) for preventive care (for example, first dollar coverage for preventive care). However, except for preventive care, a plan may not provide benefits for any year until the deductible for that year is met. (*IRS Notice 2004-2*)

The minimum annual deductible and maximum out-of-pocket requirements for HDHPs are as follows:

High Deductible Health Plan (HDHP) Limits		
Type of Coverage	Minimum Annual Deductible	Annual Out-of-pocket Maximum
Self-only	\$1,400 for 2022 (\$1,500 for 2023)	\$7,050 for 2022 (\$7,500 for 2023)
Family	\$2,800 for 2022 (\$3,000 for 2023)	\$14,100 for 2022 (\$15,000 for 2023)

### **May an HDHP apply any required cost-of-living adjustments to the minimum annual deductible amounts or maximum annual out-of-pocket expense limits on the renewal date of the HDHP if that date is after Jan. 1?**

Yes. Generally, an HDHP is a health plan that satisfies certain requirements with respect to minimum annual deductibles and maximum annual out-of-pocket expenses. These annual amounts are indexed for inflation using annual cost-of-living adjustments. Any required change to the deductibles and out-of-pocket expense limits may be applied as of the renewal date of the HDHP in cases where the renewal date is after the beginning of the calendar year, but in no event longer than a 12-month period ending on the renewal date. Thus, a fiscal year plan that satisfies the minimum annual deductible on the first day of the first month of its fiscal year may apply that deductible for the entire fiscal year, even if the minimum annual deductible increases on Jan. 1 of the next calendar year. (*IRS Notice 2004-50*)

### **If an employer offers an employee a choice between a low-deductible health plan and an HDHP, and the employee selects coverage only under the HDHP, is the employee an HSA-eligible individual?**

Yes, if the employee is otherwise an eligible individual. To determine if an individual is an eligible individual, the actual health coverage selected by the individual is controlling. Thus, it does not matter that the individual could have chosen,

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but did not choose, a low-deductible health plan or other coverage that would have disqualified the individual from contributing to an HSA. (*IRS Notice 2004-50*)

***May an otherwise eligible individual who is eligible for Medicare, but not enrolled in Medicare Part A or Part B, contribute to an HSA?***

Yes. Code Section 223(b)(7) states that an individual ceases to be an eligible individual starting with the month he or she is entitled to benefits under Medicare. Under this provision, mere eligibility for Medicare does not make an individual ineligible to contribute to an HSA. Rather, the term “entitled to benefits under” Medicare means both eligibility and enrollment in Medicare. Thus, an otherwise eligible individual under Code Section 223(c)(1) who is not actually enrolled in Medicare Part A or Part B may contribute to an HSA until the month that individual is enrolled in Medicare. (*IRS Notice 2004-50*)

***May an otherwise eligible individual who is covered by both an HDHP and also by insurance contracts for one or more specific diseases or illnesses, such as cancer, diabetes, asthma or congestive heart failure, contribute to an HSA if the insurance provides benefits before the deductible of the HDHP is satisfied?***

Yes. Code Section 223(c)(1)(B)(i) provides that an eligible individual covered under an HDHP may also be covered “for any benefit provided by permitted insurance.” Code Section 223(c)(3)(B) provides that the term “permitted insurance” includes “insurance for a specified disease or illness.” Therefore, an eligible individual may be covered by an HDHP and also by permitted insurance for one or more specific diseases, such as cancer, diabetes, asthma or congestive heart failure, as long as the principal health coverage is provided by the HDHP. (*IRS Notice 2004-50*)

***May an individual who is covered by an HDHP and who also has a discount card that enables the user to obtain discounts for health care services or products, contribute to an HSA?***

Yes. Discount cards that entitle holders to obtain discounts for health care services or products at managed care market rates will not disqualify an individual from being an eligible individual for HSA purposes if the individual is required to pay the costs of the health care (taking into account the discount) until the deductible of the HDHP is satisfied. (*IRS Notice 2004-50*)

***Does coverage under an employee assistance program (EAP), disease management program or wellness program make an individual ineligible to contribute to an HSA?***

An individual will not fail to be an eligible individual under Code Section 223(c)(1)(A) solely because the individual is covered under an EAP, disease management program or wellness program, if the program does not provide significant benefits in the nature of medical care or treatment, and, therefore, is not considered a “health plan” for purposes of Code Section 223(c)(1). To determine whether a program provides significant benefits in the nature of medical care or treatment, screening and other preventive care services will be disregarded. (*IRS Notice 2004-50*)

***If an employee begins HDHP coverage mid-month, when does the employee become an eligible individual? (For example, coverage under the HDHP begins on the first day of a biweekly payroll period.)***

Under Code Section 223(b)(2), an eligible individual must have HDHP coverage as of the first day of the month. An individual with employer-provided HDHP coverage on a payroll-by-payroll basis becomes an eligible individual on the first day of the month on or following the first day of the pay period when HDHP coverage begins. (*IRS Notice 2004-50*)

***Example:*** An employee begins HDHP coverage on the first day of a pay period, which is Aug. 16, 2022, and continues to be covered by the HDHP throughout 2022. For purposes of contributing to an HSA, the employee becomes an eligible individual on Sept. 1, 2022.

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***If an employee is covered by an HDHP and the employer pays or reimburses some or all of the employee's medical expenses incurred before the minimum HDHP deductible is satisfied (other than disregarded coverage under Code Section 223(c)(1)(B) or preventive care under Code Section 223(c)(2)(C)), is the employee an eligible individual?***

No. To be an eligible individual, an individual must be covered by an HDHP and no other health plan except disregarded coverage or preventive care. If at any time, an employer pays or reimburses, directly or indirectly, all or part of employees' medical expenses below the minimum HDHP deductible under Code Section 223(c)(2)(A) (other than for disregarded coverage or preventive care) the employees are not eligible to contribute to an HSA. (*IRS Notice 2008-59*)

***Example:*** For 2020, an HDHP with self-only coverage has an annual deductible of \$2,500. The employee pays the first \$250 of covered medical expenses below the deductible. The employer reimburses the next \$1,350 of covered medical expenses below the deductible. The employee is responsible for the last \$900 of covered medical expenses below the deductible. The \$1,350 of medical expenses paid or reimbursed by the employer is not a contribution to an HSA and not disregarded coverage or preventive care. An employee covered by this type of plan is not an eligible individual under Code Section 223(c)(1) because the employee has disqualifying coverage from a plan that is not an HDHP.

***May an otherwise eligible individual covered by an HDHP also be covered by a health plan that is not an HDHP with a deductible equal to or greater than the statutory minimum HDHP deductible?***

Yes, as long as the deductible of the other coverage equals or exceeds the statutory minimum HDHP deductible, the individual remains an eligible individual. (*IRS Notice 2008-59*)

## Contributions

HSA Maximum Contribution Limits			
Type of Coverage	2021	2022	2023
Self-only	\$3,600	\$3,650	\$3,850
Family	\$7,200	\$7,300	\$7,750

### ***Who may contribute to an HSA?***

Any eligible individual may contribute to an HSA. For an HSA established by an employee, the employee, the employee's employer or both may contribute to the HSA of the employee in a given year. For an HSA established by a self-employed (or unemployed) individual, the individual may contribute to the HSA. Family members may also make contributions to an HSA on behalf of another family member as long as that other family member is an eligible individual. (*IRS Notice 2004-2*)

### ***In what form must contributions be made to an HSA?***

Contributions to an HSA must be made in cash. For example, contributions may not be made in the form of stock or other property. Payments for the HDHP and contributions to the HSA can be made through a cafeteria plan. (*IRS Notice 2004-2*)

### ***What is the tax treatment of an eligible individual's HSA contributions?***

Contributions made by an eligible individual to an HSA are deductible by the eligible individual in determining adjusted gross income (that is, "above-the-line"). The contributions are deductible whether or not the eligible individual itemizes deductions. However, the individual cannot also deduct the contributions as medical expense deductions under Code Section 213. (*IRS Notice 2004-2*)

### ***What is the tax treatment of employer contributions to an employee's HSA?***

In the case of an employee who is an eligible individual, employer contributions (provided they are within the HSA contribution limits for that year) to the employee's HSA are treated as employer-provided coverage for medical expenses

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under an accident or health plan and are excludable from the employee's gross income. The employer contributions are not subject to withholding from wages for income tax or subject to the Federal Insurance Contributions Act (FICA), the Federal Unemployment Tax Act (FUTA), or the Railroad Retirement Tax Act. Contributions to an employee's HSA through a cafeteria plan are treated as employer contributions. The employee cannot deduct employer contributions on his or her federal income tax return as HSA contributions or as medical expense deductions under Code Section 213. (*IRS Notice 2004-2*)

## ***When may HSA contributions be made? Is there a deadline for contributions to an HSA for a taxable year?***

Contributions for the taxable year can be made in one or more payments, at the convenience of the individual or the employer, at any time prior to the time prescribed by law (without extensions) for filing the eligible individual's federal income tax return for that year, but not before the beginning of that year. For calendar year taxpayers, the deadline for contributions to an HSA is generally April 15 following the year for which the contributions are made. Although the annual contribution is determined monthly, the maximum contribution may be made on the first day of the year. (*IRS Notice 2004-2*)

## ***How do the maximum annual HSA contribution limits apply to an eligible individual with family HDHP coverage for the entire year if the family HDHP covers spouses or dependent children who also have coverage by a non-HDHP, Medicare or Medicaid?***

The eligible individual may contribute the Code Section 223(b)(2)(B) statutory maximum for family coverage. Other coverage of dependent children or spouses does not affect the individual's contribution limit, except that if the spouse is not an otherwise eligible individual, no part of the HSA contribution can be allocated to the spouse. (*IRS Notice 2008-59*)

## ***How do the maximum annual HSA contribution limits apply to a married couple if both spouses are eligible individuals and one spouse has self-only HDHP coverage and the other spouse has family HDHP coverage?***

The maximum annual HSA contribution limit for a married couple, if one spouse has family HDHP coverage and the other spouse has self-only HDHP coverage, is the Code Section 223(b)(2)(B) statutory maximum for family coverage. The contribution limit is divided between the spouses by agreement. This is the result regardless of whether the family HDHP coverage includes the spouse with self-only HDHP coverage. (*IRS Notice 2008-59*)

***Example:*** For 2020, H and W are married. Both are 40 years old. H and W are otherwise eligible individuals. H has self-only HDHP coverage. W has an HDHP with family coverage for W and their two children. The combined contribution limit for H and W is \$7,100, which is the Code Section 223(b)(2)(B) statutory contribution limit for 2020. H and W divide the \$7,100 contribution limit between them by agreement.

## ***How do the maximum annual HSA contribution limits apply to a married couple if both spouses are eligible individuals and each spouse has family HDHP coverage that does not cover the other spouse?***

The maximum HSA contribution limit for a married couple where both spouses have family HDHP coverage is the Code Section 223(b)(2)(B) statutory maximum. This rule applies regardless of whether each spouse's family coverage covers the other spouse. The contribution limit is divided between the spouses by agreement. (*IRS Notice 2008-59*)

## ***May an individual who ceases to be an eligible individual during a year still contribute to an HSA with respect to the months of the year when the individual was an eligible individual?***

Yes. An individual who ceases to be an eligible individual may, until the date for filing the return (without extensions) for the year, make HSA contributions with respect to the months of the year when the individual was an eligible individual. (*IRS Notice 2008-59*)

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***May an individual who is not an eligible individual make a rollover contribution from his or her existing HSA to a new HSA?***

Yes. (IRS Notice 2008-59)

***May employer contributions to employees' HSAs made between Jan. 1 and the date for filing the employee's return, without extensions, be allocated to the prior year?***

Yes. For employer contributions (including salary reduction contributions) made between Jan. 1 and the date for filing the employees' returns without extension, the employer must notify the HSA trustee or custodian if the contributions relate to the prior year. The employer must also inform the employee of the designation. However, the contributions designated as made for the prior year are still reported in Box 12 with Code W on the employees' Form W-2 for the year in which the contributions are actually made. (IRS Notice 2008-59)

***If a husband and wife are each eligible to make catch-up contributions, must each spouse contribute their catch-up contributions to their own HSA?***

Yes. An individual who is eligible to make catch-up contributions may only make such contributions to his or her own HSA. If both spouses are eligible for the catch-up contribution, each spouse must make catch up contributions to his or her own HSA. (IRS Notice 2008-59)

***Are employers who contribute to an employee's HSA responsible for determining whether the employee is an eligible individual and the employee's maximum annual contribution limit?***

Employers are only responsible for determining the following with respect to an employee's eligibility and maximum annual contribution limit on HSA contributions:

- Whether the employee is covered under an HDHP (and the deductible) or low deductible health plan or plans (including health FSAs and HRAs) sponsored by that employer; and
- The employee's age (for catch-up contributions). The employer may rely on the employee's representation as to his or her date of birth. (IRS Notice 2004-50)

***May the employer recoup from an employee's HSA any portion of the employer's contribution to the employee's HSA?***

No. Under Code Section 223(d)(1)(E), an account beneficiary's interest in an HSA is nonforfeitable. For example, on Jan. 2, 2020, the employer makes the maximum annual contribution to employees' HSAs, in the expectation that the employees would work for the entire calendar year 2020. On Feb. 1, 2020, one employee terminates employment. The employer may not recoup from that employee's HSA any portion of the contribution previously made to the employee's HSA. (IRS Notice 2004-50)

***If an employer contributes to the account of an employee who was never an eligible individual, can the employer recoup the amounts?***

If the employee was never an eligible individual under Code Section 223(c), then no HSA ever existed and the employer may correct the error. At the employer's option, the employer may request that the financial institution return the amounts to the employer. However, if the employer does not recover the amounts by the end of the taxable year, then the amounts must be included as gross income and wages on the employee's Form W-2 for the year during which the employer made the contributions. (IRS Notice 2008-59)

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## ***If an employer contributes amounts to an employee's HSA that exceed the maximum annual contribution due to an error, can the employer recoup the excess amounts?***

If the employer contributes amounts to an employee's HSA that exceed the maximum annual contribution due to an error, the employer may correct the error. In that case, at the employer's option, the employer may request that the financial institution return the excess amounts to the employer. Alternatively, if the employer does not recover the amounts, then the amounts must be included as gross income and wages on the employee's Form W-2 for the year during which the employer made contributions. If, however, amounts contributed are less than or equal to the maximum annual contribution, the employer may not recoup any amount from the employee's HSA. (*IRS Notice 2008-59*)

**Example:** In February 2020, Employer L contributed \$500 to an account of Employee M, reasonably believing the account to be an HSA. In July 2020, Employer L first learned that Employee M's account is not an HSA because Employee M has never been an eligible individual under Code Section 223(c). Employer L may either request that the financial institution holding Employee M's account return the balance of the account (\$500 plus earnings less administration fees directly paid from the account) to Employer L. If Employer L does not receive the balance of the account, Employer L must include the amounts in Employee M's gross income and wages on his Form W-2 for 2020.

## ***Are employer contributions to the HSA of an employee's spouse (who is not an employee of this employer) excluded from the employee's gross income and wages?***

No. The exclusion under Code Section 106(d)(1) is limited to contributions by an employer to the HSA of an employee who is an eligible individual. Any contribution by an employer to the HSA of a non-employee (for example, a spouse of an employee or any other individual), including salary reduction amounts made through a Section 125 cafeteria plan, must be included in the gross income and wages of the employee. (*IRS Notice 2008-59*)

## **Distributions**

### ***When is an individual permitted to receive distributions from an HSA?***

An individual is permitted to receive distributions from an HSA at any time. (*IRS Notice 2004-2*)

### ***When must a distribution from an HSA be taken to pay or reimburse, on a tax-free basis, qualified medical expenses incurred in the current year?***

An account beneficiary may defer to later taxable years distributions from HSAs to pay or reimburse qualified medical expenses incurred in the current year as long as the expenses were incurred after the HSA was established. Similarly, a distribution from an HSA in the current year can be used to pay or reimburse expenses incurred in any prior year as long as the expenses were incurred after the HSA was established. Thus, there is no time limit on when the distribution must occur.

However, to be excludable from the account beneficiary's gross income, he or she must keep sufficient records to later show that the distributions were exclusively to pay or reimburse qualified medical expenses, that the qualified medical expenses have not been previously paid or reimbursed from another source, and that the medical expenses have not been taken as an itemized deduction in any prior taxable year. (*IRS Notice 2004-50*)

### ***How are distributions from an HSA taxed?***

Distributions from an HSA used exclusively to pay for qualified medical expenses of the account beneficiary, his or her spouse or dependents are excludable from gross income. In general, amounts in an HSA can be used for qualified medical expenses and will be excludable from gross income even if the individual is not currently eligible for contributions to the HSA.

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However, any amount of the distribution not used exclusively to pay for qualified medical expenses of the account beneficiary, spouse or dependents is includable in gross income of the account beneficiary and is subject to an additional 20 percent tax on the amount includable, except in the case of distributions made after the account beneficiary's death, disability or attaining age 65. *(IRS Notice 2004-2)*

## ***Are health insurance premiums qualified medical expenses?***

Generally, health insurance premiums are not qualified medical expenses except for the following: qualified long-term care insurance, COBRA health care continuation coverage and health care coverage while an individual is receiving unemployment compensation. In addition, for individuals over age 65, premiums for Medicare Part A or B, Medicare HMO, and the employee share of premiums for employer-sponsored health insurance, including premiums for employer-sponsored retiree health insurance, can be paid from an HSA. Premiums for Medigap policies are not qualified medical expenses. *(IRS Notice 2004-2)*

## ***How are distributions from an HSA taxed after the account beneficiary is no longer an eligible individual?***

If the account beneficiary is no longer an eligible individual (for example, the individual is over age 65 and entitled to Medicare benefits, or no longer has an HDHP), distributions used exclusively to pay for qualified medical expenses continue to be excludable from the account beneficiary's gross income. *(IRS Notice 2004-2)*

## ***If an account beneficiary's spouse or dependents are covered under a non-HDHP, are distributions from an HSA to pay their qualified medical expenses excluded from the account beneficiary's gross income?***

Yes. Distributions from an HSA are excluded from income if made for any qualified medical expense of the account beneficiary, the account beneficiary's spouse and dependents (without regard to their status as eligible individuals). However, distributions made for expenses reimbursed by another health plan are not excludable from gross income, whether or not the other health plan is an HDHP. *(IRS Notice 2004-50)*

## ***Must HSA trustees or custodians determine whether HSA distributions are used exclusively for qualified medical expenses?***

No. HSA trustees or custodians are not required to determine whether HSA distributions are used for qualified medical expenses. Individuals who establish HSAs make that determination and should maintain sufficient records of their medical expenses in order to show that the distributions have been made exclusively for qualified medical expenses and are therefore excludable from gross income. *(IRS Notice 2004-2)*

## ***Must employers who make contributions to an employee's HSA determine whether HSA distributions are used exclusively for qualified medical expenses?***

No. The same rule that applies to trustees or custodians applies to employers. *(IRS Notice 2004-2)*

## ***What are the income tax consequences after the HSA account beneficiary's death?***

Upon death, any balance remaining in the account beneficiary's HSA becomes the property of the individual named in the HSA instrument as the beneficiary of the account. If the account beneficiary's surviving spouse is the named beneficiary of the HSA, the HSA becomes the HSA of the surviving spouse. The surviving spouse is subject to income tax only to the extent distributions from the HSA are not used for qualified medical expenses.

If, by reason of the death of the account beneficiary, the HSA passes to a person other than the account beneficiary's surviving spouse, the HSA ceases to be an HSA as of the date of the account beneficiary's death, and the person is required to include in gross income the fair market value of the HSA assets as of the date of death. For such a person (except the

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decedent's estate), the includable amount is reduced by any payments from the HSA made for the decedent's qualified medical expenses, if paid within one year after death. (*IRS Notice 2004-2*)

## ***May an HSA account beneficiary authorize someone else to withdraw funds from his or her HSA?***

Although an HSA is an individual account, an HSA account beneficiary can designate other individuals to withdraw funds pursuant to the procedures of the trustee or custodian of the HSA. Distributions are subject to tax if they are not used to pay for qualified medical expenses for the HSA account beneficiary, the account beneficiary's spouse or dependents. (*IRS Notice 2008-59*)

## **Account Administration**

### ***May a husband and wife have a joint HSA?***

No. Each spouse who is an "eligible individual" as described in Code Section 223(c)(1) and wants to make contributions to an HSA must open a separate HSA. Thus, only one person may be the account beneficiary of an HSA. (*IRS Notice 2004-50*)

### ***May an eligible individual have more than one HSA?***

Yes. An eligible individual may establish more than one HSA, and may contribute to more than one HSA. The same rules governing HSAs apply (for example, maximum contribution limit), regardless of the number of HSAs established by an eligible individual. (*IRS Notice 2004-50*)

### ***If administration and account maintenance fees (for example, flat administrative fees) are withdrawn from the HSA, are the withdrawn amounts treated as taxable distributions to the account beneficiary?***

No. Amounts withdrawn from an HSA for administration and account maintenance fees will not be treated as a taxable distribution and will not be included in the account beneficiary's gross income. (*IRS Notice 2004-50*)

### ***When is an HSA established?***

An HSA is an exempt trust established through a written governing instrument under state law. State trust law determines when an HSA is established. Most state trust laws require that for a trust to exist, an asset must be held in trust; thus, most state trust laws require that a trust must be funded to be established. Whether the account beneficiary's signature is required to establish the trust also depends on state law. (*IRS Notice 2008-59*)

### ***When is an HSA established if the funds in the HSA were rolled over or transferred from an Archer MSA or another HSA?***

An HSA that is funded by amounts rolled over or transferred from an Archer MSA or another HSA is established as of the date the prior account was established. (*IRS Notice 2008-59*)

### ***On what date is an HSA established if the account beneficiary had previously established an HSA?***

If an account beneficiary establishes an HSA, and later establishes another HSA, any later HSA is deemed to be established when the first HSA was established if the account beneficiary has an HSA with a balance greater than zero at any time during the 18-month period ending on the date the later HSA is established. (*IRS Notice 2008-59*)

## **Other Matters**

### ***Can an HSA be offered under a cafeteria plan?***

Yes. Both an HSA and an HDHP may be offered as options under a cafeteria plan. Thus, an employee may elect to have amounts contributed as employer contributions to an HSA and an HDHP on a salary-reduction basis. (*IRS Notice 2004-2*)

### ***Do the Section 125 change in status rules apply to elections of HSA contributions through a cafeteria plan?***

A cafeteria plan may permit an employee to revoke an election during a period of coverage with respect to a qualified benefit and make a new election for the remaining portion of the period only as provided in Treas. Reg. Section 1.125-4.

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Because the eligibility requirements and contribution limits for HSAs are determined on a month-by-month basis, rather than on an annual basis, an employee who elects to make HSA contributions under a cafeteria plan may start or stop the election or increase or decrease the election at any time as long as the change is effective prospectively (that is, after the request for the change is received). If an employer places additional restrictions on the election of HSA contributions under a cafeteria plan, the same restrictions must apply to all employees. *(IRS Notice 2004-50)*

***Can an employer permit employees to elect an HSA mid-year if offered as a new benefit under the employer's cafeteria plan?***

Yes, if the election for the HSA is made on a prospective basis. However, the HSA election does not permit a change or revocation of any other coverage under the cafeteria plan unless the change is permitted by Treas. Reg. Section 1.125-4. Thus, while an HSA may be offered to and elected by an employee mid-year, the employee may have other coverage under the cafeteria plan that cannot be changed, (for example, coverage under a health FSA) which may prevent the employee from being an eligible individual. *(IRS Notice 2004-50)*

***Are HSAs subject to COBRA continuation coverage under Section 4980B?***

No. HSAs are not subject to COBRA continuation coverage. *(IRS Notice 2004-2)*

*Source: Internal Revenue Service*

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## **Is an otherwise eligible individual who has access to free health care or health care at charges below fair market value from a clinic on an employer’s premises an eligible individual?**

An individual will not fail to be an eligible individual under Code Section 223(c)(1)(A) merely because the individual has access to free health care or health care at charges below fair market value from an employer’s on-site clinic if the clinic does not provide significant benefits in the nature of medical care (in addition to disregarded coverage or preventive care).  
*(IRS Notice 2008-59)*

**Example:** A manufacturing plant operates an on-site clinic that provides the following free health care for employees: (1) physicals and immunizations; (2) injecting antigens provided by employees (for example, performing allergy injections); (3) a variety of aspirin and other nonprescription pain relievers; and (4) treatment for injuries caused by accidents at the plant. The clinic does not provide significant benefits in the nature of medical care in addition to disregarded coverage or preventive care.